

ATTACHMENT E

THE PROPOSED DECISION

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

**In the Matter of the Application for Industrial Disability
Retirement and Earlier Retirement Date of:**

**JANICE M. ADAMS and COALINGA SECURE TREATMENT
FACILITY, CALIFORNIA DEPARTMENT OF STATE HOSPITALS,
Respondents**

Agency Case No. 22-0824

OAH No. 2023080057

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on December 12, 2023, from Sacramento, California.

Austa Wakily, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Janice M. Adams represented herself.

No one appeared for or on behalf of respondent Coalinga Secure Treatment Facility, California Department of State Hospitals (DSH); its default was entered; and

this matter proceeded as a default proceeding pursuant to Government Code section 11520 as to DSH only.

FACTUAL FINDINGS

Relevant Background

1. Ms. Adams worked for DSH as a psychiatric technician. She is a state safety member of CalPERS subject to Government Code section 21151 by virtue of her former employment.

2. Ms. Adams signed a Disability Retirement Election Application seeking a service pending industrial disability retirement on January 26, 2021. She identified her specific disabilities as "Cumulative Trauma to Bilateral upper extremities, Hypertension, Psyche, sleep apnea, due to Valley Fever." CalPERS received the application on February 8, 2021.

3. Ms. Adams identified her last day on payroll at DSH as December 18, 2013. She requested a retroactive retirement date of December 19, 2013.

4. On February 11, 2021, CalPERS sent Ms. Adams correspondence acknowledging receipt of her application. It explained the effective date of her service retirement was February 1, 2021, the first day of the month in which CalPERS received her application, because her application was received more than nine months after the effective date originally requested. CalPERS further explained it would evaluate Ms. Adams's request for an earlier retirement date if it approved her for an industrial disability retirement.

5. On August 10, 2022, CalPERS sent Ms. Adams correspondence denying her an industrial disability retirement. It explained the medical records it reviewed did not demonstrate she was substantially incapacitated from her usual duties as a psychiatric technician with DSH due to orthopedic, cardiovascular, respiratory, psychological, or urinary conditions.

6. CalPERS also denied her request for an earlier retirement date. It reasoned that she submitted her application more than nine months after she left DSH. Additionally, a careful review of her file revealed no evidence that she delayed submitting her application due to a correctable mistake. Based on Ms. Adams's history of contacting CalPERS and DSH about the disability retirement process between November 2011 and January 20, 2021, CalPERS concluded "the evidence suggests that you had knowledge of the application process and, therefore, we were unable to establish that a correctable mistake was made."

7. The following month, Ms. Adams appealed CalPERS's denial of an industrial disability retirement and her request for an earlier retirement date. She argued:

Government Code section 20160 authorizes [*sic*] to correct a mistake due to excusable inadvertence, oversight, or mistake of fact or law on the part of the claimant. No exception, however, can be made for a mistake caused by the claimant's neglect of a legal duty, error in judgment, or change in circumstance. I have not made a mistake due to neglect of a legal duty, error in judgment nor change in circumstance.

8. Ms. Adams further argued:

In June 2022, I was sent by CalPERS to Michael Quacinella, D.O., who was supposed to conduct a comprehensive medical evaluation. However, Dr. Quacinella conducted an inadequate evaluation which was nowhere near a "comprehensive medical evaluation." Therefore, due to the failure of Dr. Quacinella to conduct a comprehensive medical evaluation which formed the basis for the denial of my industrial disability, the denial of my industrial disability is based upon insufficient grounds and evidence.

9. Ms. Adams also disputed CalPERS's conclusion that she "had knowledge of the [disability retirement] application process." She explained, "At no point in time, during the times I contacted CalPERS was I informed that I had to file for industrial disability retirement, otherwise I would be ineligible. It is illogical to think that if I was told I need to retire early or I would lose my benefits, that I did not retire."

10. CalPERS subsequently received evidence demonstrating Ms. Adams was substantially incapacitated from the performance of her usual duties. Therefore, CalPERS granted her an industrial disability retirement. However, it did not change its position on her retirement date. Her service retirement was converted to an industrial disability retirement, retroactive to February 1, 2021.

11. On August 1, 2023, Sharon Hobbs, Chief of CalPERS's Disability and Survivor Benefits Division, signed a Statement of Issues solely in her official capacity. According to the Statement of Issues:

The issue on appeal is whether Respondent made a mistake which was the result of inadvertence, mistake, surprise or excusable neglect correctable by Government Code section 20160 which entitles her to an earlier effective retirement date of December 19, 2013.

CalPERS's Evaluation of an Earlier Retirement Date

12. Linda Ha is an associate governmental program analyst in CalPERS's Disability Retirement Unit, which is part of the Disability and Survivor Benefits Division. She has worked in the Disability Retirement Unit for just over one year but in the Disability and Survivor Benefits Division for more than three years. Her current duties include reviewing applications for a disability retirement to determine the effective date of the member's retirement if the application is granted.

13. Ms. Ha explained that a member's retirement application for a disability retirement is "deemed to have been submitted on the last day for which salary was payable" if: (1) CalPERS receives the application within nine months of the member's discontinuation of state service; and (2) the member is substantially incapacitated from the performance of her usual duties continuously from the date on which she discontinued state service until CalPERS receives her application. (Gov. Code, § 21252, subd. (a).) Otherwise, the effective date of the application "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." (*Ibid.*)

14. Ms. Ha further explained that CalPERS did not receive Ms. Adams's application until February 8, 2021, more than nine months after she discontinued state service. Therefore, the effective date of Ms. Adams's retirement was February 1, 2021,

and her request for an earlier date could not be honored unless she delayed submitting her application due to mistake, inadvertence, surprise, or excusable neglect that may be corrected under Government Code section 20160.

INFORMATION FROM Ms. ADAMS AND DSH

15. On April 12, 2021, one of Ms. Ha's colleagues sent Ms. Adams correspondence posing several questions to help CalPERS determine whether she delayed submitting her application due to mistake, inadvertence, surprise, or excusable neglect. The questions included the following:

1. Did any physician instruct you to stop working as a Senior Psychiatric Technician due to a disabling condition?

a. If yes, who was the physician (Name, Address, Phone #) and when did they instruct you to stop working?

b. If no, when did your doctor determine that you were unable to perform your former job duties?

2. How did you learn about disability retirement?

3. On what date did you become aware that you could file an application for a disability retirement?

4. What specific disabling condition prevented you from performing your duties continuously from November 15, 2012 to the present?

5. Did you advise your employer that you had to stop working because of a disabling condition?

a. If yes, when and what assistance did you receive?

b. If no, why not?

6. Did you participate in an interactive process with your employer where they provided you with information regarding disability retirement?

a. If yes, what information was provided?

b. On what date was this information provided to you?

7. Did you contact CalPERS for information regarding disability retirement before you stop working?

a. If yes, when and what assistance did you receive?

b. If no, why not?

8. Did you leave work for any reason other than a disabling condition (i.e., termination, resignation, settlement agreement, alternative employment, etc.)?

a. If yes, please explain and forward any copies of the Notice of Adverse Action, resignation letter, settlement agreement, stipulation agreement, or any other relevant information.

16. Ms. Adams responded to CalPERS's questions by explaining Dr. Leonel Apodaca instructed her to stop working due to her disability, but she was "not sure

when/date this occurred." She notified CalPERS of her disability after she was placed on permanent disability for several years.

17. Ms. Adams further explained she was not sure when she learned she could apply for an industrial disability retirement, but she always intended to return to work. Symptoms of her disability included depression, incontinence, sleep apnea, and problems with her joints. She returned to work on modified duty but was told DSH could not accommodate her work restrictions on a long-term basis.

18. DSH knew Ms. Adams's disability prevented her from performing her duties because Dr. Apodaca repeatedly sent notes documenting her disability and resulting limitations. Ms. Adams asserted DSH never initiated an interactive process during which she was provided information regarding disability retirement. She further claimed she did not ask CalPERS about disability retirement prior to discontinuing state service. Finally, Ms. Adams said she stopped working solely due to her disability, and she always hoped she would overcome her disability and return to work.

19. CalPERS sent similar correspondence to DSH, including the following questions:

1. Did the member indicate she stopped working because of a disabling condition?
 - a. If yes, on what date?
2. What did the member state as the reason for stopping work?

3. Did you participate in an interactive process with the member and provide her information regarding disability retirement?

a. If yes, what information did you provide? Please forward copies of the information provided.

b. On what date did you provide this information?

4. Did the member leave work for any reason other than a disabling medical condition (i.e., termination, resignation, settlement agreement, etc.)?

a. If yes, please explain and forward copies of the Notice of Adverse action, resignation letter, settlement agreement, stipulation agreement or any other relevant information.

5. Would Department of State Hospitals, Coalinga Secure Treatment Facility object if CalPERS accepts this member's request for an earlier retirement date?

a. If yes, explain in detail.

20. DSH responded to CalPERS's inquiry. It explained Ms. Adams stopped working on May 1, 2010, due to "a medical condition that prevented her from being able to perform her duties as a Senior Psychiatric Technician (Safety)." DSH engaged in the interactive process with Ms. Adams on five separate occasions between April 25, 2011, and September 25, 2012. Each time she was provided a written memorandum outlining the following options: (1) return to work at full-duty with no restrictions, request a reasonable accommodation to enable her to perform her essential duties, or

request a medical transfer/demotion; (2) take a temporary leave of absence under the Family Medical Leave Act/California Family Rights Act, as pregnancy disability leave, as medical leave of absence, using leave balances, or under a temporary assignment, non-industrial disability insurance, state disability insurance, or temporary total disability/industrial disability leave/vocational rehabilitation; or (3) separate from state service by applying for disability retirement, applying for service retirement, or voluntarily resigning.

NOTICE OF INTENT TO FILE FOR A DISABILITY RETIREMENT

21. In November 2011, Ms. Adams told DSH's return to work coordinator she was going to apply for a disability retirement. On November 15, 2011, Ms. Adams signed CalPERS's Employer Information for Disability Retirement form and provided it to DSH. The form authorized DSH to provide CalPERS information necessary to substantiate her disability.

22. At the same time, Ms. Adams and her supervisor filled out and signed CalPERS's Physical Requirements of Position/Occupational Title form. The form identified the physical requirements of Ms. Adams's position and the frequency with which she performed them. DSH submitted both forms to CalPERS the following week.

23. CalPERS did not receive a complete application for a disability retirement from respondent or someone acting on her behalf until February 8, 2021.

CUSTOMER TOUCH POINT NOTES

24. Customer Touch Point Notes are notes CalPERS employees take simultaneously with any contact they have with a member or regarding a member's account. The Notes contain a general summary of the substance of the contact. The

Notes for Ms. Adams's account indicated she was sent a disability retirement application as early as August 2008. She contacted CalPERS by telephone, email, or by visiting the Fresno Regional Office with questions about industrial disability retirement numerous times between April 29, 2010, and the date she submitted her application.

Ms. ADAMS'S REQUEST FOR INFORMATION FROM CALPERS

25. Ms. Adams contacted CalPERS on April 5, 2017, asking about the process for applying for industrial disability retirement and service pending industrial disability retirement. CalPERS sent her *A Guide to Completing Your CalPERS Disability Retirement Election Application*. She also requested, and CalPERS provided, estimates of her retirement allowance based on her election of an unmodified allowance or the Option 1 allowance.

26. On December 24, 2020, Ms. Adams submitted separate Retirement Allowance Estimate Requests for a service retirement and an industrial disability retirement. CalPERS provided her estimates for both based on her election of an unmodified allowance or the Option 1 allowance.

Ms. Adams's Testimony

27. Ms. Adams explained she did not submit her application sooner because she had always hoped she would recover from her disability and return to work. She said, "I always felt I was going back to work. That was always my goal." But during the COVID-19 pandemic Ms. Adams concluded her immune system was too weak for her to return to work, and she decided to retire for disability.

28. Ms. Adams further explained she went "back-and-forth with CalPERS" about applying for retirement because she was so sick and taking so many

medications she “could barely sign her name.” She was physically unable to apply for retirement. When she physically recovered, she found the application process very complicated. She asked CalPERS for assistance, but she was referred to her employer. When she contacted her employer, she was referred to CalPERS.

Analysis

29. It was undisputed CalPERS received Ms. Adams’s application more than seven years after she separated from state service. CalPERS determined the effective date of her retirement was February 1, 2021, the first day of the month in which it received her application. Ms. Adams is entitled to an earlier retirement date if she can prove she delayed submitting her application due to “mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.” (Gov. Code, § 20160, subd. (a)(2).)

30. Ms. Adams did not meet her burden of demonstrating she delayed submitting her application due to mistake, inadvertence, surprise, or excusable neglect. She repeatedly stated at hearing “I have always felt I would try to go back to work.” She responded to CalPERS’s question if she left DSH for any reason other than a disabling condition as follows:

No, I left work due to disabling condition. Hoping I would be able to heal and later [return] to work. I loved my job and the work I was doing at Coalinga State Hospital. I was told they could no longer keep my position open, they had to fill my job.

31. It was not until Ms. Adams concluded her immune system was too weak for her to return to work during the COVID-19 pandemic that she decided to retire for

disability. But the disabling condition on which her application was based is the same disabling condition that caused her to separate from state service more than seven years prior. Therefore, Ms. Adams did not delay submitting her application due to a correctable mistake.

32. Ms. Adams did not argue otherwise. She did not identify any correctable mistake in her appeal. Instead, she concluded in summary fashion, "I have not made a mistake due to neglect of a legal duty, error in judgment nor change in circumstance."

33. Ms. Adams's argument that she was never told she had to submit her application by a certain deadline to remain eligible for an industrial disability retirement is based on an improper premise: the timing of Ms. Adams's application is relevant to the effective date of her retirement, not her eligibility for retirement. Indeed, CalPERS granted her an industrial disability retirement retroactive to February 1, 2021.

34. Ms. Adams's supposed physical inability to complete her application sooner due to her disability did not constitute a correctable mistake. Nor did her alleged difficulties understanding the application.

35. CalPERS correctly concluded Ms. Adams's history of contacting CalPERS and DSH about industrial disability retirement provided, or should have provided, her sufficient information to determine whether she wanted to submit her application when she separated from state service or later. She cannot second-guess her decision now. (See Gov. Code, § 20160, subd. (a) ["Failure by a member . . . 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"].)

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Ms. Adams has the burden of proving she made an error or omission that is correctable under to Government Code section 20160, subdivision (a). (Gov. Code, § 20160, subd. (d).) The applicable standard of proof by which she must satisfy her burden is a preponderance of the evidence. (Evid. Code, § 115.) The preponderance of the evidence standard requires Ms. Adams to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, she must prove it is more likely than not that she made a correctable error or omission. (*Lillian F. v. Super. Ct.* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

DETERMINING EFFECTIVE DATE OF RETIREMENT

2. Government Code section 21252, subdivision (a), provides:

A member's written application for retirement, if submitted to the board within nine months after the date the member discontinued . . . her state service, and, in the case of retirement for disability, if the member was physically or mentally incapacitated to perform . . . 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.

CORRECTING ERRORS OR OMISSIONS

3. CalPERS's Board of Administration may correct a member's errors or omissions if:

(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.

(Gov. Code, § 20160, subd. (a).) But,

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.

(Ibid.)

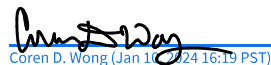
Conclusion

4. CalPERS correctly determined the effective date of Ms. Adams's industrial disability retirement was February 1, 2021, the first day of the month in which it received her application. She did not prove by a preponderance of the evidence that she delayed submitting her application due to inadvertence, mistake, surprise, or excusable neglect correctable under Government Code section 20160, subdivision (a). Therefore, Ms. Adams is not entitled to an earlier retirement date of December 19, 2013.

ORDER

Respondent Janice M. Adams's appeal from CalPERS's determination that the effective date of her industrial disability retirement was February 1, 2021, is DENIED.

DATE: January 10, 2024


Coren D. Wong (Jan 10, 2024 16:19 PST)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings