

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal for an Earlier Retirement Date of
Industrial Disability of:**

MONGI B. YACOUBI, and

**SAN QUENTIN STATE PRISON, CALIFORNIA DEPARTMENT
OF CORRECTIONS AND REHABILITATION,**

Respondents.

Case No. 2019-0386

OAH No. 2019070624

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on November 4, 2019, in Oakland, California.

Senior Staff Attorney Kevin Kreutz represented complainant California Public Employees' Retirement System.

Upon proof of compliance with Government Code sections 11504 and 11509, the matter proceeded as a default against respondents Mongi B. Yacoubi and San

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED December 03 2019

Chambers

Quentin State Prison, California Department of Corrections and Rehabilitation,
pursuant to Government Code section 11520.

The record closed and the matter was submitted on November 4, 2019.

ISSUE

Was respondent Yacoubi's failure to timely file his industrial disability retirement application the result of an error or omission correctable under Government Code section 20160, requiring CalPERS to change the effective date of his industrial disability retirement from September 1, 2018, to June 1, 2017?¹

FACTUAL FINDINGS

1. Keith Riddle, Chief of the Disability and Survivor Benefit Services Division of the California Public Employees' Retirement System (CalPERS), filed the statement of issues in his official capacity on behalf of complainant CalPERS.

2. Respondent Mongi B. Yacoubi was employed by respondent San Quentin State Prison, California Department of Corrections and Rehabilitation (CDCR) as a Correctional Supervising Cook. By virtue of that employment, respondent Yacoubi is a member of CalPERS.

¹ All statutory references are to the Government Code unless otherwise stated.

3. On June 3, 2016, respondent Yacoubi contacted CalPERS and spoke to a representative who explained disability retirement options to him and sent him a copy of the CalPERS disability retirement guide and forms (PUB-35).

4. On March 27, 2017, respondent Yacoubi contacted CalPERS and spoke to a representative who explained the benefit factors for service retirement and disability retirement.

5. May 31, 2017, was respondent Yacoubi's last day on payroll and the date his state service was discontinued.

6. On July 26, 2017, respondent Yacoubi contacted CalPERS and spoke to a representative who explained the disability retirement option and sent him a second copy of PUB-35.

7. On March 13, 2018, respondent Yacoubi contacted CalPERS and spoke to a representative regarding his disability and service retirement estimates. The representative sent him a third copy of PUB-35.

8. On April 18, 2018, respondent Yacoubi met with a CalPERS representative who counseled him regarding service and disability retirement timeframes and set up an appointment to discuss estimates.

9. On September 4, 2018, respondent Yacoubi signed an application for industrial disability retirement (IDR), which requested a retirement effective date upon expiration of benefits.

10. Respondent Yacoubi's industrial disability retirement was approved effective September 1, 2018.

11. On January 30, 2019, CalPERS sent respondent a letter denying his request for an earlier retirement date.

12. On February 28, 2019, respondent Yacoubi sent CalPERS a letter in which he timely appealed the denial and requested an administrative hearing. This proceeding followed.

13. Respondent Yacoubi did not appear at hearing or otherwise submit evidence in this proceeding.

14. The evidence submitted by CalPERS did not establish that respondent's failure to submit his application earlier was the result of mistake, inadvertence, surprise, or excusable neglect or that he made his request for an earlier effective date within a reasonable time or within six months after discovery of a right to make that request.

LEGAL CONCLUSIONS

1. CalPERS was established by state law in 1932 to provide retirement benefits for state employees. The California Employees' Retirement Fund, managed by the CalPERS Board of Administration (Board), is a trust fund devoted to providing benefits to members, retired members and their survivors and beneficiaries. (§§ 20151, 20170, 20171.) CalPERS and its benefits are governed by the Public Employees' Retirement Law (PERL), which is found at sections 20000 et seq.

2. The standard of proof in this proceeding is a preponderance of the evidence. (Evid. Code, § 115.) The party seeking a correction has the burden of

presenting documentation or other evidence to the Board establishing his right to such a correction. (§ 20160, subd. (d).)

3. Section 21252, subdivision (a), provides that the effective date of a disability retirement application shall be deemed to be the day after the applicant's "discontinuance of state service," if the application is received within nine months of that date. If however, the application is received more than nine months after the applicant's discontinuance of state service, then the effective date of retirement is "the first day of the month in which the member's application is received" by CalPERS.

4. Respondent Yacoubi's last day on active pay status—the date of his discontinuance of state service—was May 31, 2017. (Factual Finding 5.) That date is more than nine months prior to his September 4, 2018 application for disability retirement. Accordingly, pursuant to section 21252, subdivision (a), the effective date of his disability retirement is September 1, 2018.

5. Pursuant to section 20160, subdivision (a), the Board may correct the errors or omissions of a retired member "provided that all the following facts exist:"

(1) The request, claim, or demand to correct the error or omission is made by the party seeking the 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 the right.

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

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

Failure by a member . . . 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.

(§ 20160, subd. (a).)

6. Respondent submitted no evidence in this proceeding and the evidence submitted by CalPERS did not establish that respondent's failure to submit his application earlier was the result of mistake, inadvertence, surprise, or excusable neglect or that he made his request for an earlier effective date within a reasonable time or within six months after discovery of a right to make that request. (Factual Findings 6 & 7.) Accordingly, respondent failed to meet his burden to prove that his failure to timely file his industrial disability retirement application the result of an error or omission correctable under Government Code section 20160, requiring CalPERS to change the effective date of his industrial disability retirement.

ORDER

Respondent Yacoubi's application for an earlier effective date of retirement is denied. The effective date of respondent Yacoubi's disability retirement shall remain September 1, 2018.

DATE: December 2, 2019

DocuSigned by:
Michael C. Starkey
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MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings