

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:**

**BERNICE V. GARZA and SUBSTANCE ABUSE TREATMENT
FACILITY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION, Respondents**

Agency Case No. 2024-0531

OAH No. 2025030805

PROPOSED DECISION

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 20, 2025, from Sacramento, California.

Bryan R. Delgado, Staff Attorney, appeared on behalf of California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of the respondents Bernice V. Garza (respondent) and Substance Abuse Treatment Facility, California Department of Corrections and Rehabilitation (Department). Respondent and the Department were

duly served with a Notice of Hearing. The matter proceeded as a default against respondent and the Department pursuant to California Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter was submitted for decision on August 20, 2025.

ISSUE

The issue on appeal is whether respondent made an error or omission as a result of mistake, inadvertence, surprise, or excusable neglect, correctable by Government Code section 20160, which would allow CalPERS to accept her late application for industrial disability retirement (IDR)?

FACTUAL FINDINGS

1. Respondent was employed as a Correctional Sergeant for the Department. By virtue of her employment, respondent is a state safety member of CalPERS, subject to Government Code section 21151.

Respondent's Service Retirement Application

2. Evelyn Murillo-Soria, an Associate Governmental Program Analyst for CalPERS Disability and Survivor Benefits Division, testified at hearing concerning respondent's filing for service retirement and IDR. Respondent's communication with CalPERS staff regarding service retirement and IDR are documented in the CalPERS "Customer Touch Point Report" system.

3. On August 28, 2018, respondent visited the CalPERS Fresno Regional Office (FRO) for counseling on service retirement pending IDR. A CalPERS representative told respondent that it would take up to four months to process and review the IDR application with her. Respondent submitted a service retirement and IDR estimate request.

4. On September 5, 2018, CalPERS provided respondent with a service retirement estimate. On September 25, 2018, CalPERS provided respondent with an IDR estimate.

5. On December 28, 2018, respondent visited the FRO and asked questions about receiving service retirement pending IDR. A CalPERS representative told respondent that it would take up to four months to process and referred her to CalPERS Publications 43 and 35, which explain the process for applying for service retirement and IDR. Respondent was told that applying for IDR would not cancel an application for service retirement.

Respondent was told to look at Publication 43, page 5 "when a member may apply for DR [disability retirement]." She was also given "Publication 35 – Disability Retirement Election Application" which provides information on the IDR filing requirements, including an explanation of the requirement that an IDR application be filed within four months of discontinuance of CalPERS-covered employment.

6. On February 6, 2020, respondent visited the FRO and asked questions about receiving service retirement pending IDR. A CalPERS representative explained the process to her, and respondent submitted a request for a service retirement pending IDR estimate. Thereafter, the estimate was provided.

7. On June 29, 2021, respondent called CalPERS and stated that she wanted to apply for service retirement until her IDR cases are closed. The CalPERS representative advised respondent to submit her IDR application and also explained service retirement pending IDR. Respondent explained that she wanted to apply for service retirement and once her cases were "closed" she would apply for IDR. The CalPERS representative mailed respondent an IDR application.

8. On June 29, 2021, respondent submitted to CalPERS a service retirement application with a requested retirement date of July 30, 2021. Respondent retired from the Department effective July 30, 2021, and has been receiving her benefits since that date.

9. On June 29, 2021, July 20, 2021, and February 4, 2022, CalPERS sent respondent a Publication 35. Additionally, on February 4, 2022, respondent requested an IDR application, which was mailed to her the same day.

Respondent's First IDR Application

10. On June 6, 2022, CalPERS received respondent's first IDR application dated May 25, 2022, with a retirement effective date of July 29, 2021. In filing the application, disability was claimed on the basis of orthopedic conditions (carpel tunnel, bilateral wrist and hands, nerve damage, ulnar nerve, and cervical disc disorder).

11. By letter dated July 8, 2022, CalPERS requested information from the Department regarding respondent's request to change from service retirement to IDR. The purpose was to determine whether the late-filed IDR application could be accepted due to a correctable mistake. In the letter, CalPERS explained in part that:

In general, a member cannot change their retirement status after they retire or refund their contributions (Government Code section 20340). An exception can be made if the error or omission was because of a mistake, inadvertence, surprise or excusable neglect. No exception can be made for a mistake caused by a member's failure to make an inquiry that would be made by a reasonable person in like or similar circumstances (Government Code section 20160).

CalPERS requested information from the Department regarding when respondent stopped working for the Department and if she stopped working due to a disabling condition.

12. Additionally, by letters dated July 8, 2022, and July 29, 2022, CalPERS requested information from respondent regarding her request to change from service retirement to IDR through the late filing of the IDR application, to determine if a correctable mistake had been made. CalPERS further requested she provide updated physicians' reports.

13. On August 12, 2022, CalPERS received respondent's response to CalPERS' request for information. Respondent explained that she did not file for IDR sooner because she had pending workers' compensation cases. Respondent explained that she stopped working for the Department due to her orthopedic conditions.

14. By letter dated August 16, 2022, the Department provided its responses to CalPERS' request for information. The Department wrote that respondent did not stop working for the Department due to a disabling condition. Rather, she service retired.

15. By letter dated August 30, 2022, CalPERS informed respondent that her application for IDR had been canceled due to lack of information. The letter states in part that:

On July 8, 2022 and July 29, 2022 we sent you letters requesting an updated Physician's Report on Disability. We received a new Physician's Report on Disability from William Foxley, M.D. The doctor still indicates you became unable to perform your job duties on March 23, 2022. Per Government Code section 21154, you must establish that you were disabled at the date of discontinuance of service June 30, 2021.

CalPERS informed respondent that any future request for IDR "will require a new application and an updated Physician's Report on Disability."

Respondent's Second IDR Application

16. On October 25, 2023, respondent contacted CalPERS and requested CalPERS' IDR publications. The same day, CalPERS sent respondent Publication 35.

17. On March 5, 2024, CalPERS received respondent's second IDR application, with a retirement date of July 29, 2021. In filing the IDR application, respondent claimed disability based on her orthopedic conditions (bilateral hands and elbows).

18. Ms. Murillo-Soria explained that respondent had four months from her last day of employment with the Department to submit an IDR application to CalPERS. Respondent's last day of employment with the Department was July 30, 2021. As a

result, she had four months from that date to submit a timely IDR application. Publication 35 specifically states that an IDR application must be filed “within four months of discontinuance of CalPERS-covered employment or while on an approved leave of absence.” Respondent failed to timely file her IDR application.

19. By letter dated May 28, 2024, CalPERS notified respondent that her IDR application was denied because it was not timely. CalPERS explained in part that:

The evidence suggests you had knowledge of the application process and, therefore, we are unable to establish that a correctable mistake was made.

Government Code section 20160 may be used as authority to correct an error or omission due to mistake of fact or law, inadvertence, surprise, or excusable neglect on the part of a member. However, no exception can be made for a mistake caused by a member’s failure to make an inquiry that would be made by a reasonable person in like or similar circumstances.

20. CalPERS advised respondent of her appeal rights. Respondent filed a letter of appeal dated June 7, 2024. On March 13, 2025, Sharon Hobbs, Chief Disability and Survivor Benefits Division for CalPERS, made and thereafter filed the Statement of Issues.

Analysis

21. The evidence established that respondent’s last day of employment with the Department was July 30, 2021. She had four months from that date to submit a

timely IDR application. She failed to do so. Respondent has the burden of presenting evidence establishing that in filing her late IDR application she made an error or omission that was a result of mistake, inadvertence, surprise, or excusable neglect, which would warrant granting her appeal to change her service retirement to IDR. Respondent failed to appear at hearing and presented no evidence.

When all of the evidence is considered, the facts of this case do not support a finding of mistake, inadvertence, surprise, or excusable neglect. As a result, respondent's appeal must be denied.

LEGAL CONCLUSIONS

1. Respondent was employed by the Department as a Correctional Sergeant until her retirement on July 30, 2021. By virtue of her employment, respondent was a state safety member of CalPERS subject to Government Code section 21151, subdivision (a) which provides:

(a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.

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

The application shall be made only (a) while the member is in state service, or (b) while the member for whom

contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion.

3. Government Code Section 20026, provides that:

"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.

4. Government Code section 20160 governs a request by a member or beneficiary to correct an error. It provides in pertinent part:

(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).

5. As set forth in the Factual Findings, respondent did not meet her burden of establishing her right to correction under Government Code section 20160. No evidence was presented which established an error or omission that was the result of mistake, inadvertence, surprise, or excusable neglect. Accordingly, CalPERS may not accept respondent's late application for IDR and her request to change her service retirement to IDR must be denied.

ORDER

The appeal of respondent Bernice V. Garza to change her service retirement to industrial disability retirement is DENIED.

DATE: August 29, 2025

Marcie Larson

Marcie Larson (Aug 29, 2025 15:07:01 PDT)

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings