

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. 2025040268.1

PROPOSED DECISION FOLLOWING ORDER OF REMAND

Marion J. Vomhof, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on June 10, 2025, and heard this matter on remand on January 5, 2026.

Celina S. Bernard, respondent, 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, and the matter proceeded as a default against this respondent pursuant to Government Code section 11520. For clarity, this party shall simply be referred to as County of Riverside.

Additional evidence was received consistent with the remand order and the matter was submitted on January 5, 2026.

PROCEDURAL BACKGROUND

On October 6, 2025, complainant's counsel advised OAH that on September 17, 2025, the Board of Administration (board) remanded the matter to OAH for the taking of additional evidence. A hearing on the remand was set for January 5, 2026.

The documents served on OAH with the request for remand included relevant transcripts from the June 10, 2025, hearing and complainant's argument in support of the remand. No argument was submitted by respondents. The board adopted complainant's argument, which stated in part:

At the hearing, the SOI was amended to reflect that the issues on appeal were limited to the following: (1) Whether respondent's application for disability retirement is timely submitted pursuant to Government Code section 21154; 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.

Although the ALJ granted CalPERS motion to amend the SOI, which was included in a footnote, the Proposed Decision decides the issue on “[w]hether 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.”¹ Given that this is not the issue that was before the ALJ, this matter should be remanded so that the ALJ may issue a decision based on the amended SOI.

The board requested that the ALJ receive and consider further evidence on the issue as amended.

At the hearing on remand, the parties stipulated that the finding made in paragraph 18 of the Proposed Decision is inaccurate because respondent did not separate from her employment in March 2022. This is not a service retirement but a request for disability retirement.

¹ The words in italics had been deleted by amendment on June 10, 2025.

ISSUES

- (1) Whether respondent's application for disability retirement was timely submitted pursuant to Government Code section 21154; and
- (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 the 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 she timely submitted her application for disability retirement. While respondent's application for disability retirement was found to not be timely, it is noted that, when respondent did submit her application nine months after the deadline, 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. Because respondent's application was not submitted timely, 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 requests, on August 22, 2022, February 1, 2023, and April 26, 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 based on the following specific disability: avascular necrosis in hips, bilateral total hip replacement, herniated discs, broken left ankle, severe deep tissue damage from overprescribed steroids for over a seven-year period. Respondent submitted no additional records with her application.

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 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.

13. On June 1, 2023, CalPERS sent respondent requesting that by June 22, 2023, she provide a physician's report based on an office visit within the past six months and copies of her medical records from March 9, 2021, to present. The requested information was not received.

14. On June 26, 2023, CalPERS sent respondent a letter requesting that by July 17, 2023, she provide a physician's report based on an office visit within the past six months and copies of her medical records from March 9, 2021, to present. The requested information was not received.

15. On August 3, 2023, CalPERS sent respondent a letter requesting that by August 24, 2023, she provide a physician's report based on an office visit within the past six months and copies of her medical records from January 1, 2021, to present. The requested information was not received.

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

17. 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.

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

19. 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.

20. 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.

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

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

23. 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 [*sic*], my siblings, and all of our immediate cousins received, as a result of our entire passing of our paternal grandparents and fathers.

24. 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.

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

26. 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.

27. On March 13, 2025, complainant signed the Statement of Issues in her official capacity. Complainant stated that the issue on appeal is limited to the following: (1) Whether respondent's application for disability retirement is timely submitted pursuant to Government Code section 21154 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 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

28. 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.

29. 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 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.

30. 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. Government Code section 20026 provides:

"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. Government Code section 21150, subdivision (a) provides:

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. Government Code section 11152 provides in part:

Application to the board for retirement of a member for disability may be made by:

[¶] . . . [¶]

- (c) The governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency.
- (d) The member or any person in his or her behalf.

7. Government Code section 21153 provides:

Notwithstanding any other provision of law, an employer may not separate because of disability a member otherwise eligible to retire for disability but shall apply for disability retirement of any member believed to be disabled, unless the member waives the right to retire for disability and elects to withdraw contributions or to permit contributions to remain in the fund with rights to service retirement as provided in Section 20731.

8. Government Code section 21154 provides in part:

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 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.

9. Government Code section 21156, subdivision (a)(1) provides in part:

If the medical examination and other available information show to the satisfaction of the board, . . . 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. . . .

Evaluation

10. Respondent did not meet her burden to prove by a preponderance of the evidence that she submitted her application for disability retirement in a timely manner. On March 21, 2022, the County of Riverside applied for disability retirement on respondent's behalf. Respondent was notified that she needed to submit her own application for disability retirement within four months and to provide CalPERS supporting documents. (Govt. Code, § 21154.) 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's staff providing her with disability retirement information.

11. Given that respondent's application was not timely filed, there is no need to address the second issue, 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.

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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.

DATE: January 14, 2026

Marion J. Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings