ATTACHMENT A

THE PROPOSED DECISION
In the Matter of the Application for an Earlier Effective Date of Retirement of:

LESLIE M. SCHREINER,
Respondent,
and
SAN DIEGO UNIFIED SCHOOL DISTRICT,
Respondent.

Case No. 2017-1185
OAH No. 2018021073

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 16, 2018, in San Diego, California.

Austa Wakily, Senior Staff Attorney, represented complainant, Anthony Suine, Chief, Benefit Services Division, California Public Employees’ Retirement System (CalPERS).

Leslie M. Schreiner, respondent, represented herself.

There was no appearance on behalf of the San Diego Unified School District.

The matter was submitted on July 16, 2018.

ISSUE

Is Ms. Schreiner entitled to an earlier effective retirement date retroactive to July 1, 2012, due to a correctable error resulting from mistake, inadvertence, or excusable neglect under Government Code section 20160?
FACTUAL FINDINGS

Background

1. Ms. Schreiner was employed by the San Diego Unified School District as a Financial Controller. By virtue of her employment, Ms. Schreiner was a local miscellaneous member of CalPERS, subject to Government Code section 21150.

2. On May 10, 2017, CalPERS received Ms. Schreiner’s application for disability retirement on the basis of a neurological (stroke) condition. In the application, Ms. Schreiner requested a retirement effective date of “expiration of benefits.”

3. By letter dated October 26, 2017, CalPERS addressed Ms. Schreiner’s request for a retirement date effective on the expiration of benefits, which was when she separated from employment on June 30, 2012. CalPERS noted that Government Code section 20160 may be used to correct a mistake due to excusable inadvertence, oversight, or mistake of fact or law on the part of the applicant. However, CalPERS determined that Ms. Schreiner was not entitled to an earlier retirement date because she was unable to establish that she had made a “correctable mistake.”

4. On the same date, CalPERS informed Ms. Schreiner that it approved her application for disability retirement. Because the application for disability retirement had not been filed within nine months of her discontinuance of service, Ms. Schreiner began receiving her disability retirement benefits effective May 1, 2017, the first day of the month in which CalPERS received the application.

5. Ms. Schreiner appealed CalPERS decision denying her request for an earlier effective retirement date. On February 20, 2018, complainant filed the statement of issues in his official capacity. The sole issue on appeal is whether Ms. Schreiner made an error which was the result of inadvertence, mistake, surprise, or excusable neglect correctable under Government Code section 20160, which would have entitled her to an effective retirement date retroactive to July 1, 2012.

Ms. Schreiner’s Communications with CalPERS

6. Nichole Herrera is an appeals specialist for CalPERS in the disability retirement section who testified at hearing. Ms. Herrera explained that Touch Point is CalPERS’s computerized system for documenting action taken involving a member’s account. A Touch Point report for Ms. Schreiner was received as evidence.

7. A Touch Point entry on May 15, 2014, indicated that Ms. Schreiner met with a CalPERS representative and submitted two requests for estimates of service retirement and

1 Ms. Schreiner testified that she was not directly employed by the district, but rather an independent charter school.
disability retirement benefits. The note indicated that Ms. Schreiner separated from her employer on July 1, 2012, and she was “not aware that she can apply for disability retirement.” The note stated that Ms. Schreiner was receiving Social Security disability benefits. Finally, the CalPERS representative noted that he went over the service retirement and disability retirement process and indicated that Ms. Schreiner would return as soon as possible to submit her retirement application.


9. Ms. Schreiner did not again contact CalPERS until March 29, 2017, when she met with another CalPERS representative. The Touch Point note indicated that the representative explained the difference between service retirement and disability retirement and that disability retirement would be beneficial to Ms. Schreiner. The CalPERS representative provided Ms. Schreiner information and forms needed to complete a disability retirement application.

**Ms. Schreiner’s Evidence**

10. Ms. Schreiner suffered a stroke in 2012. As a result of the stroke she had to learn to walk again, and after six months of recovery, still suffered from serious fatigue, dizziness, balance problems, and became easily confused. She never returned to work, but utilized her sick days until separating from her employer on June 30, 2012. At this point, Ms. Schreiner was still focused on her recovery and was not aware of disability retirement. Because she was employed by a charter school, and not the school district, no one at the district’s human resources provided her with any information about disability retirement. Ms. Schreiner began receiving Social Security disability benefits.

11. In May 2014, Ms. Schreiner and her husband met with a CalPERS representative. Ms. Schreiner wanted to know what happened to the money that she had contributed to CalPERS over the years. She said the meeting lasted 30 minutes, the CalPERS representative spoke extremely fast, and she came away from the meeting “utterly confused.” All she was able to comprehend from the meeting was that she needed to wait until she was age 55 to file for a service retirement. Ms. Schreiner did not remember anything else from the meeting and did not recall discussing disability retirement at that time. Ms. Schreiner acknowledged that she submitted two retirement estimate requests to CalPERS, including for disability retirement, but again said the only thing she was aware of was that she could not retire until age 55. She did not understand that she could apply for disability retirement at that time.

12. Ms. Schreiner and her husband returned to CalPERS in March 2017, because Ms. Schreiner was approaching the age of 55 and she wanted to know how retirement would affect her Social Security disability benefits. At this time, the CalPERS representative
explained disability retirement. This was the first time that Ms. Schreiner clearly understood that she was eligible to apply for disability retirement. She submitted the application a month later.

13. Ms. Schreiner’s husband, Joe Schreiner, also testified at hearing. He went to the meeting with CalPERS and his wife in May 2014. Like Ms. Schreiner, he too was confused about what options were available and believed she had to wait until she was 55 to file an application. Mr. Schreiner disputed that CalPERS informed them about disability retirement, and said that had this been the case, they surely would have elected to start immediately obtaining benefits because of their financial situation. He said there would have been no reason for them to forego applying for another three years.

LEGAL CONCLUSIONS

Administration of the Retirement Fund

1. The CalPERS retirement fund was established as a trust, to be administered in accordance with the provisions of the Public Employees Retirement Law solely for the benefit of the participants. (Gov. Code, § 20170.) Management and control of the retirement system is vested in the Board of Administration. (Gov. Code, § 20123). The Board of Administration has the exclusive control of the administration and investment of the retirement fund. (Gov. Code, § 20171.)

2. Pension legislation must be liberally construed, resolving all ambiguities in favor of the applicant. However, liberal construction cannot be used as an evidentiary device. It does not relieve a party of meeting the burden of proof by a preponderance of the evidence. (Glover v. Bd. of Retirement (1989) 214 Cal.App.3d 1327, 1332.)

Burden and Standard of Proof

3. An applicant for retirement benefits has the burden of proving that he or she is entitled to it. (Greatorex v. Bd. of Administration (1979) 91 Cal.App.3d 54). In the absence of a statute to the contrary, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Applicable Statutes

4. Government Code section 21252, subdivision (a), provides:

A member’s written application for retirement, if submitted to the board within nine months after the date the member discontinued his or her state service, and, in the case of retirement for disability, if the member was physically or mentally incapacitated to perform his or her duties from the date
the member discontinued state service to the time the written application for retirement was submitted to the board, shall be deemed to have been submitted on the last day for which salary was payable. The effective date of a written application for retirement submitted to the board more than nine months after the member's discontinuance of state service shall be the first day of the month in which the member's application is received at an office of the board or by an employee of this system designated by the board.

5. Government Code section 20160 provides:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active . . . member . . . [if] all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

[f] . . . [f]

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties
described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

**Evaluation**

6. Ms. Schreiner seeks to use Government Code section 20160 to correct her failure to submit an application for disability retirement within nine months of her separation of employment, which would be required in order to receive an effective retirement date of July 1, 2012. (Gov. Code, § 21252, subd. (a).) Ms. Schreiner has the burden to show that the “error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.” (Gov. Code § 20160, subd. (a)(2).) Any failure to make an “inquiry that would be made by a reasonable person in like or similar circumstances” does not constitute an “error or omission” correctable under this section. (Gov. Code § 20160, subd. (a)(3).) Neglect is “excusable” when a reasonably prudent person under the same or similar circumstances might have made the same error. (Zamora v. Clayborn Contracting Group, Inc. (2002) 28 Cal.4th 249, 258; Bettencourt v. Los Rios Community College Dist. (1986) 42 Cal.3d 270, 276; Ambrose v. Michelin North America, Inc. (2005) 134 Cal.App.4th 1350, 1354.) Put another way, if a reasonably prudent person might have made the same error as Ms. Schneider, her failure to timely file a disability retirement application is “excusable” within the meaning of Civil Procedure section 473. Finally, she must establish that the request to correct the error or omission was made within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right. (Gov. Code, § 20160, subd. (a)(1).)

Ms. Schreiner suffered a debilitating stroke in 2012 that forced her separation of employment from a contacting entity. Under Government Code section 21252, in order to
begin receiving disability benefits effective upon separation, she was required to file a
disability retirement application within nine months of July 31, 2012. Ms. Schreiner credibly
testified that she was going through extensive rehabilitation, and under the circumstances, it
is reasonable that her focus would not be on her retirement benefits.

However, the question remains whether a five-year delay in filing the application is
excusable in light of her meeting with CalPERS in May 2014. Ms. Schreiner and her
husband met with a CalPERS representative on May 17, 2014. The Touch Point note
indicates that the representative explained both disability and service retirements to Ms.
Schreiner. Ms. Schreiner disputes this, and said she came away from the meeting confused
and believing that she had to wait until she was age 55 to file a retirement application.
However, the accuracy of the Touch Point notes is not dispositive because Ms. Schreiner did
in fact submit requests for estimates of both retirements, which she subsequently received
from CalPERS. Although both Ms. Schreiner and her husband might have been confused
after the meeting, they were provided information about both retirements. A reasonably
prudent person in that situation would have at least inquired with CalPERS for further
information or sought additional clarification about the option to file for a disability
retirement. There are many resources explaining retirement options that Ms. Schreiner could
have availed herself; including again contacting CalPERS for clarification. Even assuming
that Ms. Schreiner’s cognitive difficulties following the stroke made this more difficult, she
had the support of her husband, and a reasonably prudent person in a similar situation would
have made further inquiries. Thus, Ms. Schreiner’s error or omission in failing to timely file
a disability retirement application cannot be considered “excusable” in light of the
information CalPERS provided to her in May 2014. Additionally, because a reasonable
person in like or similar circumstances would have filed an application or taken further steps
to clarify her options, Ms. Schreiner’s failure to timely file does not constitute a correctable
“error or omission.” (Gov. Code § 20160, subd. (a)(3).)

Accordingly, CalPERS is not required to correct Ms. Schreiner’s failure to timely file
her disability retirement application that would entitle her to an earlier effective retirement
date.

ORDER

Respondent Leslie M. Schreiner’s appeal of CalPERS decision denying her request
for a retroactive effective disability retirement date of July 1, 2012, is denied.

Dated: August 1, 2018

ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings