

ATTACHMENT E

THE PROPOSED DECISION

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

**In the Matter of Accepting the Late Application for Industrial
Disability Retirement of:**

RONALD ARCHULETA, Respondent

And

**WASCO STATE PRISON, CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, Respondent**

Agency Case No. 2019-0682

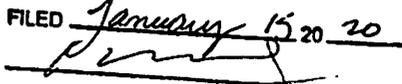
OAH No. 2019080996

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 17, 2019, in Fresno, California.

Rory J. Coffey, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

Ronald Archuleta (respondent) appeared on his own behalf.

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED January 15 20 20


There was no appearance by or on behalf of respondent California Department of Corrections and Rehabilitation, Wasco State Prison (CDCR). At the hearing, CalPERS established that CDCR was properly served with the Statement of Issues and Notice of Hearing. This matter therefore proceeded as a default against CDCR under Government Code section 11520.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 17, 2019.

ISSUE

Respondent signed an application for service pending industrial disability retirement (disability application) dated June 10, 2014. In July 2014, he retired for service. On July 22, 2014, CalPERS requested that respondent provide further documentation to assist in processing his disability application within 21 days. Respondent timely submitted several documents, but on August 23, 2014, CalPERS notified him that his disability application was canceled due to a missing workers' compensation form. CalPERS also advised respondent to resubmit a completed disability application. In November 2014, respondent requested a disability packet, which CalPERS provided along with a guide to completing the application process.

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

Because CDCR failed to appear, all further references to "respondent" are to Mr. Archuleta.

Approximately five years later, on October 30, 2018, respondent submitted several documents to CalPERS, but did not submit a completed industrial disability application. Respondent then submitted further documentation to CalPERS in December 2018. In April 2019, CalPERS contacted respondent to determine whether a correctable mistake had been made in his late filing to allow him to change his retirement status from service to industrial disability retirement. In May 2019, CalPERS determined that no correctable mistake had been made to allow such a change in his retirement status to be made.

CalPERS contends the application for change in status was not timely. The issue is whether respondent made an error as a result of inadvertence, mistake, surprise or excusable neglect which would thereby entitle him to retroactively change his retirement status.

FACTUAL FINDINGS

Jurisdictional Matters and Background Information

1. Respondent worked for CDCR as a correctional officer since approximately 2003, which gave him CalPERS safety member status. On January 17, 2013, he was assaulted by an inmate and injured his left knee. In June 2013, he had surgery to repair his injured knee. He also filed a workers' compensation claim following his injury.

2. On June 10, 2014, respondent filed his disability application with an effective retirement date of July 1, 2014. He retired for service on July 1, 2014, and has been receiving his service retirement allowance since August 1, 2014. In his application, he described his January 17, 2013 knee injury and stated his work-related

limitations and/or preclusions were "No running, no lifting with legs, [or] climbing." In a narrative statement, he stated he "[could] no longer perform [his] duties as a corrections officer with this [injury]."

3. On July 22, 2014, CalPERS sent a letter to respondent requesting he provide additional forms for processing his disability application, including: a job description/duty statement form; a physical requirements of position/occupational title form; a physician's report on disability; and a "Workers' Compensation Carrier Request" (WCCR) form." The letter further informed respondent: "If the forms are not received within 21 days from the date of this letter, your application will be canceled."

4. On July 29, 2014, CalPERS received from respondent a completed job description/duty statement form, physical requirements of position/occupational title form, and a physician's report on disability, as CalPERS requested seven days earlier. However, respondent did not submit a WCCR form. Due to this omission, CalPERS sent a letter to respondent, dated August 23, 2014, informing him that his disability application had been canceled.

5. On August 28, September 3, and December 11, 2014, respondent contacted CalPERS to inquire about the cancellation of his disability application. CalPERS informed him that CalPERS canceled his disability application because, absent the required WCCR form, it was incomplete. CalPERS further advised respondent that if he wished to reapply for a disability retirement, he would need to resubmit a completed application containing all required documentation.

6. On November 7, 2014, respondent contacted CalPERS and requested a disability packet. On the same day following this request, CalPERS mailed a publication

entitled "A Guide to Completing Your CalPERS Disability Retirement Election Application" (PUB-35) to respondent.

7. On October 30, 2018, respondent submitted the following documents to CalPERS: a job description/duty statement form; a physical requirements of position/occupational title form; a physician's report on disability; an employer information for disability retirement form; and a report of separation and advance payroll form. Respondent submitted these documents without resubmitting an industrial disability retirement application. On December 12 and 20, respondent submitted WCCR forms to CalPERS.

8. On March 13, 2019, respondent contacted CalPERS regarding the status of his disability application. CalPERS informed him that his original 2014 disability application would be "rekeyed."

9. On April 4, 2019, CalPERS wrote to respondent, advising him that in general, a member could not change his retirement status after he retired or refunded his contributions, but an exception could be made if the delay in change was due to excusable inadvertence, oversight, or mistake of law or fact on the part of the member. CalPERS reiterated that respondent's June 2014 disability application was canceled due to CalPERS not receiving all the required forms and information. CalPERS invited respondent to explain why he did not submit the required forms and information following CalPERS' notification that, absent that documentation, his disability application would be canceled. The letter further asks respondent to answer a series of questions to assist CalPERS in determining whether respondent made a correctable mistake.

10. On April 19, 2019, respondent sent a letter of response to CalPERS stating that in May 2014, his treating physician informed him that he had reached maximal medical improvement, he was "at 3 [percent] whole persons impairment rating," and was entitled to "future medical and other needs pertaining to my left knee including surgery." Respondent described how he contacted CalPERS to begin his retirement process and received an application packet and document checklist to complete. Respondent stated he collected and submitted to CalPERS all required documentation, except for a form requiring medical information from the workers' compensation carrier handling his workers' compensation matter. Respondent identified his workers' compensation adjuster as "Anna Rodriguez," and stated he contacted her to determine whether she had completed the required document, but Ms. Rodriguez said "she had not filled it out yet." Respondent further stated Ms. Rodriguez did not thereafter submit his workers' compensation documentation to CalPERS "and therefore, my application was canceled." Respondent also stated he was "under the impression [he] could submit for medical retirement when [he] was [deemed] permanent stationary (*sic*)" by a treating physician.

11. On May 9, 2019, CalPERS notified respondent it determined that no correctable mistake had been made which would allow for a change of his retirement status to industrial disability retirement. Respondent timely appealed CalPERS' determination, and this matter followed. All jurisdictional requirements have been met.

CalPERS' Evidence

12. Mari Cobbler, a CalPERS Retirement Programs Specialist II with over 13 years of experience analyzing claimant cases, testified that she monitors CalPERS cases that are appealed. Once an appeal is made, she reviews the entire CalPERS file on the appellant, including all documents and electronically recorded CalPERS' "Customer

Touch Point" (CTP) notes in the file. Ms. Cobbler was assigned to respondent's matter and reviewed his entire file. In general, CalPERS member attempts to retroactively change their retirement status from safety to disability are not uncommon, because disability status confers a higher monetary benefit and other tax benefits on the member.

13. Ms. Cobbler reiterated CalPERS' position that respondent's disability application had been canceled because it lacked complete documentation, and that according to her review of the case, there appeared to be no basis for CalPERS to excuse respondent's late filing of his disability application. She reviewed every entry in CalPERS' CTP notes, and saw no instances in which respondent was not properly advised of his disability application's status, or CalPERS' reasons for canceling his application. CalPERS also appropriately mailed new applications and instructions for completing the application process to respondent. On March 13, 2019, CalPERS staff "rekeyed" respondent's canceled application in order to facilitate his belated attempts to provide documentation several years after his disability application was canceled.

14. Regarding respondent's claim that he was awaiting the resolution of his workers' compensation claim, Ms. Cobbler explained that CalPERS staff always advises members not to await workers' compensation decisions when filing for CalPERS industrial disability benefits because workers' compensation decisions do not affect CalPERS' determinations regarding eligibility for disability benefits. A CalPERS member need not be deemed "permanent and stationary" for purposes of workers' compensation in order to apply for industrial disability benefits. Ms. Cobbler noted that respondent claimed he could no longer perform his job in his disability application in June 2014. Thus, he was correct to apply for disability benefits at that time. He had six additional months from the time of his original application submission

to correct any mistakes or deficiencies and was repeatedly advised that absent the WCCR form, his disability application was not complete and could not be processed. However, he did not reapply and did not provide the required documentation. Ms. Cobbler opined that six months is a very reasonable time-frame to allow for respondent to ensure that his workers' compensation carrier submitted a necessary form.

Respondent's Testimony

15. Respondent was dismayed that CalPERS initially rejected his disability application merely because he failed to submit the WCCR form on time. By the time CalPERS advised him to resubmit his application in late 2014, he was no longer "permanent and stationary" pursuant to his workers' compensation case and was working on temporary duty. He decided to wait until he was "permanent and stationary." Respondent claimed he was unaware of a six-month time limit for reapplying, and had been advised by CalPERS that he could "resubmit at any time." He decided to wait because that way, he would have a "better chance to be approved." He testified that not reapplying for several years was "a mistake on my part," but contended his workers' compensation insurance carrier was at fault for failing to submit the WCCR form to CalPERS.

16. Respondent admitted he could no longer perform his job duties when he submitted his disability application in June 2014, but at that time, he still believed he could continue to perform his job if he healed properly from his knee-replacement surgery. His employer did not accommodate "temporary duty" positions, so he could not return to work and continue his job with restrictions. He believed that if he received disability retirement, it would be harder for him to return to work in the future; this was why he believed it was better for him to wait until he was "permanent

and stationary” again. He contended CalPERS should have “directed” him to reapply for disability benefits rather than merely suggest that he do so.

Discussion

17. At the hearing, the evidence established that CalPERS correctly assessed respondent’s disability application, timely and appropriately notified him as to how, and why, it was deficient, and gave him ample time to correct the deficiency. Respondent failed to follow through with any such correction. His claim that the error in not submitting a necessary WCCR form fell on his workers’ compensation insurer was not corroborated by any evidence, either in the record or at hearing. This contention was further belied by respondent’s explanation that he delayed refiling a disability application as a strategy to increase the possibility that the application would be approved. Respondent’s delay in allowing several years to pass with no reapplication or activity on his original disability application was inexplicable, and on the whole, his testimony was not persuasive. By contrast, CalPERS’ documentation of its correspondence with respondent, both oral and written, was thorough and consistent with the applicable law governing the application process.

18. The evidence did not establish that a correctable mistake had been made in respondent’s late filing to allow him to change his retirement status from service to industrial disability retirement. Therefore, CalPERS was justified in not allowing for the receipt of respondent’s late application for industrial disability retirement benefits.

LEGAL CONCLUSIONS

1. Respondent’s eligibility for disability due to a medical condition is not at issue here. The only question for determination in this proceeding is whether CalPERS

should allow respondent to file his second disability application when he filed that application² more than four years after the effective date of his service retirement.

2. Section 21154 sets forth when a CalPERS member may file an application for disability retirement. In relevant part, it provides:

The application 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. . . .

3. At all times relevant to respondent's second disability application, section 21252, subdivision (a), set forth the conditions under which a member who has ceased to be employed in state service may apply for retirement as follows:³

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

² As set forth above, respondent never actually submitted a second application; instead, as a courtesy, CalPERS staff "rekeyed" his 2014 canceled application:

³ Section 21252 was amended effective January 1, 2010.

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 determined in accordance with Section 20160.** (Bolding added.)

4. As set forth in section 21252, subdivision (a), because respondent filed his second disability application more than nine months after he ceased to be employed in state service, the determination of whether CalPERS should accept respondent's application must be made in accordance with section 20160. (*Rodie v. Board of Administration* (1981) 115 Cal.App.3d 559, 567.)

5. Section 20160 sets forth the conditions under which the Board may, in its discretion, correct any errors or omissions of a retired member. In relevant part, it 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 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.

(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.

6. At the hearing, CalPERS argued that respondent did not meet the requirements of section 20160 to permit him to file a second disability application. As explained below, CalPERS's argument is persuasive.

7. In *Button v. Board of Administration* (1981) 122 Cal.App.3d 730 (*Button*), the court reviewed whether Mr. Button should be allowed to submit a disability retirement four years after he service retired. In that case, when Mr. Button service retired in 1973, although he felt exhausted, he was not aware that he was disabled. In 1976, Mr. Button suffered a mild heart attack, and was diagnosed with coronary artery disease. He applied for workers' compensation, and in 1977, the WCAB determined that, "although appellant did not become compensably disabled until 1976, his injury was cumulative and arose out of his employment with the county." (*Id.* at p. 734.) Mr. Button thereafter applied to CalPERS to convert his service retirement to a disability retirement. CalPERS denied Mr. Button's request, and Mr. Button appealed.

8. In *Button*, the court recognized that "the need for administrative and actuarial efficiency and the difficulty of making disability determinations years after the date of retirement, evidence a legislative intent that under normal circumstances retirees may not change their status." (*Button, supra*, 122 Cal.App.3d at p. 735.) But the court found that the "decisive question is whether the existence of abnormal or unusual circumstances will permit subordination of conventional interests in favor of other policy considerations." (*Ibid.*) The court stated that "[s]ection 20180 [now section 20160] provides that inadvertence or mistake constitutes a special circumstance excusing a retired member's earlier inaction." (*Ibid.*) According to the court,

Section 20180 [now 20160] dictates that PERS' interests in administrative and actuarial efficiency are not of overriding

importance so as to allow honest mistakes to remain uncorrected.

9. The court recognized that "pension statutes are to be liberally interpreted in favor of the respondent so as to effectuate, rather than defeat, their avowed purpose of providing benefits for the employee and his family." (*Button, supra*, 122 Cal.App.3d at p. 737, quoting from *Campbell v. Board of Administration* (1980) 103 Cal.App.3d 565, 571.) The court concluded that Mr. Button should be allowed to file his disability retirement application, finding that:

In light of the clear legislative intent to compensate in a certain manner those employees who are disabled at the time they retire (see § 20001), and given the express language of section 20180 [now 20160], it is unreasonable to attribute to the Legislature an intention to preclude an otherwise eligible employee from receiving a disability pension on the sole ground that his disabling condition was not diagnosed as such at the time of retirement.

(*Button, supra*, 122 Cal.App.3d at pp. 737-738.)

10. In 1982, after *Button* was issued, the Attorney General was asked to opine on the following question:

Does the Public Employees' Retirement Law authorize a revocation of an election to retire for service, and consideration of a new election to retire for disability, after the statutory time for such election has elapsed, where the change in status will not affect the amount of the benefit,

but where the change is requested because the retirant asserts it will provide a tax advantage?

(65 Ops. Cal. Atty. Gen. 542 (1982).)

11. The question presented to the Attorney General involved a CalPERS member “who, fully aware of his medical condition and the availability of disability retirement benefits, applied for and received service retirement benefits.” (65 Ops. Cal. Atty. Gen. at p. 544.) As the Attorney General noted, “as the *Button* court stresses, under normal circumstances, a retirant may not change status.” (*Id.* at p. 549.) The Attorney General concluded that the question presented “no special circumstance which would warrant a revocation of the original election to retire for service and a new election to retire for disability. The member was aware of his medical condition and the availability of alternate benefits when he made his choice, and a change in status would not provide new or additional benefits.” (*Ibid.*) While an opinion by the Attorney General is not binding, the reasoning set forth in the cited opinion is persuasive.

12. In this case, respondent sustained a work injury in January 2013. To obtain compensation for that injury, he filed a workers’ compensation claim and subsequently began receiving workers’ compensation benefits. Respondent was aware of his possible disability when he filed for service pending industrial disability retirement in June 2014. In his application, respondent claimed he could no longer perform his duties as a correctional officer. Thus, when he completed his disability application in June 2014, he was aware of his right to file for disability retirement. The evidence established that CalPERS timely informed respondent of the specific deficiencies in his disability application, made suggestions as to how he could remedy those deficiencies, and set forth a deadline for that process, but respondent failed to

make corrections. There was no evidence to show that respondent's failure to correct his first disability application was the result of duress, mistake, inadvertence, surprise, or excusable neglect.

13. Respondent did not explain why he waited over four years after the cancellation of his disability application to file a subsequent disability application. He did not demonstrate that his failure to timely file a second disability application was the result of mistake, inadvertence, surprise, or excusable neglect. CalPERS' staff was in frequent contact with respondent and provided new disability application forms to him along with directions on how to properly file an application. Respondent conceded that his delay was partly attributable to a deliberate strategy to maximize the chances of his application being approved. Even when the applicable pension statutes are interpreted liberally, respondent did not establish that he is entitled to the protections and benefits of section 20160. Consequently, respondent did not establish that he should now be allowed to seek disability retirement, which would thereby entitle him to retroactively change his retirement status.

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ORDER

The appeal of respondent Ronald Archuleta that he made an error or omission as a result of mistake, inadvertence, surprise, or excusable neglect sufficient to be correctable under Government Code section 20160, which, if established, would allow CalPERS to accept his late application for industrial disability retirement, is DENIED.

DATE: January 14, 2020

DocuSigned by:
John DeCure
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JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings