

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Application for Disability Retirement of:

CELINA S. BERNARD, Respondent

and

COUNTY OF RIVERSIDE, Respondent

Agency Case No. 2024-0605

OAH No. 2025040268

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 10, 2025.

Respondent Celina S. Bernard represented herself.

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

There was no appearance by, or on behalf of, respondent County of Riverside.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 10, 2025.

ISSUES

(1) Whether respondent's application for disability retirement was timely submitted pursuant to Government Code section 21154 or otherwise excused from compliance with section 21154 due to a "correctable mistake" pursuant to Government Code section 20160.

(2) If respondent's application for disability retirement was timely filed, whether she was, at the time she filed the application, substantially incapacitated from the performance of her duties as a Social Services Practitioner III for respondent County of Riverside based on her orthopedic (avascular necrosis in hips, bilateral total hip replacement, herniated discs, and broken left ankle) and internal (severe deep tissue damage from overprescribed steroids for over a seven-year period) conditions.

SUMMARY

Respondent did not prove by a preponderance of the evidence that her failure to timely submit her application for disability retirement was the result of a correctable mistake pursuant to Government Code section 20160. While respondent's application for disability retirement was found to not be timely and there was no correctable mistake to accept her untimely application, it is noted that CalPERS nonetheless reviewed the reports provided by respondent in support of her application for disability retirement and determined she was not permanently disabled or incapacitated from performance of her duties when she applied for disability

retirement. CalPERS properly denied respondent's application, and her appeal is denied.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. Respondent was employed by County of Riverside as a Social Services Practitioner III. By virtue of her employment, she was a local miscellaneous member of CalPERS subject to Government Code section 21151. Respondent has the minimum service credit necessary to qualify for disability retirement.

Evidence Presented at Hearing

2. CalPERS employee Evelyn Murillo-Soria and respondent testified, and numerous documents were introduced. The factual findings reached herein are based on that evidence.

3. In an application dated March 7, 2022, and received by CalPERS on March 21, 2022, County of Riverside applied for disability retirement on behalf of respondent.

4. On March 22, 2022, CalPERS informed respondent that it received an employer-originated application for disability retirement, and that she needed to complete her own application for disability retirement and provide CalPERS supporting documents. CalPERS did not receive a response to its letter.

5. On April 12, 2022, CalPERS sent respondent a “letter of noncooperation,” confirming that it had not received her application or the requested documents, and if these were not received within 21 days, CalPERS would cancel the application.

6. On May 3, 2022, CalPERS sent respondent a letter canceling her employer's application for disability retirement, based on respondent's failure to apply for disability retirement. CalPERS cannot make a determination based on the employer's documents without information from the member.

7. On June 28, 2022, CalPERS sent respondent a letter informing her that she had been permanently separated from all CalPERS-covered employment. Respondent was given three options available to her: receive a refund of her member contributions; retire with CalPERS; or leave her contributions on deposit.

8. Pursuant to respondent's request, on August 22, 2022, and February 1, 2023, CalPERS sent respondent Publication 35 - Disability Retirement Election Application (PUB 35). PUB 35 includes the following:

You should apply for disability or industrial disability retirement as soon as you believe you are unable to perform your usual job duties because of an illness or injury that is of permanent or extended duration and expected to last at least 12 consecutive months or will result in death. Once we receive all the required information described in this publication, we can begin processing your application.

[¶] . . . [¶]

If you have a workers' compensation claim, you should not wait until your condition is "permanent and stationary" under workers' compensation requirements to submit your application. Delaying your application for retirement may affect important benefits you may be entitled to receive.

[¶] . . . [¶]

CalPERS can cancel your application for any of the following reasons:

- If you fail to provide the information or forms needed to make a determination on your disability retirement; or
- If you fail or refuse to attend an Independent Medical Examination (IME) appointment when requested; or
- If you do not meet the eligibility requirements for disability or industrial disability retirement.

9. On March 23, 2023, CalPERS received respondent's application for disability retirement but she provided no attachments.

10. On March 23, 2023, CalPERS sent respondent a letter requesting she provide additional records, with a response due within 21 days from the date of the letter.

11. On April 20, 2023, CalPERS sent respondent a letter canceling her application for disability retirement due to the requested records not being received.

12. On April 26, 2023, at respondent's request, CalPERS sent respondent a second PUB 35.

13. On May 25, 2023, respondent applied for disability retirement. She provided a report from her physician, but the form was incomplete and was not based on a current examination.

14. On June 1, 2023, CalPERS sent respondent a letter requesting she provide a physician's report based on an office visit within the last six months and copies of her medical records from March 9, 2021, to present, by June 22, 2023.

15. On June 26, 2023, CalPERS sent respondent a letter requesting she provide a physician's report based on an office visit within the last six months and copies of her medical records from March 9, 2021, to present, by July 17, 2023.

16. On August 3, 2023, CalPERS sent respondent a letter requesting she provide a physician's report based on an office visit within the last six months and copies of her medical records from January 1, 2021, to present, by August 24, 2023.

17. On August 29, 2023, CalPERS sent respondent a final notice letter requesting she provide a physician's report based on an office visit within the last six months and copies of medical records from January 1, 2021, to present, by September 19, 2023. The requested information was not received.

18. Respondent separated from her employment in March 2022. Under Government Code section 21154, an application for disability retirement must be made while the member is in active service; or within four months after the discontinuation of the service. If a member applies for disability more than four months following the last day of pay, then the medical records must reflect

"continuous disability." This means the member's medical records must reflect documented evidence of continuous disability from last day on pay through the date of the application and ongoing.

19. On October 11, 2023, CalPERS sent respondent a letter canceling her application for disability retirement due to the requested records not being received.

20. On February 15, 2024, respondent applied for disability retirement based on her orthopedic (avascular necrosis in hips, bilateral total hip replacement, herniated discs, and broken left ankle) and internal (severe deep tissue damage from overprescribed steroids for over a seven-year period) conditions.

21. On February 15, 2024, CalPERS mailed respondent a letter requesting additional information with a submission deadline of 21 days from the date of the letter.

22. On March 18, 2024, CalPERS mailed respondent a letter acknowledging her request for an earlier disability retirement date, and provided information as to what documentation was required.

23. On April 9, 2024, CalPERS mailed respondent a final notice regarding documentation required regarding her request for an earlier disability retirement date.

24. On May 13, 2024, CalPERS received Physician's Report on Disability from Amjah Al-Khawaldeh, M.D., signed on April 26, 2024, indicating respondent's incapacity was not permanent and would not last longer than 12 months.

25. In May 2024, respondent completed a CalPERS questionnaire. In response to the question as to why she waited until February 15, 2024, to apply for disability retirement if her last day on pay was March 9, 2022, she responded:

I was living off of the inheritance of my grandparents [*sic*] estate, which me, my siblings, and all of our immediate cousins received, as a result of our entire passing of our paternal grandparents and fathers.

26. On June 12, 2024, CalPERS sent respondent a letter advising her that her disability retirement application had been denied because she did not meet the eligibility requirements. The letter confirmed that CalPERS received a new Physician's Report on Disability from Dr. Al-Khawaldeh, dated April 26, 2024, stating that the duration of her condition was less than 12 months. Per Government Code section 20026, her disabling condition must be expected to last at least 12 consecutive months, and therefore, her application for disability retirement was denied.

27. On July 1, 2024, respondent appealed CalPERS's denial of her application for disability retirement and requested an administrative hearing.

28. On February 20, 2025, CalPERS sent respondent a letter amending its June 12, 2024, denial of respondent's application. The letter stated an additional basis for denial was that her application was untimely. CalPERS reviewed information relating to her application for disability retirement and determined that her failure to submit a timely application was not the result of a "correctable mistake" pursuant to Government Code section 20160.

29. On March 13, 2025, complainant signed the Statement of Issues¹ in her official capacity. Complainant stated that the issue on appeal is limited to the

¹ At hearing, complainant moved to amend the Statement of Issues on page 7, lines 11 and 12, by placing a period after the words "section 2154" and deleting the

following: (1) Whether respondent's application for disability retirement is timely submitted pursuant to Government Code section 21154 or otherwise excused from compliance with section 21154 due to a "correctable mistake" pursuant to Government Code section 20160; and (2) If respondent's application for disability retirement is timely filed, whether she is substantially incapacitated from the performance of her duties as a Social Services Practitioner III for respondent County of Riverside based on her orthopedic (avascular necrosis in hips, bilateral total hip replacement, herniated discs, and broken left ankle) and internal (severe deep tissue damage from overprescribed steroids for over a seven-year period) conditions.

RESPONDENT'S TESTIMONY

30. Respondent testified that the original statement was from her treating physician. She was asked to provide a more recent statement. She called the office where her physician worked and he was not available for another year. She only had 21 days to provide an updated statement, so she spoke to a nurse practitioner at the same office and he completed the second statement. That is why the information contradicted her doctor's statement.

31. Respondent learned that she had been given too many steroid injections. Doctors recommend that patients receive only three to four steroid or cortisone injections per year to the same area, but respondent had received 11 injections. As a result, she suffered avascular necrosis or lack of blood flow to the femoral head. She

remainder of that sentence. The motion was granted, and the pleading was amended by interlineation.

also had two hip replacements. She was in a lot of pain and started using a cane. She trusted the doctor. Her life has gone downhill since that time.

32. Respondent did not want to retire "but respectfully I had no choice." Family members had passed away, her dog passed away, and her son left for college. Respondent said, "I couldn't get myself out of this hole." She was alone and lost her house. She could not pay her mortgage. She worked for the county for 17 years. She said, "The only reason my application was delayed was all of the above."

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. By virtue of her employment, respondent is a local miscellaneous member of CalPERS, pursuant to Government Code section 21150. To qualify for disability retirement, respondent must prove that, at the time she applied, she was "incapacitated physically or mentally for the performance of [her] duties in the state service." (Gov. Code, § 21156.) As defined in Government Code section 20026:

"Disability" 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 . . . on the basis of competent medical opinion.

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

6. 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.

Mistake, Inadvertence, Surprise, or Excusable Neglect

7. 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.

8. 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 ground 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.*)

Evaluation

9. Respondent did not meet her burden. She retired from state service effective March 2022. She had four months within which to file her disability retirement application. (Govt. Code, § 21154.) Respondent did not file it until almost nine months later. CalPERS sent respondent a letter advising her of the right to seek a disability retirement. Numerous letters, and at least two copies of PUB 35, documented CalPERS staff providing her with disability retirement information. Although respondent provided some testimony concerning personal issues that she says contributed to her failure to timely file a disability retirement election application, none of those excuses constitute mistake, inadvertence, surprise, or excusable neglect.

Consequently, respondent 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 as required for relief under Government Code section 20160, and CalPERS properly canceled respondent's application.

Given that respondent's application was not timely filed and she is not entitled to relief pursuant to Government Code section 20160, there is no need to address the second issue in this hearing, which is whether she was substantially incapacitated from performing the usual and customary duties of her job at the time she filed her disability retirement election application. Regardless, no competent medical evidence was proffered with respect to that issue.

On this record, respondent's appeal must be denied.

ORDER

Respondent Celina S. Bernard'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. Respondent is not entitled to a disability retirement.

DATE: July 14, 2025

Marion J. Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings