

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues against:**

**Mario U. Manansala, Jr., Respondent**

**and**

**Metropolitan Water District of Southern California,  
Respondent**

**Agency Case No. 2019-0318**

**OAH No. 2019070169**

**PROPOSED DECISION**

Jeremy Cody, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on December 12, 2019, in Los Angeles.

Helen L. Louie, staff attorney, represented complainant, the California Public Employees' Retirement System (CalPERS).

Mario U. Manansala, Jr. (respondent) was present and represented himself.

No one appeared on behalf of respondent Metropolitan Water District of Southern California.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED January 10 20 2020  
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Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 12, 2019.

## **SUMMARY**

Respondent appeals a decision by CalPERS to reject his application for disability retirement as untimely. Respondent took a service retirement from government employment in December 2017; then, in September 2018, he applied to change his retirement from service retirement to disability retirement. CalPERS rejected respondent's application for disability retirement as untimely and not subject to correction under Government Code section 20160. Under that statute, a request to correct an error may be considered only if: (a) it is filed no later than six months after the discovery of the right to make the correction; and (b) the error resulted from "mistake, inadvertence, surprise or excusable neglect." Under the facts presented, respondent cannot meet either requirement. Therefore, respondent's appeal is denied.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Keith Riddle made and filed the Statement of Issues in his official capacity as Chief of the Disability & Survivor Benefits Division of CalPERS.
2. Respondent was employed by the Metropolitan Water District of Southern California for five years, from December 4, 2013, until December 4, 2018. Respondent retired effective December 5, 2017. Accordingly, respondent was a member of CalPERS, subject to Government Code sections 21151 and 21154.

3. Respondent became eligible for retirement once he earned five years of service, which occurred on December 5, 2017. Respondent began his service retirement on December 5, 2017. On September 28, 2018, respondent applied to change his retirement from service retirement to disability retirement. On February 5, 2019, CalPERS denied the request based on its determination that no correctable mistake had been made to allow a change to respondent's retirement status, and returned the application. By letter dated February 18, 2019, respondent filed a timely appeal and requested an administrative hearing.

### **Relevant Chronology**

4. On September 22, 2017, respondent filed an Application for Service Retirement with CalPERS. In the application, respondent indicated that he intended to take service retirement beginning on December 5, 2017.

5. By letter dated September 22, 2017, CalPERS acknowledged that it had received respondent's Application for Service Retirement. In its letter, CalPERS noted: "You may be entitled to receive disability retirement if you are unable to work because of an illness or injury. To apply for a disability retirement, you must complete a Disability Retirement Election Application." (Ex. 4.)

6. As of September 2017, respondent was considering filing for disability retirement. In 2016, respondent had undergone two brain surgeries which left him with some memory loss, mood swings and speech impairment. He considered taking disability leave at that time but decided to continue working until his retirement vested on December 5, 2017.

7. CalPERS publishes "A Guide to Completing Your CalPERS Disability Retirement Application" (Disability Publication), which is made available to the public

through CalPERS, state employers and the Internet. The Guide includes forms for applying for disability retirement as well as instructions in how to file.

8. The Disability Publication on page 5, states: "You may apply for a disability or industrial disability retirement: While you are in CalPERS-covered employment; or Within four months of separation from CalPERS-covered employment . . . ." (Ex. 6, p. 5.)

9. In September 2017, respondent viewed the Disability Publication online and admits that he read the paragraph about having four months after his separation from service (i.e., his last day of work) to file for disability. Respondent used the CalPERS website's simulator to calculate and compare the benefits he would receive under service retirement versus disability retirement. He noted that the monthly retirement benefits would be the same under both types of retirement. He assumed there was no difference in benefits for him between service retirement and disability retirement. Based on this assumption and the fact that service retirement required less paperwork, he applied for service retirement rather than disability retirement.

10. On December 4, 2017, respondent worked his last day for the Metropolitan Water District of Southern California (former employer). His "discontinuation of service" was considered his last day of work – December 4, 2017. On December 5, 2017, respondent's retirement vested; he ceased being a member of CalPERS and became a retiree.

11. In January 2018, respondent's former employer, through its Human Resources office, informed respondent that if he changed to disability retirement, half of his monthly health insurance premiums would be paid by his former employer. Respondent learned this information just as he was realizing that he was dissatisfied

with the new Medicare coverage he had enrolled in rather than retaining his CalPERS-covered health coverage.

12. In January 2018, respondent visited a doctor complaining of shortness of breath. The doctor told respondent that he had pulmonary fibrosis, a degenerative pulmonary condition. The doctor opined that given the advanced stage of the disease, respondent's condition must have existed for months or years; in other words, during the time in which he worked as a state employee. The doctor referred respondent to a pulmonologist through Medicare, which took several months to arrange.

13. On February 1, 2018, respondent contacted CalPERS and asked for a printed copy of the Disability Publication to be sent to him. The staff reported that the publication would be sent.

14. Sometime between April and June 2018, a pulmonologist ordered a CT scan of respondent's lungs which confirmed the earlier diagnosis of pulmonary fibrosis.<sup>1</sup> Respondent has been informed by his doctors that the average life expectancy of individuals diagnosed with pulmonary fibrosis is 3.8 years following diagnosis.

15. On April 25, 2018, respondent contacted CALPERS by telephone and spoke with a CalPERS representative who confirmed that under disability retirement, respondent's former employer would pay fifty percent of his monthly premiums. The

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<sup>1</sup> Respondent testified that pulmonologist Panch Jeyakumar, M.D., diagnosed him with pulmonary fibrosis in April 2018, but respondent entered into evidence a medical report which lists the date of the examination as June 15, 2018. (Ex. A.)

representative told him that he could apply to change his "service" retirement to "disability" retirement by filing an application. During the phone call, respondent does not recall asking about any deadline to file for the change of retirement status and the representative did not mention a deadline.

16. On August 31, 2018, respondent filed his Disability Retirement Election Application. In a letter dated September 7, 2018, CalPERS returned respondent's Disability Retirement Election Application to him because he had neglected to select a "retirement payment option" on the form. (See Ex. 6 at § 5). On September 28, 2018, respondent resubmitted his Disability Retirement Election Application to CALPERS.

17. In his Application for Disability Retirement, filed in September 2018, respondent listed his disabilities as his 2016 brain surgeries and his pulmonary fibrosis. In describing his limitations due to his illnesses, respondent stated: "memory loss, speech impairment, coughing and shortness of breath, plus mood swings (impatience and anger) interfere with the proper discharge of my duties as senior [engineer]." (Ex. 9, p. 2.)

18. On November 6, 2018, CalPERS sent a letter to respondent which contained questions to determine why respondent had filed a late disability application. CalPERS noted that in its letter of September 27, 2017, respondent had been advised he could apply for disability retirement "if [he] had a medical problem which prevented [him] from working." CalPERS asked in Question no. 4, why respondent had not filed for disability after receiving that letter. Respondent sent back a written response that read:

Because the information from the website indicated that the retirement pension from regular retirement is the same

from disability retirement[.] I did not know at that time that disability retirement would provide me with 50% reduced medical coverage. It was not until January 2018 one month into retirement that someone at MWD HR department heard about my difficulty with my new Medicare insurance coverage[,] told me about this disability retirement benefit and sent me the application form.

(Ex. 11, pp. 1-2.)

19. The CalPERS letter of November 6, 2018, also asked at Question no. 5: "How did you learn of the right to apply for reconsideration that is found under Government Code section 20160? (a) On what date did you become aware that you could submit a request to correct a mistake?" Respondent sent back a written response that read:

I did not know about Government Code 20160[.] I called CalPERS around February 2018 to ask is [*sic*] I could still apply for disability retirement after being retired since December 2017. I was told YES. The person I talked to even told me to use the 2017 version of the application form instead of the 2018.

(Ex. 11, p. 2.)

20. By letter dated February 5, 2019, CalPERS notified respondent that it had decided not to accept his late application because, as it explained, the "evidence suggests you had knowledge of the application process and therefore, were unable to establish that a correctable mistake was made." (Ex. 16, p. 1.)

## LEGAL CONCLUSIONS

1. The Public Employees' Retirement Law is set forth in Government Code section 20000 et seq. The general purpose of the public retirement system is "to prevent hardship to state employees who because of age or disability are replaced by more capable employees. The pension system serves as an inducement to enter and continue in state service [citation], and the provisions for disability retirement are also designed to prevent the hardship which might result when an employee who, for reasons of survival, is forced to attempt performance of his duties when physically unable to do so." (*Quintana v. Board of Administration* (1976) 54 Cal.App.3d 1018, 1021.)

2. CalPERS has sole and exclusive fiduciary responsibility over the assets of the public retirement system and the manner in which benefits and related services are administered to participants and their beneficiaries. (Cal. Const., art. 16, § 17, subd. (a).)

3. A CalPERS active or retired member seeking correction of an error or omission pursuant to Government Code section 20160, which, as discussed below, is the case here, "has the burden of presenting documentation or other evidence to the board establishing the right to correction." (Gov. Code, § 20160, subd. (d).)

4. An applicant for disability retirement has the burden of establishing eligibility by a preponderance of the evidence. (Evid. Code, §§ 115 and 500; see *Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]" (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

## Statutory Authority Related to Disability Retirement

5. CalPERS is governed by the California Public Employees' Retirement Law, and relevant provisions of the Government Code. Government Code Section 20026 provides:

"Disability and incapacity for performance of duty as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, . . . on the basis of competent medical opinion.

6. Under Government Code section 21152, an application for disability retirement may be made by, among others, the member, or any person on his or her behalf.

7. Government Code section 21154 provides in pertinent part:

The application [for disability retirement] shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) *within four months after the discontinuance of the state service of the member*, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion.

8. Government Code section 20340, subdivision (a), provides that a person ceases being a “member” . . . “[u]pon retirement, except while participating in reduced worktime for partial service retirement.”

9. Government Code section 21453 provides: “An election, revocation, or change of election shall be made within 30 calendar days after the making of the first payment on account of any retirement allowance or, in the event of a change of retirement status after retirement, within 30 calendar days after the making of the first payment on account of any retirement allowance following the change in retirement status.” A “change in retirement status” includes changing from service to disability retirement.

### **Statute Allowing CALPERS to Correct Errors or Omissions**

10. Government Code section 20160 outlines circumstances when CalPERS may correct an active or retired member’s errors or omissions. It states in pertinent part:

(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 or retired member, or any beneficiary of an active or retired member, provided that 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. [¶] . . . [¶]

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.2 . . . .

11. Respondent's Application for Disability Retirement, which he filed on September 28, 2018, was untimely because it was made after the deadlines prescribed by Government Code sections 21154 and 21453. After respondent retired, he ceased being a CALPERS member pursuant to Government Code section 20340.

12. Because respondent's disability retirement application was untimely, CALPERS may not accept it unless the provisions of Government Code section 20160, allowing CALPERS to correct errors or omissions, are met. Section 20160 contains two requirements before a correction may be made. First, the correction must have been

requested 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).) Second, the error or omission must have resulted from “mistake, inadvertence, surprise, or excusable neglect” (Gov. Code, § 20160, subd. (a)(2).) Both conditions must be fulfilled. In this case, neither condition was met.

13. In this case, CalPERS determined that Government Code section 20160 does not apply to excuse respondent’s later filing on account of an error, based on its finding that:

[R]espondent Manansala knew, or should have known, that he may be entitled to disability retirement if he was unable to work due to an illness or injury and that no error or omission as a result of mistake, inadvertence, surprise or excusable neglect was made.

## **Disposition**

14. Respondent failed to establish by a preponderance of the evidence that he is entitled to relief under Government Code section 20160. In September 2017, CalPERS fulfilled its fiduciary duties of informing respondent of the potential availability of disability retirement. At that time, respondent believed he had grounds to qualify for a disability retirement, but instead, he decided to file for service retirement. His decision, made after he reviewed the Disability Publication, was based on his erroneous belief that disability retirement would not give him any added benefit from regular “service” retirement. That belief was wrong, but it should not be

considered a correctable mistake under Section 20160.<sup>2</sup> Section 20160, subdivision (a)(3), in pertinent part, states:

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.

15. In September 2017, when respondent was considering whether to file for disability retirement, he could have asked CalPERS, or his former employer, how his election of different retirement plans might affect his health insurance premiums, but he failed to do so. His mistake was a mistake of judgment. The ALJ finds that a reasonable person in that same situation, knowing that disability retirement was a real option, would have inquired as to this issue. Pursuant to Section 20160, subdivision (a)(2), therefore, respondent's "mistake" is not a correctable error.

16. A second problem with respondent's request for correction is the untimeliness of his request. It is too late for respondent to submit a request to change to disability retirement because the six-month period under Section 20160, subdivision (a)(1), in which to correct the error, began in September 2017 - the date that CalPERS informed respondent that he had the right to file for disability retirement.

17. Respondent argues he should have more time because he did not learn of his "error" until January 2018, when his former employer told him that changing his retirement from service to disability retirement would reduce his health insurance

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<sup>2</sup> All further statutory references are to the Government Code unless otherwise noted.

premiums. Respondent's contention is misplaced as it improperly equates discovery of respondent's error in judgment with the statutory language - "discovery of the right to make the correction." (Gov. Code § 20160, subd. (a)(1).) Even if one were to accept respondent's argument that his error was correctable and that the six-month filing period began when he learned of his error, respondent still waited eight months - from January until September 2018 - to file his Application for Disability; thus, his filing is untimely even under his own analysis. If respondent had filed his request to change to disability retirement in January 2018, when his former employer told him he would pay reduced health premiums under disability retirement, his request would have been timely.

18. Respondent also argues that he should be excused from the six-month deadline in Section 20160 to correct his error (i.e., file for a change of retirement status) because he did not know there was a deadline and CalPERS never informed him. This argument is not persuasive. When respondent read the CalPERS Disability Publication, he noted the four-month deadline to file for disability retirement. (Factual Finding 9.) Thereafter, he should have realized that some deadline applied to changing his retirement status to a disability retirement. Yet, he never asked about the deadline. Respondent had an obligation to make a reasonable inquiry concerning the deadline, which a reasonable person would have done. (Gov. Code, § 20160, subd. (a)(3).) Respondent's failure to inquire about the filing deadline is not an error that is correctable under Section 20160.

19. Respondent has not met his burden of presenting documentation and other evidence establishing that he made a legally correctable error or omission, or a timely filing, under Government Code section 20160, subdivision (a)(1) and (a)(2), which is respondent's only statutory source for relief. Accordingly, respondent's appeal

should be denied and CalPERS's denial of his request to change from service to disability retirement should be affirmed.

## **ORDER**

CalPERS's determination to deny respondent Mario U. Manansala, Jr.'s request to file a late application for disability retirement is affirmed. The appeal filed by respondent Mario U. Manansala, Jr. is denied.

DATE: January 10, 2020

DocuSigned by:  
*Jeremy Cody*  
JEREMY CODY

Administrative Law Judge  
Office of Administrative Hearings