

ATTACHMENT A
THE PROPOSED DECISION

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

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

Case No. 2016-0076

JOSEPH G. CHAPA,

OAH No. 2016030661

Respondent,

and

DEPARTMENT OF CORRECTIONS AND
REHABILITATION, CALIFORNIA
SUBSTANCE ABUSE TREATMENT
FACILITY AND STATE PRISON,
CORCORAN,

Respondent.

PROPOSED DECISION

This matter was heard before Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on August 2, 2016, in Fresno, California.

John Shipley, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

Joseph G. Chapa (respondent) appeared on his own behalf.

There was no appearance by or on behalf of respondent Department of Corrections and Rehabilitation (CDCR), California Substance Abuse Treatment Facility and State Prison, Corcoran (Corcoran). 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

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

At hearing, CalPERS moved to strike the recitation of sections 21151 and 21453 in the Statement of Issues. Respondent did not object, and the sections were struck.

Evidence was received and the record remained open for respondent to submit written closing argument by close of business August 15, 2016. Respondent's Closing Argument was received on August 9, 2016, and marked as Exhibit C. The matter was submitted for decision on August 15, 2016.

ISSUE

Whether respondent Chapa made a mistake which was the result of inadvertence, mistake, surprise or excusable neglect correctable by section 20160, which would have entitled him to retroactively change his retirement status from service retirement to industrial disability retirement?

FACTUAL FINDINGS

1. On September 20, 2013, CalPERS received respondent's signed application for service retirement. On September 23, 2013, CalPERS wrote respondent, acknowledging receipt of his service retirement and informing him: "[y]ou may be entitled to receive a disability retirement if you are unable to work because of an illness or injury. To request a service pending disability retirement, you must complete a Disability Retirement Election Application." Respondent retired effective December 27, 2013, and has been receiving a retirement allowance from that date.

2. Prior to December 31, 2013, respondent was employed as a Correctional Counselor I (CC I), for CDCR at Corcoran. By virtue of his employment, respondent was a state safety member of CalPERS subject to section 21151.

Industrial Disability Application

3. On January 17, 2014, respondent filed a worker's compensation (WC) claim with the State Compensation Insurance Fund (SCIF) for pain to both knees, with an injury date of December 26, 2013 (cumulative trauma). SCIF denied the claim. Respondent appealed the denial in or about April 2014. His claim was then accepted.

4. Respondent then contacted Daniel Price, California Consulting Services, for assistance in pursuing an Industrial Disability Retirement (IDR). On May 8, 2014, respondent contacted Corcoran and requested a referral to an Early Intervention Counselor. The referral was made to Dan Price the same day. Mr. Price met with respondent on May 13, 2014, and counseled him to pursue an IDR. On May 15, 2014, respondent sent a letter to SCIF, stating, in part:

As instructed in the California Public Employees Retirement System (CalPERS) Industrial Disability Retirement Handbook, I am sending this [Workers' Compensation Carrier Request] form to you for completion. As you likely know the industrial disability retirement process is lengthy and often complicated, therefore I request that you please complete this form and forward any documents required by CalPERS as expeditiously as possible.

On May 21, 2014, both respondent and Corcoran signed a required IDR form, the Physical Requirements of Position/Occupational Title.

5. Online or by request, CalPERS makes available a publication entitled, "A Guide to Completing Your CalPERS Disability Retirement Election Application" (Guide). Respondent received the Guide on or before May 15, 2014, because he makes reference to it in his May 15, 2014 letter to SCIF. The Guide is lengthy, but has a specific section on WC, which states:

If you have a workers' compensation claim, you should not wait until your condition is considered "permanent and stationary" under workers' compensation requirements to submit your [IDR] application.

A workers' compensation award does not automatically entitle you to a CalPERS industrial disability retirement. Medical evidence will be required to show that you meet the CalPERS definition of disability. If you do, your workers' compensation award for the same illness or injury may be used as evidence that your condition is job-related.

6. On July 16, 2014, respondent had a total knee replacement by Paramjeet Gill, M.D. On December 29, 2014, CalPERS received a Physician's Report on Disability for respondent, completed by Dr. Gill, concluding that respondent was not substantially incapacitated from the performance of the usual and customary duties of the CC I position. On December 22, 2014, SCIF signed the WC Carriers Request form, noting that respondent was awaiting a Qualified Medical Examination (QME).

7. In April 2015, respondent was seen by Kenneth Baldwin, M.D. for a QME. Dr. Baldwin determined that respondent's right knee injury (cumulative trauma) was work related. On June 1, 2015, respondent submitted Dr. Baldwin's QME report to CalPERS, in-person. CalPERS informed respondent that he had not filed an IDR application. On August 10, 2015, respondent telephoned CalPERS and asked questions about filing an IDR application. He was told to submit his IDR application with a letter explaining why it was being filed late.

8. On August 11, 2015, respondent submitted an IDR application to CalPERS, a completed WC Carriers Request form, dated December 22, 2014, and a letter explaining the late filing of the IDR application. Respondent wrote: “[t]he reason this application is late is because I was not aware of early intervention referral. A friend referred me to Daniel M. Price – California Consulting Services who advised me and assisted me with this documentation.” Respondent claimed disability on the basis of right knee, left knee and back conditions. On August 13, 2015, CalPERS received the Physical Requirements of Position/Occupational Title form from respondent.

9. On September 1, 2015, CalPERS sent respondent a questionnaire regarding his IDR application and a request for additional documentation, because the IDR application was a “change in retirement status” and not filed timely, pursuant to sections 21154, 21252, and 20340. On September 1, 2015, CalPERS sent Corcoran a questionnaire regarding respondent’s employment and separation from service. On September 8, 2015, respondent submitted to CalPERS written responses to the questionnaire, identifying his treatment provider as Dr. Gill. On September 10, 2015, Corcoran submitted to CalPERS written responses to the questionnaire, indicating, among other things, that respondent had a doctor’s note excusing him from work from September 17, 2013, through December 25, 2013, and had service retired on December 26, 2013; and he had not filed an industrial injury claim within the three years preceding his retirement. On September 21, 2015, respondent submitted to CalPERS additional medical documentation, in-person.

10. On October 26, 2015, CalPERS notified respondent that his request to change from service to disability retirement was denied because respondent had knowledge of the application process, and no correctable mistake was made, as defined by section 20160. At hearing, CalPERS argued that respondent became aware of his right to file an IDR application under the mistake provisions of section 20160 in or about May 2014, when he met with Mr. Price; and he admitted as much in his questionnaire responses to CalPERS on September 8, 2015. In addition, CalPERS argued that respondent took an affirmative step to begin the process of filing for IDR in May 2014, when he sent a letter to SCIF in May 2014.

11. On or about November 25, 2015, respondent appealed. At hearing, respondent asserted that he believed that he had to wait for the QME findings to apply for IDR. To that end, he first knew he was eligible for IDR when Dr. Baldwin found his injury to be work related in or around April 2015. Respondent argued that under section 20160, he filed his IDR application within six months of the discovery of his right: on August 11, 2015.

LEGAL CONCLUSIONS

1. Section 20026 provides:

“[d]isability” and “incapacity for performance of duty” as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board, or in the

case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical evidence.”

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 IDR 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:

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 determined in accordance with Section 20160.

4. As set forth in section 21252, subdivision (a), because respondent filed his IDR 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. Here, respondent filed an application for service retirement on September 20, 2013. On December 27, 2013, he service retired. On January 17, 2014, respondent filed a WC claim for his knees. In or about April 2014, his claim was accepted by SCIF. In May 2014, respondent met with Mr. Price, who counseled him on applying for IDR; respondent was made aware of the CalPERS Guide on applying for IDR; and respondent took steps to begin an IDR application by sending a letter to SCIF regarding the same.

7. Considering the above, respondent was aware of his possible disability in January 2014, when he filed his WC claim. He was made aware of the IDR application requirements in May 2014, by a Mr. Price, an Early Intervention Referral specialist, and the CalPERS Guide, which informed him that: even “[i]f you have a workers’ compensation claim, you should not wait until your condition is considered ‘permanent and stationary’ under workers’ compensation requirements to submit your [IDR] application.” Even still, respondent waited to submit his IDR application until after his QME was complete. At no time between May 2014, and August 10, 2014, did respondent confirm his understanding of the IDR application process with either Mr. Price or CalPERS. Then, on August 11, 2015, respondent filed his IDR application.


8. A reasonable person, who had a known disability, was aware that he could file an IDR application, but believed he was precluded from filing said application until his WC claim was resolved, would have sought to clarify and confirm his understanding. (Gov. Code, § 20160, subd. (a)(3).) There is no evidence respondent made any such inquiries after May 2014, but before August 10, 2015, one day before he filed his application. Respondent’s failure to make such an inquiry does not constitute an error or omission that was the result of mistake, inadvertence, surprise, or excusable neglect within the meaning of section 20160. Notwithstanding the above, as of May 15, 2014, respondent had sufficient information to make an educated decision about when and how to file an IDR application, and he acted upon said information by immediately sending a letter to SCIF. He then waited 14 months to file his application. However, respondent had only until November 15, 2014, to file his IDR application under the provisions of section 20160.

9. When all the evidence is considered, respondent did not show that he should be allowed to file his IDR application on August 11, 2015. Respondent filed his IDR application more than six months after he discovered his right to file (May 2014), a year and one-half after making a claim for an injury (January 2014), and two years after he applied for service retirement (September 2013). He did not demonstrate that his failure to timely file his IDR application was the result of mistake, inadvertence, surprise, or excusable neglect. Consequently, respondent did not establish that he should now be allowed to retroactively change his retirement status from service retirement to industrial disability retirement.

ORDER

The request of respondent Joseph G. Chapa to file a disability retirement application is DENIED.

DATED: September 14, 2016

DocuSigned by:

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ERIN R. KOCH-GOODMAN
Administrative Law Judge
Office of Administrative Hearings