

ATTACHMENT A

THE PROPOSED DECISION

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

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

STEVEN MONDAY, Respondent,

and

CITY OF SOUTH LAKE TAHOE, Respondent.

Agency Case No. 2024-0569

OAH No. 2025010361

PROPOSED DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 16, 2025, in San Diego, California, and by videoconference.

Bryan Delgado, Senior Attorney, represented petitioner, Sharon Hobbs, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System (CalPERS).

Steven Monday, respondent, represented himself and appeared at the hearing.

Michael D. Youril, Attorney at Law, Liebert Cassidy Whitmore, represented respondent, City of South Lake Tahoe (City).

The record was held open until close of business on July 14, 2025, in order for CalPERS and the City to submit closing briefs. The closing briefs were timely submitted by CalPERS and the City. The record was closed, and the matter was submitted for decision on July 15, 2025.

ISSUE

The limited issue on appeal is whether Mr. Monday made a mistake, which was the result of inadvertence, mistake, surprise, or excusable neglect, correctable by Government Code section 20160, which would entitle him to an effective retirement date retroactive to December 31, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. Mr. Monday was employed by the City. By virtue of his employment, Mr. Monday was a local state member of CalPERS subject to Government Code¹ section 21151.

¹ Unless otherwise indicated, all code sections refer to the Government Code.

2. On November 5, 2021, Mr. Monday called CalPERS to inquire about the industrial disability retirement (IDR) process.

3. On December 8, 2022, CalPERS mailed Mr. Monday a Publication 35 – Disability Retirement Election Application (PUB 35), at his request.

4. On December 9, 2022, Mr. Monday attended a counseling appointment at the CalPERS San Diego Regional Office (SDRO) for assistance with the IDR process. A CalPERS representative reviewed the IDR process, the Service Retirement (SR) pending IDR application, the disability retirement application checklist, and the timeframe to submit documents.

5. On December 14, 2022, Mr. Monday attended a counseling appointment at the CalPERS SDRO for assistance with the IDR application and process.

6. On April 18, 2023, Mr. Monday arrived at the CalPERS SDRO for assistance with the IDR application. A CalPERS representative referred him to the checklist in PUB 35.

7. On January 4, 2024, Mr. Monday submitted an application for SR pending IDR with an effective date of retirement on December 31, 2022. He claimed disability on the basis of orthopedic conditions involving his neck, back, and right ankle.

8. Mr. Monday retired for service effective January 1, 2024, and he has been receiving his retirement benefits since that date.

9. CalPERS conducted a review of medical reports concerning Mr. Monday's medical conditions and his late filing of his IDR application to determine if he made a mistake in not filing for disability retirement at or near the time he separated from his employment with the City.

10. On May 21, 2024, CalPERS notified Mr. Monday and the City of its determination that, upon its review, Mr. Monday made no correctable mistake to allow CalPERS to change his effective retirement date to January 1, 2023,² pursuant to Section 20160.

11. On June 4, 2024, CalPERS informed Mr. Monday and the City that Mr. Monday's application for IDR was approved based on his orthopedic conditions involving his neck, back, and right ankle, retroactive to January 1, 2024.

12. On June 24, 2024, Mr. Monday appealed CalPERS's decision to deny him an IDR retroactive to January 1, 2023.

13. This hearing followed.

CalPERS's Evidence

14. The following is a summary of the in-person testimony of Evelyn Murillo-Sorio and CalPERS's supporting documentation. Ms. Murillo-Sorio has worked for CalPERS as a retirement disability analyst for two and a half years. Her duties include reviewing IDR applications, ensuring CalPERS receives all required documents with the application, and verifying by a medical opinion that a member has been disabled 12 consecutive months or more. Prior to her current position, Ms. Murillo-Sorio worked in

² In his IDR application, Mr. Monday requested an effective retirement date of December 31, 2022. In his appeal, he asked for his effective retirement date to be changed from the approved date of January 1, 2024, to January 1, 2023. The issue on appeal is whether he is entitled to an effective retirement date of December 31, 2022.

the pre-survivor death unit at CalPERS for nine months and with the Franchise Tax Board for three to four years in the call center.

15. Ms. Murillo-Sorio testified she sent a copy of PUB 35 to Mr. Monday on December 8, 2022. PUB 35 consists of a 77-page application for IDR from CalPERS. It is a guide that shows step-by-step how to fill out an IDR application, and it provides definitions and explanations. Ms. Murillo-Sorio explained the effective date of retirement can be no earlier than the day following the last day on payroll, as long as the application is received by CalPERS within nine months after separation of employment.

16. On December 9, 2022, CalPERS received a request for a retirement allowance estimate from Mr. Monday. Ms. Murillo-Sorio testified that after this request is received by CalPERS, the member receives a letter with detailed estimates of what they will receive on a monthly basis. The member then has 120 days to fill out their application and turn it into CalPERS. She stated that local agencies make the medical determination. CalPERS "goes from there" and analyzes whether the application was received on time. If the application was timely, meaning it was received by CalPERS within nine months after separation, and the local agency approved the application, then the application is approved effective the last day on payroll. If the application was not timely, meaning it was not received by CalPERS within nine months after separation, then the application is approved effective the first day of the month the application was received.

17. Ms. Murillo-Sorio testified that on January 4, 2023, CalPERS sent Mr. Monday a letter informing him of "his options now that he [was] permanently separated from all CalPERS-covered employment."³

18. On April 18, 2023, CalPERS received a second request for a retirement allowance estimate from Mr. Monday.

19. Ms. Murillo-Sorio stated that on January 4, 2024, CalPERS received Mr. Monday's SR pending IDR application, which had a requested service retirement effective date of December 31, 2022. His position was listed as a fire engineer. He listed conditions related to his neck, back, and right ankle as a basis for disability.

20. On January 5, 2024, CalPERS sent a letter to Mr. Monday indicating his application was not timely because he did not file within nine months of his requested effective date of December 31, 2022, and his service retirement effective date would be processed as January 1, 2024, which is the first day of the month his application was received.

21. On January 9, 2024, CalPERS sent a questionnaire to the City to determine whether Mr. Monday might be approved for an earlier effective retirement date if a "correctable mistake" had been made.

22. In a letter dated January 18, 2024, the City replied to CalPERS, stating, "Yes, the City of South Lake Tahoe would be in agreement if CalPERS grants the earlier

³ Mr. Monday's last day on payroll at the City was December 31, 2022.

retirement. The City was under the impression that he filed his application at the time of his retirement and began ADDP payment effective 01/01/2023 "⁴

23. Ms. Murillo-Sorio testified that based on the City's reply on January 18, 2024, CalPERS determined there had been no correctable mistake in order for CalPERS to change the effective date of retirement to an earlier date.

24. On January 9, 2024, CalPERS sent a questionnaire to Mr. Monday to determine whether Mr. Monday might be approved for an earlier effective retirement date due to "excusable inadvertence, oversight, or mistake of fact or law on the part of the claimant."

25. On January 29, 2024, CalPERS received the following response, in part, from Mr. Monday: (Errors in original and emphasis added.)

3 Did you contact calPERS for information regarding disability before you ceased working? If not why not? If yes what assistance did you receive?

I did not contact calPERS, specifically regarding disability.
My case was already filed as an IDR. **I have been to the local calPERS office several times to get my retirement application completed**. The calPERS employee asked me to confirm my case was an IDR, to which I said yes. I **brought home a pamphlet for disability retirement but**

⁴ ADPP stands for Advanced Disability Pension Payments.

did not receive assistance specifically regarding disability retirement.

4 On what date did you become aware that you could submit an application for disability retirement? Why didn't you apply at that time?

I don't recall the date I became aware that I could submit an application for disability retirement. At the time I was in the middle of a divorce, fighting for child custody, filing for bankruptcy and **laid up recovering from neck surgery followed by ankle surgery.** I was informed by HR that my case had been filed as an IDR. **I believe I had started my application process when I found out but there were more materials that calPERS needed, and I had several questions regarding the application.**

26. Ms. Murillo-Sorio testified that based on Mr. Monday's response on January 29, 2024, CalPERS determined there had been no correctable mistake in order for CalPERS to change the effective date of retirement to an earlier date.

27. In a letter dated March 13, 2024, the City issued its medical determination, based on competent medical opinion, that Mr. Monday was permanently substantially incapacitated from the performance of his usual duties as a fire engineer, due to a primary disabling condition of cervical disc disorder with radiculopathy status-post discectomy surgery and ligament reconstruction surgery. The City further certified that Mr. Monday separated from employment on the last day of his payroll effective December 31, 2022. CalPERS received this letter, via fax, on April 15, 2024.

28. Ms. Murillo-Sorio testified about CalPERS's touch point report with the communications between Mr. Monday and CalPERS. On November 5, 2021, Mr. Monday called to inquire about the process for IDR. He was advised to submit an application when he was ready and his employer will make the medical determination.

29. There was a touch point entry on December 9, 2022, which indicated Mr. Monday had a one-on-one personal counseling appointment at CalPERS's SDRO. He sat with an analyst who explained the IDR application, went over PUB 35 and the required documents, and the "requirements for effective date of retirement are covered." Ms. Murillo-Sorio remarked the touch point note stated, "Discussed last day on payroll vs. RD....." She testified the last day of payroll could be different than a retirement date.

30. On December 14, 2022, there was a touch point entry indicating Mr. Monday had another one-on-one personal counseling appointment at CalPERS's SDRO to "go over IDR."

31. On April 18, 2023, the following touch point entry was made indicating Mr. Monday had another one-on-one personal counseling appointment at CalPERS's SDRO: (Errors in original and emphasis added.)

Mbr came into SDRO for assistance with Industrial Disability Retirement Election Application. **Assisted member with the application, referred them to the checklist in the publication for required documents**, and explained the timeframe. **Provided the timeframe of 21 days from the date completed package is received**. Also discussed CP.

Assisted mbr submit CP allowance estimate. RA date unsure maybe 10/1/23.

32. Ms. Murillo-Sorio testified that if Mr. Monday “had provided his IDR application on this date, then his IDR date would have been when he asked for it to be” on December 31, 2022.

33. In a letter dated June 4, 2024, CalPERS notified Mr. Monday that his application for IDR was approved. However, Mr. Monday was denied his request for an earlier retirement date of January 1, 2023, because CalPERS determined he did not make a correctable mistake. Ms. Murillo-Sorio testified this letter essentially says an earlier effective date of retirement of January 1, 2023, cannot be approved because Mr. Monday’s application was not received within nine months of separating from service on December 31, 2022, as his application was received on January 4, 2024.

34. The following testimony by Ms. Murillo-Sorio is a summary of the questions asked on cross-examination by the City and Ms. Murillo-Sorio’s responses:

35. Ms. Murillo-Sorio was asked if there were changes to CalPERS’s IDR process and she replied that she was not aware of any changes. She was asked about CalPERS circular letter titled “Disability Retirement & Reevaluation Required Documents,” dated March 15, 2023. She replied the documents required for IDR application are the same as before this circular letter was issued, but she did not work for CalPERS in 2022. She was unsure which documents the local agencies had to send to CalPERS prior to March 2023 in order to certify medical determinations for IDR.

36. Ms. Murillo-Sorio was asked what Mr. Monday was advised by CalPERS representatives during their communications.

37. Ms. Murillo-Sorio testified she was not present during the three one-on-one meetings that Mr. Monday had at CalPERS's SDRO. She stated the local safety member files their IDR application with CalPERS, and the local authority, such as the City, makes the determination of medical disability. CalPERS does not make the medical determination when the member is a local safety member, such as Mr. Monday. Ms. Murillo-Sorio explained that after the local safety member files their IDR application with CalPERS, the employer (local authority) has six months to make their medical determination. CalPERS allows the local authority a single extension of up to six months to make their medical determination.

38. Ms. Murillo-Sorio testified Mr. Monday could have filed his IDR application without his medical documentation, and when a local member files their IDR application, it is deemed filed with or without the medical documentation. The local authority has a certain amount of time (six months plus up to a six-month extension) to make their medical determination.

39. Ms. Murillo-Sorio was asked about **PUB 35** and its **checklist**, which provide the **following order** for the "CalPERS Disability Retirement Application Process" and "Application Package Checklist": (Exhibit 7, page A92.) (Emphasis added.)

Request an Estimate

Obtain Medical Records

Complete Required Documents

Submit Application with Required Documents

Application Package Review

Independent Medical Examination (if required)

Written Decision

The **checklist** states, "**Request your medical records from at least one year prior to your last day of work to the present.**" The **checklist** also states the member must **request from his/her physician "medical records to support the *Physician's Report on Disability* form.**" (Emphasis added.)

At the bottom of the **checklist**, it states, "**Failure to provide the above information to CalPERS may result in a cancellation of your disability retirement application.**" (Emphasis added.)

40. Ms. Murillo-Sorio was **asked if PUB 35 and its checklist were confusing to local members because they suggest that you have to have all your medical records and medical documentation before you file your application.** She replied, "**Uh, yes.**" (Emphasis added.)

41. Ms. Murillo-Sorio was **asked if a local safety member, such as Mr. Monday, can submit their medical records/documentation to their local authority (the City) after they file their IDR application with CalPERS.** She replied, "**Correct.**" (Emphasis added.)

42. Ms. Murillo-Sorio was asked why the "Employer Information for Disability Retirement" form was included in PUB 35 and given to local safety members, when it states, "**When the CalPERS determination of disability is completed, they will inform you.**" (Emphasis added.) (Exhibit 7, page A112.) She **replied this was confusing because a local agency (such as the City) makes the determination of medical disability not CalPERS.**

43. Ms. Murillo-Sorio was asked why the "Physician's Report on Disability" form was included in PUB 35 and given to local safety members, when it states, "**Mail**

completed report directly to CalPERS." She replied this form **"should go to the local agency not CalPERS when it's a local safety [authority] as in this case."**

(Exhibit 7, page A118-119.) (Emphasis added.)

44. Ms. Murillo-Sorio was asked about the touch point entry on December 9, 2022, and why it stated, "Advised member to submit all required documents within timeframe of 21 days from submission of Disability Retirement Application (DRA), if not the DRA will be cancelled." She replied that she was **not sure what documents exactly Mr. Monday was told to submit within 21 days or if he was told he had to submit his application within nine months of separating from service.**

45. Ms. Murillo-Sorio was asked about the touch point entry on April 18, 2023, and if the customer representative explained **how the checklist applied differently to local safety members and general miscellaneous members.** She replied that **it did not differentiate** between the two types of members.

46. Ms. Murillo-Sorio was asked to review the touch point entry on **October 13, 2023**, which stated, "**Mbr called because he is 90% done with DR app and wanted to know if he can submit it.** Mbr is still **waiting on 2 physician's report.** **Advised** when packet is received we will start processing it and **if not all docs received within 30 days we will cancel DR app. Mbr will reach out to physicians."** (Emphasis added.) (Errors in original.)

47. Ms. Murillo-Sorio was **asked if a local safety member can file their IDR application and not include their medical documentation.** She replied, **"Correct."** (Emphasis added.) She **acknowledged the touch point entry did not indicate if Mr. Monday was advised of this.** She also noted CalPERS will send a letter to the local authority (the City) to make the determination on the medical disability.

The City's Evidence

48. The following is a summary of the testimony of Ember Buckman and the City's supporting documentation. Ms. Buckman has been employed with the City for 18 years. She was hired in the human resources (HR) department where she worked as a clerk, technician, specialist, and analyst. She currently serves as the HR manager. Her duties include overseeing operations in the HR department and managing staff and employee and labor relations/negotiations. She is the sole employee who processes the IDR applications for the City. The "interactive process" is when she meets with an employee to go over their medical restrictions and job description, and determine if the City can make a reasonable accommodation in their current role or another role.

49. Ms. Buckman is familiar with Mr. Monday. She explained he is a retired fire engineer with the City. He started his employment in 2002 and retired off payroll on December 31, 2022. He was injured in September 2020 during employment while he was doing wildland firefighting and fell down a hill. He went on leave shortly after the injury and never returned to regular duty.

50. On April 4, 2022, LWP Claims Solutions, Inc. (LWP), the City's third-party administrator for workers' compensation claims, sent a questionnaire to Ramin Raiszadeh, M.D., of the La Jolla Spine Institute. Dr. Raiszadeh's answers on April 7, 2022, indicated that Mr. Monday was evaluated and found to be precluded from performing any firefighter work and his disability was anticipated to be permanent.

51. After Ms. Buckman received the LWP questionnaire completed by Dr. Raiszadeh, she reached out to Mr. Monday on May 25, 2022, to engage in the interactive process. She met with Mr. Monday soon after. She testified, "It was clear that he could not return to his job." The City determined it could not accommodate

Mr. Monday in his current position. At this point, Mr. Monday was still treating through the workers' compensation system.

52. In an email on December 21, 2022, Mr. Monday sent Ms. Buckman an "Employer Information for Disability Retirement" form, which he signed on December 14, 2022. He informed Ms. Buckman that his retirement date was December 31, 2022. Ms. Buckman certified the form and returned it to CalPERS. She stated this form is typically sent to her by employees, and she is asked to complete the form as the last part of their IDR process. Mr. Monday's last day on payroll was December 31, 2022.

53. The City received a permanent and stationary report from Dr. Raiszadeh, dated October 25, 2023, which provided he could not perform any firefighting duties due to his spinal injuries. The City also received a permanent and stationary report, dated December 12, 2023, from Garrett Tallman, M.D., an orthopedic surgeon who treated Mr. Monday for his right ankle injury and surgeries. Mr. Monday applied for IDR a few weeks after the permanent and stationary report was issued by Dr. Tallman.

54. Ms. Buckman testified that prior to March 2023, the local authorities did not have to provide actual work restrictions and medical documentation to certify medical disability for CalPERS. She would sign a form similar to the "Employer Information for Disability Retirement" form; she would make a determination of medical disability based on competent medical opinion; and she would send the form to CalPERS with the job description and the medical determination.

55. Ms. Buckman stated that in March 2023, CalPERS made changes and she referred to the circular letter titled "Disability Retirement & Reevaluation Required Documents." **As of March 15, 2023, the local authorities must provide CalPERS the "Physician's Report on Disability" and all medical records.** There has been **"a lot of**

confusion regarding the physician's report on disability" because, at times, the report has been sent to CalPERS or to the employee instead of to her. She has handled IDR applications for nearly 10 years and this new process has been confusing. **She called CalPERS and received "mixed advice from CalPERS analysts" when she tried to speak with them.** She found the **CalPERS representatives "to be confused themselves" as to who the report should be sent to, and CalPERS will not send the medical reports to her.** (Emphasis added.)

56. Ms. Buckman testified that **it is her understanding that medical documentation and medical records can be gathered after the IDR application is filed by the local member.**

57. Ms. Buckman stated she received a letter from CalPERS on January 9, 2024, asking for additional information regarding Mr. Monday's IDR application. She responded to CalPERS on January 18, 2024, indicating the **City did not object to Mr. Monday having an earlier effective date of retirement** because **the City was under the impression that the application for IDR had been filed at an earlier date.**

Mr. Monday's Evidence

58. The following is a summary of the in-person testimony of Mr. Monday, which is consistent with his supporting documentation. Mr. Monday testified with a very soft-spoken voice and demeanor, which included breaks of silence and, at times, ended without completion of his sentences. He was very respectful and emotional, and he appeared to sometimes weep very quietly throughout his testimony.

59. Mr. Monday served as a firefighter for the City. He sustained serious and permanent injuries during the line of duty on September 4, 2020. He was working on a wildland fire - the Butte/Tehama/Glenn Lightning Complex Fire - in Butte County. His

crew had to cut a trail because the terrain was so steep. They were chasing spot fires and laid over 1,000 feet of line. He had about 55 pounds of equipment on his back when he lost his footing on shale, tumbled down the hillside, and hit a tree. He was "care flighted" off the mountain.

60. Mr. Monday testified he suffered damage to his neck/cervical spine at C4 to C7, thoracic spine at T2 to T4, right ankle, right shoulder, and other bumps and bruises. He "didn't claim a couple of those injuries" because he felt like he "was being a burden." He had the most pain in his neck, back, and right ankle, and he did not have feeling in his left arm.

61. In October 2021, Mr. Monday underwent an "elaborate neck surgery" involving disc replacements. However, his workers' compensation coverage did not cover a third disc replacement that he needed, so he also underwent a spinal fusion.

62. In February 2023, Mr. Monday underwent full reconstructive surgery on his right ankle, although only two of the three objectives in that surgery were completed. He had physical therapy from September 2020 through March 2024, two to three days, each week.

63. Starting around 2021, Mr. Monday developed "some symptoms and signs" that he could not understand. He later had a few incidents that he could not wrap his head around or explain. He confided in friends and they suggested he seek therapy. In April 2023, he started therapy for post-traumatic stress disorder (PTSD). He has worked with several therapists for PTSD. He most recently has treated for several months at Brightside Clinic because it specializes in treatment for first responders.

64. Mr. Monday testified very emotionally that he understands the untimely submittal of his IDR application, but it was not intentional and he was confused as he

thought his application was "not complete" and still "pending." He referred to having a "lack of notification." He was also juggling a lot including trying to raise his 14-year-old son while managing his ongoing medical treatments, surgeries, and physical therapy, and trying to navigate his PTSD and what he was "going through." He stated, "I love my job. I wasn't ready for it to end." His career ended abruptly and when he really needed his job the most. He stated, "I needed more stability, not less." His job ended because of his injuries. He was also going through a divorce where he lost a lot financially and his son was at an age when things tend to get more expensive. He ended up having to file for bankruptcy. He testified, "It just doesn't make sense that I would have delayed the process. I needed the money. I was fighting to keep my place. I had to sublet my place out."

65. On cross-examination by CalPERS, Mr. Monday stated his department knew about his injury right away and the fire battalion chiefs were the ones who picked him up from the hospital in Butte County. He recalled Ms. Buckman helping him through the process. He also recalled going to CalPERS SDRO multiple times.

66. On cross-examination by the City, Mr. Monday testified that the **"last several years have all been confusing"** when it came to the IDR process. He did not realize that CalPERS, at the time, made some changes. He referenced the **checklist** in PUB 35 and stated, "One major change, I recall, **requiring medical records one year prior to the incident or my last day of work.**" (Emphasis added.) He had **submitted medical records but because of the gap in time and the change in CalPERS's process, he had to submit more medical documentation and he was feeling frustrated.** In 2023, he had to contact the City who directed him to occupational medicine, and he went through a couple different medical contractors to track down

his medical records. He also needed to get his medical records for 2019. He stated, "That part was **confusing** . . . difficult." (Emphasis added.)

67. On cross-examination by the City, Mr. Monday stated he was told by CalPERS that he needed to submit his medical records for 12 months prior to his last day of work. He had to retrieve those medical records, as well, which had not been required before. It was **his understanding that he had to gather all of these medical records, as directed** on the **checklist**, before he could file his IDR application. He stated, "[This] is why I called CalPERS and said I was 90 percent complete and was waiting on two reports still." He was **asked if anyone at CalPERS told him what would happen if he did not file within nine months of his last day on payroll**. He replied:

No, I **don't recall an explanation of the consequence of not applying within that time frame**. I do recall, I had **20 to 30 days [to submit medical documentation]**, **otherwise I'd have to restart the IDR application process** again and they'd **cancel my application** . . . 21 days.

Mr. Monday was waiting on the permanent and stationary **reports from Dr. Raiszadeh and Dr. Tallman** as **it was his understanding they were required to be submitted with his IDR application, per the checklist and his communications with CalPERS**. It took time for him to get these reports. He had to request them from a third party, LWP, as they are not issued by the doctors. One of the reports he had to submit a request two times. He applied for IDR a couple weeks after he received both reports.

Mr. Monday stated **if he had been told that he could file his IDR application before he had all of his medical documentation, he would have done so** because

he was in a hurry to get everything turned in to CalPERS. He also stated that if he had been told that he could have applied for IDR without all of his medical documentation and had his application backdated, he would have done so.

68. The following is a summary of the testimony of Crystal Seitz. Ms. Seitz is Mr. Monday's "support person." She met him in June 2020 about three months before his injury. Prior to Mr. Monday's injury, he was calm, down to earth, and very active. Since the injury, he has been more withdrawn and spent a lot of time inside. He was "often frustrated and overwhelmed." He struggled with tasks and she helped him get things done. He tried to make calls to his doctors and go to doctor appointments, and had lots of to-do lists. She helped him complete his tasks. She went with him to the CalPERS's SDRO, although she did not attend the meetings, and she helped him with the computer stuff for CalPERS.

69. Ms. Seitz testified, "[Mr. Monday] expressed frustration with the back and forth with the [CalPERS] procedures. It seemed it was constantly changing . . . the things that he needed to do."

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.)

3. As referenced below, Section 20160, subdivision (d), provides that the party seeking a correction has the burden of "presenting documentation or other evidence to the board establishing the right to correction."

Applicable Statutes & Case Law

4. Section 20026 states, "'Disability' and 'incapacity for performance of duty' as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, 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 opinion."

5. Section 21150, subdivision (a), states, "A member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076, 21076.5, or 21077."

6. Section 21154 states: (Emphasis added.)

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.** On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to **determine whether the member is incapacitated** for the performance of duty. **On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.**

7. Section 21156 states: (Emphasis added.)

(a)(1) **If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state**

service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability, unless the member is qualified to be retired for service and applies therefor prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.

(2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

(b)(1) The governing body of a contracting agency upon receipt of the request of the board pursuant to Section 21154 shall certify to the board its determination under this section that the member is or is not incapacitated.

(2) The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

8. Section 20160 states: (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.

9. Section 21252 states: (Emphasis added.)

(a) 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 the first day of the month in which the member's application is received** at an office of the board or by an employee of this system designated by the board.

(b) An application for retirement may only be submitted by or for a member who is living on the date the application is actually received by the system. If the member has been deemed incompetent to act on his or her own behalf continuously from the last day for which salary was payable, the effective date of retirement may not be earlier than one year prior to the month in which an application submitted by the guardian of the member's estate is received by the system.

(c) Notwithstanding any other provision of law, a member who separates from a retirement system that has established reciprocity with this system with the intention of retiring concurrently under both systems and who submits his or her application for retirement for service to the board within nine months after that separation, may have his or her application received and acted upon by this system as if the application were submitted pursuant to this section.

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 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

11. Mr. Monday appeared in person at the hearing. His testimony was given with the utmost sincerity and was extremely emotional as it was evident his life has drastically changed since his accident. He often spoke with a tremble and so quietly that faint weeping was audible. Also evident was how much effort Mr. Monday put into trying to ensure that he submitted his application with all the documents that he believed were required, and how much this process literally drained him of the limited energy and mental stamina that he had remaining.

12. On September 4, 2020, Mr. Monday was severely injured while working for the City as a firefighter in the Butte/Tehama/Glenn Lightning Complex Fire. He had 55 pounds of equipment on his back while chasing spot fires and cutting a trail on steep terrain. He lost his footing on shale rock and tumbled down the terrain into a tree. He was extracted from the scene by an air ambulance.

13. Mr. Monday has undergone years of medical treatment for his injuries including physical therapy, two to three times each week, from 2020 through 2024, spinal disc replacements and a spinal fusion in October 2021 for damage to his vertebrae at C4-7 and T2-4, right ankle full reconstructive surgery in February 2023, and counseling and therapy for PTSD, outbursts, and depression since April 2023. He continues to suffer from pain in his neck, back, and right ankle. His finances and ability to support his son were affected and he filed for bankruptcy in March 2023.

14. Mr. Monday testified his delay in applying for SR pending IDR was not intentional. He credibly testified that he was trying to manage his ongoing medical issues and his mental struggles, and raise his son. He stated, "I love my job. I wasn't ready for it to end." His career ended abruptly when he really needed his job the most.

15. Mr. Monday testified that he was told by CalPERS representatives that he needed everything on the **checklist**, including his medical documentation, before he could submit his application. He was told that he needed to submit his medical documentation with his application, and his application would be canceled if he did not do so within 21 days.

16. It is evident from Mr. Monday's many interactions with CalPERS on the phone and in person, and from his following the process outlined in the **checklist** in PUB 35, that he was unaware and not informed that his application could have been submitted to CalPERS without his medical documentation because he was a local safety member, and he could have submitted his medical documentation to the City at a later date. CalPERS's **checklist** in PUB 35, at the time, advised applicants such as Mr. Monday that they must submit to CalPERS their medical documentation of their disability for the prior 12 months along with their application or their application would be canceled. However, the **checklist** addresses the process for miscellaneous safety members and does not address the correct process for local safety members, such as Mr. Monday, who can submit their medical documentation to their local authority, such as the City, and it is the local authority who makes the medical determination not CalPERS.

17. It is evident that Mr. Monday was unaware and not informed by CalPERS during his many interactions with CalPERS on the phone and in person that he needed

to submit his application **within nine months** after he discontinued service, in order for his effective date of retirement to be the last day he was on payroll.

18. On **November 5, 2021**, Mr. Monday first called CalPERS to ask about how to apply for IDR. The next time he communicated with CalPERS was on **December 8, 2022**, when he asked CalPERS to mail him an application and they sent him PUB 35, which includes the application and the **checklist**. The next day, on **December 9, 2022**, Mr. Monday attended a counseling appointment at SDRO to get help with his application and there was a discussion about the process, the **checklist**, the required documents, and the timeframe. A few days later on **December 14, 2022**, Mr. Monday attended another counseling appointment at SDRO for help with his application. About four months later on **April 18, 2023**, Mr. Monday went to SDRO for help with his application and he was again referred to the **checklist** in PUB 35.

19. It was not until January 4, 2024, when Mr. Monday submitted his SR pending IDR application with a requested effective date of December 31, 2022. His last day on payroll with the City was December 31, 2022, which is when he discontinued from his state service.

20. In order for Mr. Monday to have an effective date of retirement as the last day he was on payroll, December 31, 2022, he needed to submit his application within nine months of his discontinuance from state service. Nine months after December 31, 2022, is approximately September 30, 2023. Hence, Mr. Monday's submission of his SR pending IDR application on January 4, 2024, was not within nine months of his discontinuance from state service and was approximately three months late, whereby his effective date of retirement was determined by CalPERS to be January 1, 2024, or the first day of the month in which his application was received.

21. What must be determined is whether Mr. Monday made an error which was the result of inadvertence, mistake, surprise, or excusable neglect, which is correctable by Government Code section 20160, whereby his effective retirement date would be retroactive to December 31, 2022, which is his last date on payroll with the City and the date he discontinued from his state service.

22. Section 20160 sets forth the following three facts that must exist in order for an **error to be corrected**:

23. Subdivision (a)(1) sets forth the request to correct the error must be made within a reasonable time and not later than six months after the discovery of the error. Here, Mr. Monday was not aware of his mistake until May 21, 2024, when he was notified of CalPERS's determination that his effective retirement date was found to be January 1, 2023, because his application was not submitted within nine months from when he discontinued state service on December 31, 2022. He appealed on June 24, 2024, which was within six months of him becoming aware of his mistake.

24. Subdivision (a)(2) sets forth the error must have been the result of a mistake, inadvertence, surprise, or excusable neglect, as those terms are used in Code of Civil Procedure section 473, which provides a court may relieve a party from a judgment or other proceeding taken against him through his mistake and the court may grant relief as determined to be appropriate.

It is evident the reasons why Mr. Monday did not timely submit his application were because he was mistaken as to when he needed to submit his application in order for it to be considered timely, in order for his effective date of retirement to be his last day on payroll, as there is no evidence that he was ever informed of this deadline by CalPERS. He was also mistaken when he was erroneously told by CalPERS

representatives on the phone and in person that he needed to submit medical documentation to CalPERS along with his application to CalPERS, or his application would be canceled within 21 days, when in fact, he was a local safety member and his medical documentation should have been submitted to the City not CalPERS and his application only should have been submitted to CalPERS. He was also mistaken when he referenced the **checklist** in PUB 35 and other parts of PUB 35, at the time, which erroneously informed him of the same erroneous requirement that he must submit medical documentation to CalPERS with his application to CalPERS, when in fact, he was a local safety member and his medical documentation should have been submitted to the City, not CalPERS, and his application only should have been submitted to CalPERS.

The testimony by Ms. Murillo-Sorio corroborated Mr. Monday's confusion that led to his mistake in his untimely filing of his application. She acknowledged the **checklist** in PUB 35 could be confusing for local members because they do not have to turn in their medical documentation to CalPERS when they submit their application, and they instead need to submit their medical documentation to their local authority after they file their application with CalPERS. She acknowledged the **checklist** did not differentiate the process between general miscellaneous members and local safety members. She acknowledged **PUB 35** was also confusing because it stated CalPERS makes the determination of disability, but the local authority makes the disability determination for local members not CalPERS. She also acknowledged the "Physician's Report on Disability" form in **PUB 35** erroneously stated it should be sent to CalPERS when it should be sent to the local authority if a local safety member is applying. She also acknowledged that she was not sure by her review of the **touch point entries** if Mr. Monday was advised by CalPERS that he needed to submit his application within

nine months of separating from service in order to have his effective retirement date be the day after his last day of service.

The testimony by Ms. Buckman also corroborated Mr. Monday's confusion that led to his mistake in his untimely filing of his application. When she called CalPERS for clarification with the application process, she found the representatives to be confused themselves and to give mixed advice. There had also been CalPERS changes for local authorities effective March 2023 that also caused confusion.

In the alternative, excusable neglect also applies, as the record demonstrates Mr. Monday was and continues to be incapacitated, physically and mentally, since he was injured in his work-related accident. His credible testimony, corroborating medical evidence, and IDR approval show that Mr. Monday has suffered continuous pain since the accident, undergone major surgeries and other treatments for his physical injuries, undergone counseling and therapy for his mental conditions and symptoms, struggled to make it through each day both physically and mentally, has filed for bankruptcy, and has not been able to return to any type of gainful employment. His physical appearance and mental presentation at the hearing corroborated his testimony, as did his supporting documentation, and the testimony of Ms. Seitz, his supporting witness. His physical and mental conditions have essentially rendered him incapacitated such that any neglect he might have had in failing to timely submit his application is excusable.

25. Subdivision (a)(3) sets forth the correction will not provide a status, right, or obligation that is not otherwise available. Here, Mr. Monday will not receive any thing more than what he would have been entitled to if he had submitted his application within nine months. This subdivision sets forth that a "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." Here, a reasonable person in the same or similar situation as Mr. Monday would have made the **same mistakes** as Mr. Monday because they would have been given the same erroneous information that was listed in CalPERS's checklist in PUB 35 and throughout PUB 35, at the time.

26. Hence, all three facts required pursuant to Section 20160, subdivision (a), exist and Mr. Monday's error shall be corrected.

27. Based on all the above, Mr. Monday and the City met their burden to show that Mr. Monday made a **correctable mistake**, pursuant to Section 20160, such that his SR pending IDR application shall be considered to have been timely submitted within nine months of his discontinuance of service, whereby his effective date of retirement shall be corrected to December 31, 2022, which is the last day for which he was on payroll with the City.

ORDER

The appeal for an earlier effective date of industrial disability retirement of December 31, 2022, by respondent Steven Monday and respondent City of South Lake Tahoe, is granted.

DATE: August 13, 2025



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings