

ATTACHMENT A

THE PROPOSED DECISION

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

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

ROSEMARY SANCHEZ HERNANDEZ, Respondent

and

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

Agency Case No. 2023-0861

OAH No. 2025041203

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on June 30, 2025.

Rosemary Sanchez Hernandez, respondent, represented herself.

Preet Kaur, Senior Attorney, represented complainant, Sharon Hobbs, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System (CalPERS), State of California.

Tameka Robertson, Employment Relations Officer, represented respondent, Ironwood State Prison (Ironwood), California Department of Corrections and Rehabilitation (CDCR).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 30, 2025. Hereinafter, all references to "respondent" refer to Ms. Hernandez only; "Ironwood" and "CDCR" will be used to refer to respondent's employer.

ISSUE

Did respondent make a mistake correctable under Government Code section 20160 that would allow CalPERS to retroactively change her service retirement to industrial disability retirement?

SUMMARY

Respondent did not prove by a preponderance of the evidence that she made an error that was the result of "mistake, inadvertence, surprise, or excusable neglect" under Government Code section 20160 when she submitted her January 26, 2023, application seeking to change her retirement status from service retirement to industrial disability retirement. Respondent did not timely file her 2023 application,

and Government Code section 20160 does not afford her relief. CalPERS properly rejected her application, and her appeal is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent was employed by Ironwood as a correctional officer. By virtue of her employment, she was a state safety member of CalPERS subject to Government Code section 21151.

2. On March 28, 2022, respondent applied for service retirement, retiring from service effective that date. Since then, respondent has been on the service retirement roll.

3. On July 12, 2022, July 26, 2022, September 21, 2022, November 3, 2022, and December 7, 2022, respondent received disability retirement counseling via telephone, videoconference and/or in-person appointments with CalPERS.

4. On January 26, 2023, respondent submitted an application for an industrial disability retirement with a retirement date of March 28, 2022. Respondent alleged her disability was due to orthopedic conditions.

5. CalPERS advised respondent that additional information was required. After reviewing the information, CalPERS canceled her disability retirement application on July 26, 2023. The following day, CalPERS sent respondent a letter advising her of the bases for its decision and of her right to appeal.

6. On August 21, 2023, respondent sent a letter to CalPERS appealing the decision to cancel her disability retirement application. In that letter, respondent asserted that she never received any certified mail from CalPERS at her current address, was never told of any deadline to file her disability retirement application, and delayed doing so because of her poor physical and mental health. Respondent disagreed with CalPERS's determination that her reason for filing her application late did not fall within the reasons set forth in Government Code section 20160 because her physical and mental health prevented her from "dealing with day-to-day issues." Respondent enclosed multiple medical records with her appeal letter, none of which were introduced at hearing, and asked CalPERS to reconsider its denial.

7. On April 25, 2025, complainant signed the Statement of Issues in her official capacity.

8. On April 29, 2025, complainant filed a Request to Set the matter at OAH, and this hearing followed.

Evidence Presented at Hearing

9. Several witnesses testified, and documents were introduced. The factual findings reached herein are based on that evidence.

10. Tameka Robertson, Employee Relations Officer, Staff Services I, is employed by CDCR. Her duties include facilitating all disciplinary matters, including corrective actions, adverse actions, letters of reprimand, and dismissals. Respondent was the subject of an adverse action in 2022, which was resolved via a stipulation signed by respondent on March 7, 2022, and by the warden on March 8, 2022. As noted in the stipulation, as a result of the adverse action, respondent's penalty was a five percent salary reduction for five qualifying pay periods, effective March 2, 2022.

11. On March 28, 2022, respondent submitted a service retirement election application listing her retirement date as that same day, March 28, 2022.

12. On March 28, 2022, CalPERS sent respondent a letter at the address listed in her application advising her of its receipt of her application. CalPERS stated that respondent may be entitled to receive a disability retirement if she is unable to work because of illness or injury, and identified the application she must file if seeking a disability retirement.

13. On April 14, 2022, CalPERS sent a letter to respondent advising her it had processed her service retirement application. The letter informed respondent what her monthly retirement benefit would be based on her March 28, 2022, retirement date.

14. A May 18, 2022, letter from CDCR to respondent advised her that she separated from state service effective March 28, 2022. CDCR determined that she separated from employment "Under Unfavorable Circumstances."

15. CalPERS's Customer Touch Point Reports (CTPs) document all contacts CalPERS representatives have with members and their representatives. Each member has his or her own CTP that records all of the member's communications with CalPERS.

16. A CTP entry on July 12, 2022, documented a phone call between respondent and a CalPERS staff member in which respondent "asked about possibly submitting a [disability retirement] application in case it is more beneficial. Distributed [Publication 35, Disability Retirement Election Application (PUB 35)] and provided 7-10 business days for mailing. Scheduled video [disability retirement] appointment on 7/26/2022 at 9:00 AM." In a corresponding July 12, 2022, letter, CalPERS sent respondent PUB 35 "Per your request." The letter provided respondent with website and telephone contact information if she had any questions.

17. PUB 35 is a 76-page CalPERS publication created to help individuals “understand the disability retirement benefit options and provides instructions for completing” disability retirement applications and other required forms.

18. A July 26, 2022, CTP entry documented that a CalPERS staff member waited for respondent to log in to the scheduled video appointment, but she did not log in. The staff member called respondent’s cell phone number on file and spoke with respondent. Respondent wanted to know if the disability rating from workers’ compensation had anything to do with CalPERS, and was told that if she wanted to submit an application for disability retirement or industrial disability retirement, she needed to complete the disability retirement application in PUB 35 along with all supporting documents. Respondent was also told that CalPERS does not use a disability rating, which respondent “understood.” Per respondent’s request, another disability retirement telephone appointment was scheduled for August 9, 2022.

19. The August 9, 2022, CTP entry documented that a CalPERS staff member attempted to call respondent, but she did not answer. The CalPERS staff member left a voicemail advising she would attempt to call again within five minutes, but when she did, there was still no answer. The CalPERS staff member left a voicemail for respondent to contact CalPERS or the “Education tab” in her “MSS account” (acronym not explained) for further assistance or to reschedule a phone appointment.

20. A September 12, 2022, letter from CDCR to respondent advised her of the closure of an internal affairs investigation, which stemmed from her actions on December 11, 2021, of operating a privately owned vehicle while under the influence and using a controlled substance while off-duty, which was not medically prescribed. CDCR’s letter advised that based on those findings, respondent was “subject to

discipline. However, her service was retired prior to review of the investigation for penalty decision. Therefore, no further action is being taken and this matter is closed."

21. Ms. Robertson testified that when the internal affairs investigation was referred to her office for discipline, respondent had already retired, so no discipline could be imposed, and the matter was closed.

22. A September 21, 2022, CTP entry documented that respondent called to request a one-on-one appointment for assistance completing the disability retirement application. An in-person appointment was scheduled for November 3, 2022.

23. The November 3, 2022, CTP entry documented that in-person appointment where a CalPERS staff member "went over the [disability retirement] packet with [respondent], explaining each form and who had to complete it." The 21-day timeframe to submit all documents once the disability application had been received was also explained to respondent. Respondent "opted to not submit [the application] today, she will work on getting all her other documents completed." The CalPERS staff member scheduled a return appointment for December 8, 2022.

24. On December 7, 2022, a CTP entry documented that respondent called to request a one-on-one appointment that was then scheduled for January 24, 2023. Of note, there is no CTP entry explaining what happened to the December 8, 2022, appointment that had been scheduled on November 3, 2022, and no other evidence regarding this appointment was offered at hearing.

25. On January 9, 2023, CDCR's "Return-to-work Coordinator" completed CalPERS's "Employer Information for Disability Retirement" form, which had been provided by respondent. The "Employer Certification" section states that pursuant to Government Code section 21156, a disability retirement may not be used as a

substitute for the disciplinary process and asks the employer to check one of six boxes. CDCR's "Return-to-work Coordinator" checked the box marked: "The member has an adverse action pending against him/her."

26. One January 24, 2023, CTP entry documented that respondent requested "ICA" (acronym not explained) to submit an industrial disability retirement application. An ICA was scheduled for that afternoon. A second January 24, 2023, CTP entry documented that respondent came in for her ICA appointment and wanted to verify that her physician submitted his report on disability, which he had previously faxed to CalPERS. Respondent would submit her industrial disability retirement application at her next appointment on January 26, 2023.

27. The January 26, 2023, CTP entry documented that respondent came to the regional office to submit her disability retirement application for industrial disability retirement and also provided various documents.

28. A January 27, 2023, CTP entry documented that respondent's late industrial disability retirement application had been submitted, and that she was already on the service retirement roll with a retirement date of March 28, 2022.

29. On February 22, 2023, CalPERS sent a letter to CDCR advising that respondent was seeking to have her service retirement status changed to industrial disability retirement. CalPERS advised that Government Code section 20340 prohibits this change after retirement, but exceptions can be made under Government Code section 20160. In its letter, CalPERS set forth several questions it asked CDCR to answer so it could evaluate respondent's request to change her retirement.

30. On March 10, 2023, CDCR sent its response. It advised that respondent "did not mention that she was retiring because of the disability." CDCR "was told it was

a service retirement.” No one from the CDCR personnel department discussed disability retirement with respondent as she “told the Personnel department that she was service retiring.” Finally, CDCR advised it “would not object to [CalPERS] accepting the untimely application.”

31. Cynthia Venable is a CDCR Personnel Supervisor I, whose duties include handling all employee benefits. She confirmed she completed the document advising CalPERS that respondent never inquired about a disability retirement, nor did she notify CDCR of any type of disability or medical condition at the time she retired. Had CDCR been so notified, respondent would have been referred to the return to work department that handles employee disabilities.

32. CalPERS also sent a letter to respondent on February 22, 2023, seeking information so it could evaluate her request to change her service retirement to a disability retirement. In her handwritten responses, among other answers, respondent advised she did not become aware she could file an application for disability retirement until January 26, 2023. Given the numerous CTP entries, noted above, this answer was not credible.

33. Linda Ha, a CalPERS Associate Governmental Program Analyst in the Disability Retirement Unit, testified about the work CalPERS performed to evaluate respondent’s disability retirement application, and the CalPERS’s records documenting information given to respondent over time regarding a disability retirement.

34. Ms. Ha explained that based upon those records, and the documents CalPERS received during its review of respondent’s disability application, CalPERS first determined that respondent was not eligible to apply for disability retirement under

Government Code section 21154 because the application had not been filed within four months after respondent discontinued state service.

35. Given that determination, Ms. Ha explained that CalPERS then reviewed the records to determine if Government Code section 20160 applied. That section allows a late application to be considered if there has been a mistake, surprise, inadvertence, or excusable neglect, as long as no more than six months have elapsed. Here, respondent knew as early as July 2022 about a disability retirement and did not correct it. Also, more than six months transpired from when respondent was first advised of her ability to file a disability retirement application in March 2022 and when she filed it.

36. Accordingly, CalPERS determined that respondent was not eligible to file a disability retirement application. As such, the application was canceled.

37. Respondent testified that she was unaware of the four-month "grace period." Her employer never informed her about a disability retirement. Her union counselor/representative advised her that the warden recommended she retire because of the 2021 under the influence investigation, which was later dropped to a reckless driving charge. She moved twice after filing her service retirement application and was "totally unaware" of all this.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.].....The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the quality of the evidence. The quantity of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Applicable Code Sections

3. Government Code section 20021 defines "Board" as "the Board of Administration of the Public Employees' Retirement System."

4. Government Code section 20026 defines "disability" and "incapacity for performance of duty" as those terms are used as the basis for retirement.

5. Government Code section 21151, provides that a state safety member who is "incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability..... "

6. Government Code section 21152, subdivision (d), authorizes a member to apply for a disability retirement.

7. Government Code section 21154 requires the application to be made while the member is in state service, except in certain limited circumstances, or within four months after the discontinuation of state service.

8. Government Code section 20340 sets forth when persons cease being members. Subdivision (a) provides that membership ceases upon retirement.

Mistake, Inadvertence, Surprise, or Excusable Neglect

9. Government Code section 20160, provides (emphasis added):

(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.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(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.

10. Mistake, inadvertence, surprise, or excusable neglect, are understood as each of those terms are used in Code of Civil Procedure section 473. Case law has also interpreted each of those terms. Mistake, for example, must be an honest mistake "where there are no elements of negligence, laxness or indifference." (*Security Truck Line v. City of Monterey* (1953) 117 Cal.App.2d 441, 445.) Mistake is not a grounds for relief when it is the result of "ignorance of the law . . . or unjustifiable negligence in discovering the law." (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206.) Surprise, as used in Section 473, refers to some condition or situation in which a party "is

unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against.” (*Ibid.*) Finally, as for inadvertence or neglect, a party’s neglect “must have been such as might have been the act of a reasonably prudent person under the same circumstances.” (*Ibid.*)

Precedential Decisions

11. Government Code section 11425.60 authorizes agencies to designate decisions as precedential that contain “a significant legal or policy determination of general application that is likely to recur.” Precedential decisions may be expressly relied upon by the administrative law judge and the agency.

12. Complainant introduced two decisions, *Philip F. Ketterle and California Men’s Colony, CDCR, Case No. 2021-0923*, (*Ketterle*) and *Linda Christine George and Department of Rehabilitation, Case No. 2022-0704*, (*George*), wherein the applicants filed for a disability retirement more than four months after retiring for service. In neither case, did the applicant establish a correctable mistake, and CalPERS’s denials were affirmed. Further, in *George*, like here, the applicant alleged she did not receive information regarding filing a disability retirement, but the evidence showed she had been correctly served with that information. While these two cases presented issues similar to those raised here, it was not established that either *Ketterle* or *George* were precedential, so their holdings are not controlling.

Evaluation

13. Respondent did not meet her burden. She retired from state service effective March 28, 2022. She had four months within which to file her disability retirement application. (Govt. Code, § 21154.) Respondent did not file it until January 26, 2023, almost 10 months later. Her claim she was unaware of the four month rule is

unpersuasive as ignorance of the law is no excuse. (*People v. Meneses* (2008) 165 Cal.App.4th 1648, 1661-1665.)

Respondent also did not prove that her failure to file her disability retirement application in a timely manner was the result of mistake, inadvertence, surprise, or excusable neglect. (Govt. Code, § 20160.) On March 28, 2022, CalPERS sent respondent a letter advising her of the right to seek a disability retirement. Numerous CTP entries documented CalPERS staff providing her with disability retirement information. Her claim of no notice was unsupported by the record.

However, despite being extremely late, CalPERS gave respondent an opportunity to cure her untimely submission by answering a series of questions aimed at determining whether she could avail herself of Government Code section 21060. Based on respondent's answers, and the information CalPERS obtained from CDCR and from its CTP entries, respondent's untimely submission was not the result of mistake, inadvertence, surprise, or excusable neglect. But, even if respondent had been able to establish one of those four factors, her disability retirement application was filed beyond Government Code section 21060's six-month deadline, which began running when CalPERS sent its March 28, 2022, letter which would have put a reasonable person on notice about the right to file such an application.

Consequently, CalPERS properly canceled respondent's application, and on this record, her appeal must be denied.

ORDER

Respondent Rosemary Sanchez Hernandez's appeal from CalPERS's cancellation of her January 26, 2023, disability retirement election application is denied. CalPERS

acted properly in canceling the late application and is barred from accepting it under Government Code sections 20340 and 20160.

DATE: July 2, 2025


Mary Agnes Matyszewski (Jul 2, 2025 10:13 PDT)

MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings