ATTACHMENT D

DECISION
RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated September 4, 2018, concerning the appeal of Brian A. Dalhover; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

I hereby certify that on November 15, 2018, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the Administrative Law Judge's Proposed Decision is a true copy of the Decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

MARCIE FROST
CHIEF EXECUTIVE OFFICER

Dated: 11/20/2018  

BY

DONNA RAMELUM
Deputy Executive Officer
Customer Services and Support
BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal for an Earlier Effective Date of Retirement of:

BRIAN A. DALHOVER.

Respondent,

and

DEPARTMENT OF STATE HOSPITALS—METROPOLITAN LA.

Respondent.

Case No. 2018-0199

OAH No. 2018050818

PROPOSED DECISION

The hearing in this matter was conducted by Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings in Los Angeles, California, on August 2, 2018.

Austa Wakily represented the California Public Employees’ Retirement System (CalPERS). Respondent Brian A. Dalhover appeared and represented himself. There was no appearance by the Department of State Hospitals—Metropolitan LA.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. The Statement of Issues in this case was signed and filed by Anthony Suine, Chief of the Benefit Services Division of CalPERS. He, and CalPERS, acted in their official capacities by initiating and maintaining this proceeding.
2. Respondent Brian A. Dalhover (Respondent) was employed by the other respondent in this matter, Department of State Hospitals—Metropolitan LA (DSHM). He was employed as a Psychiatric Technician, and by virtue of that employment is a state safety member of CalPERS pursuant to Government Code section 21151.  

3. On July 6, 2017, Respondent Dalhover submitted an application for industrial disability retirement (IDR) to CalPERS. (The Application.) In the Application he requested a retirement effective date of “EOB,” which meant upon expiration of benefits. His last day on payroll had been April 30, 2011, and his EOB would be May 1, 2011, years before the Application date.

4. Thereafter, there was correspondence among or between CalPERS and DSHM and/or Respondent, concerning issues that would impact whether he could have an earlier retirement date. Eventually, Respondent began receiving IDR allowance, effective July 1, 2017.

5. On January 12, 2018, CalPERS wrote Respondent and DSHM and informed them that a retirement date prior to July 1, 2017 could not be granted, and informed them of their appeal rights.

6. On February 9, 2018, Respondent submitted a timely appeal, and this proceeding ensued. There is no evidence of an appeal by DSHM, and no evidence of a response by DSHM to the underlying Statement of Issues. All jurisdictional requirements have been met.

History of Respondent’s Application Process

7. As found above, Respondent worked at DSHM as a psychiatric technician. On July 30, 2010, he was assaulted by a patient while administering an injection. He was injured in his abdominal section. He sought workers’ compensation benefits, and was placed on temporary disability, which, as he put it during the hearing, was not so temporary. As noted above, he was off the payroll after April 30, 2011, but he had not separated from service.

8. On April 6, 2016, Respondent met with staff from the DSHM Human Resources (HR) office for an interactive process meeting. The purpose of the meeting was to discuss his options, going forward from that point, regarding his employment.

9. Prior to the meeting, on April 5, 2016, a letter was delivered to Respondent, inviting him to the meeting. The letter laid out many options for Respondent. The options ran the gamut from a return to work, to separation from state service by disability or service retirement, to medical termination. As to disability retirement, the document informed

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1 All further statutory references are to the Government Code, unless otherwise noted.
Respondent that he could apply for disability retirement or DSHM could apply to have him retired for disability. (Ex. 15, pp. 2, 3.)

10. During the April 6, 2016 meeting Respondent discussed retirement with the HR representatives. There was a discussion of service retirement and disability retirement. According to Respondent, there was some disagreement about whether he had the requisite five years of employment necessary for service retirement. He was told it would take some time to determine his status in that regard.

11. On April 7, 2016, Respondent contacted CalPERS regarding his service credit balance, and he inquired about correcting what he perceived as inaccuracies in his account. He was told to contact his employer about correcting information in his account. On April 15, 2016, a service credit breakdown letter was given to Respondent.

12. A second interactive process meeting was held for Respondent by DSHM staff on January 8, 2017. Several options were discussed, including IDR, and DSHM notes indicate that Respondent was given a Disability Retirement handbook at that meeting. (Ex. 17, p. 2.)

13. CalPERS records indicate that Respondent first contacted them about disability retirement on March 2, 2017. An IDR benefits estimate was generated on March 15, 2017. DSHM staff inquired of the status of Respondent’s IDR application on May 8, 2017, and on June 21, 2017, each time learning that Respondent had not yet applied for IDR. As noted above, the IDR application was filed on July 6, 2017. It took some time to complete the process, as various medical documents and documents from the workers’ compensation process had to be obtained and reviewed.

14. According to Respondent, he put “EBO” on the Application because CalPERS staff told him to do it that way.

Post Application Actions Regarding an Earlier Retirement Date

15. (A) In September 2017, CalPERS sent letters to Respondent and to DSHM regarding the Application’s request for an earlier retirement date, as CalPERS deemed the “EBO” request as seeking a retirement date earlier than July 2017. The letters sought background information about the retirement process. Respondent responded by writing answers after each interrogatory on a copy of the letter that CalPERS sent him along with typed versions of those handwritten answers. DSHM sent a letter response.

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2 Those entries in the CalPERS records, the Customer Touch Point Report, reference “BP calling.” BP stands for “business partner.” (Ex. 14, pp. 10 and 11, at entries for 7/13/2017, 6/21/2017, and 5/8/2017.)
(B) The letter to Respondent asked first if a physician instructed him to stop working because of permanent disability, and if not, when was he determined incapacitated to work. Respondent replied “March 24, 2011.” (Ex 11, p. 1, 3.)

(C) Second, CalPERS asked if Respondent advised DSHM he had to retire due to disability, and if the answer was no, he was asked to say why not. The last part of the second interrogatory asked Respondent if he believed he was unable to do his job because incapacitated. Respondent answered “Yes, April 7, 2011.” (Id.)

(D) The third query asked if Respondent contacted CalPERS for IDR information before he stopped working, and if not, then why not. If he had, he was asked to describe the assistance he had received. His response was “No, I did not have knowledge of Retirement Options.” (Id.)

(E) The last interrogatory asked Respondent for the date that he became aware he could submit an application for IDR, and so say why he did not apply at that time. His response was May 3, 2017. (Id.)

16. The September 2017 letter by CalPERS to DSHM, exhibit 9, sought information as follows:

(A) If Respondent indicated he was retiring because too disabled to work, and if so, when did that.

(B) What reason did he state for stopping work.

(C) Was there an industrial injury/illness claim pending or filed in the previous three years, and asking for information about the identity of the workers’ compensation insurance carrier and a claim number.

(D) Was Respondent given information or counseling regarding disability retirement, and if so, when.

(E) Would DSHM be in agreement to an earlier retirement date.

17. DSHM responded to CalPERS on September 25, 2017. DSHM’s Personnel Officer informed CalPERS that service retirement had been discussed with Respondent on April 6, 2016, that he still had an open issue in his workers’ compensation claim, and information about that claim was provided. She advised CalPERS that Respondent was advised about IDR at the April 6, 2016 and January 8, 2017 meetings. She also stated that DSHM was in agreement about granting an earlier effective date of retirement.

18. On January 12, 2018, CalPERS wrote Respondent and informed him that it would not grant an earlier retirement date. It pointed to the April 6, 2016 and January 8, 2017 meetings between Respondent and DSHM where he received information about IDR,
and his March 3, 2017 inquiry about IDR. CalPERS stated that he had knowledge of the application process before July 2017 and that he had not made a mistake of the type that could be corrected under governing law, section 20160.

19. In his appeal letter, Respondent indicated that the January 2017 meeting with DSHM staff occurred because he had established he was not eligible for service retirement, and that it was indicated in the second meeting that he was eligible for IDR. He stated he was told he had several months to speak to his lawyer and doctor so he could decide what to do. He further stated that after such consultations, he obtained an estimate of IDR benefits. (Ex. 7.)

20. At the hearing Respondent’s testimony was consistent with the foregoing, and he stated that if he had understood he might obtain IDR in April 2016, he might have then applied. It appears he believes that the meeting in April 2016 did not adequately apprise him of his option to pursue IDR then, and that he believes that he wasted the period between the first and second interactive meetings pinning down the service retirement matter. During the hearing Respondent made clear that he wanted the earlier retirement date to be in April 2016, and not April 2011, implied by placing EBO in the retirement date portion of the Application.

21. Notwithstanding Respondent’s testimony, the weight of the evidence indicates that Respondent had notice of his option to pursue IDR by April 7, 2016.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to California Code of Regulations, title 2, sections 555.1, 555.2, and 555.4 was established, based on Factual Findings 1 through 6.

2. Section 20160 provides the mechanism whereby CalPERS may correct the errors or omissions of an active or retired member. The first prerequisite for relief is found at subdivision (a)(1) of that statute, and it regulates when a request for correction must be made. It states:

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

3. CalPERS treated the request to make the retirement date “EBO” as a request for an earlier retirement date, because Respondent’s benefits expired in April 2011. At hearing Respondent stated he only wanted the effective date of his IDR set back to April 2016.
4. (A) As found in Factual Finding 21, the weight of the evidence establishes that Respondent had notice of his option to pursue IDR in April 2016. That notice is based, in part, on the letter that brought him to the interactive meeting. It was noted that IDR could be sought by him, or even by DSHM. (Factual Finding 9.) A witness from DSHM credibly testified that IDR was discussed, and the hospital's records support the finding.

(B) At bottom, Respondent's application was filed over one year after the first interactive meeting, and thus more than six months after notice to Respondent that he might pursue IDR. As a result, whatever error or omission occurred cannot be corrected by CalPERS under section 20160.

5. Based on the foregoing, an earlier retirement date cannot be granted to Respondent.

ORDER

The appeal of Respondent Brian A. Dalhove is denied.

September 4, 2018

[Signature]

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings
PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On November 20, 2018, I served the foregoing document described as:
DECISION – In the Matter of the Appeal for an Earlier Effective Date of Retirement of BRIAN A. DALHOVER, Respondent, and DEPARTMENT OF STATE HOSPITALS - METROPOLITAN LA, Respondent.
Case No. 2018-0199
OAH No. 2018050818.

on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Brian A. Dalhover
Office of Administrative Hearings Los Angeles
320 West Fourth Street, Suite 630
Los Angeles, CA 90013
(Via Federal Express)
(Via OAH Secure e-File)

MEMBER

Personnel Officer
Department of State Hospitals - Metropolitan LA
11401 Bloomfield Avenue
Norwalk, CA 90650
(Via Federal Express)

EMPLOYER

[ XX ] BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address(es) within 24 hours by overnight delivery service.

[ XX ] BY ELECTRONIC FILING: I caused such documents to be e-filed via OAH SECURE e-FILE.

Executed on November 20, 2018, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Deb Jo Wooten
NAME

__________________________________________
SIGNATURE