

ATTACHMENT C

RESPONDENT'S ARGUMENT

Janice M. Adams
[REDACTED]

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CalPERS Legal Office

January 23, 2024

Ref. No. 2022-0824

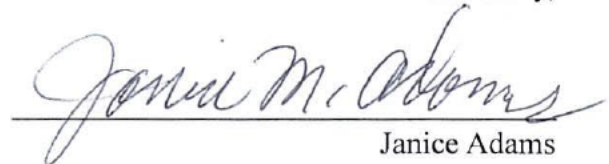
CalPERS LEGAL OFFICE
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SUBJECT: In the Matter of the Application for Industrial Disability Retirement and Earlier Retirement Date of Janice M. Adams, Respondent, and Coalinga Secure Treatment Facility, California Department of State Hospitals, Respondent.

I am submitting my arguments against the Proposed Decision for the Board of Administration CalPERS (Board) to take into consideration when making their decision. Below you will find my arguments against the proposed decision. I am also asking the Board to designate the decision as precedent, in whole or in part, if it is adopted. The Respondent's Argument is attached.

I sincerely request that the proposed decision be denied, and I be granted my industrial disability retirement dated back to December 19, 2013. I am not asking for full retirement going back to 2013, only the industrial retirement to go back to December 19, 2013.

Sincerely,


Janice Adams

RESPONDENT'S ARGUMENT

Respondent, Janice Adams, requests that the Proposed Decision for case number 22-0824 be declined or remanded for further consideration.

Respondent requested a retroactive retirement date of December 19, 2013. Respondent's last day on payroll at DHS was December 18, 2013. Respondent signed a Disability Retirement Election Application seeking a service pending industrial disability retirement on January 26, 2021 with her specific disabilities as "Cumulative Trauma to bilateral upper extremities, hypertension, psyche, sleep apnea, due to Valley Fever." This application was received by CalPERS on February 8, 2021.

CalPERS informed respondent on February 11, 2021, that they would evaluate her request for an earlier retirement date if it approved her for an industrial disability retirement. On August 10, 2022, CalPERS denied respondent's industrial disability because "the medical records it reviewed did not demonstrate that she was substantially incapacitated from her usual duties as a psychiatrist technician with DSH due to orthopedic, cardiovascular, respiratory, psychological or urinary conditions." Furthermore, her request for an earlier retirement date was denied because it was submitted more than nine months after she left DSH. Also, CalPERS stated that there was no "correctable mistake".

Subsequently CalPERS received evidence demonstrating respondent was substantially incapacitated from the performance of her usual duties and granted industrial disability retirement, but the date was only retroactive to February 1, 2021 not December 19, 2013 as requested.

Gov. Code, §. 21252, (a)states 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.

**AN "ERROR OR OMISSION" CORRECTABLE UNDER GOV. CODE, SEC. 20160(a)
OCCURRED AND THEREFORE RESPONDENT'S INDUSTRIAL DISABILTY DATE
SHOULD BE MOVED TO EARLIR DATE OF DECEMBER 19, 2013.**

It is more likely than not that Respondent made an error or omission that is correctable under GC sec. 20160 (a) because she was not physically or mentally healthy and therefore could not behave like a reasonable person under the circumstances. She had no one to help her. She was not in a condition to be able to help herself. She attempted to get help from CalPERS and the HR department at Coalinga State Hospital but did not receive it.

There are no signed notices of notifications sent to respondent or respondent acknowledging notification that she was to submit the application within nine months from the date she received her last paycheck. Furthermore, there are notices which the Petitioner states were sent to Respondent, however they were mailed to the Coalinga State Hospital and Respondent never received them (Exhibit 10 A97).

Respondent was unaware of the necessity to have the documents filled out as evidenced by respondent apparently requesting information in November 2011, but not submitting them until January 2021. Exhibit 1, page A2 states that “In January 2012, Respondent told DHS that she would apply for Industrial Disability Retirement in November 2011.” However, Respondent denies this occurred and Petitioner has not provided any evidence of Respondent having knowledge about when she was supposed to apply for Industrial Retirement. Respondent was also incapable of physically filling out the documents due to sever joint pain, depression, and effects of multiple medications she was taking. She also requested things multiple times because under her condition she would forget she had asked about something or requested documents. She was not in the right physical and mental condition. On November 06, 2012, when Respondent visited CalPERS Regional Office, it was to discuss her credits and years of service, not specifically industrial disability.

Furthermore, on the written questionnaire CalPERS provided on April 27, 2021 (Exhibit 1 A4) Respondent responded to the question of “On what date did you become aware that you could file an application for a disability retirement?” Answer: “My intentions were always to return back to work, not sure when I was aware I could file for disability retirement.” Even on January 07, 2021 when Respondent had spoken to staff Diana Santos, Ms. Santos wrote “The member was very overwhelmed. When I asked the member how come she didn’t request her retirement any sooner, she went on to explain her multiple limitations and HIPPA conditions.” (Exhibit 11 A116).

Here, in 2013 Respondent did not know she was never going to be able to return to her job. The respondent was hoping eventually she would recover enough to return to work. Therefore, Respondent did not second-guess her decision; she was simply unable to behave and

act in the manner of a reasonable person who would have been well enough to act accordingly. This would constitute “an error or omission” correctable under Gov. Code, sec. 20160 (a) therefore Respondent’s industrial retirement date should be December 19, 2013.

**GOVERNMENT CODE SECTION 21154, MEMBER MUST REFLECT “CONTINUOUS
DISABILITY” IF APPLYING FOR DISABILITY GREATER THAN FOUR MONTHS
FOLLOWING LAST PAY DAY.**

Under Government Code section 21154, an application for disability retirement must be made (a) While the member is in active service; (b) While the member, for whom contributions will be made under Section 20997, is absent on military service; (c) Within four months after the discontinuance of the service, or while on an approved leave of absence (this is the most common scenario under which a member applies); or (d) While the member is physically or mentally incapacitated to perform duties from the date of discontinuance of service to the time of application. If a member applies for disability greater than four months following last day on 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.

Here, Respondent has medical records which have already been submitted for review showing that her disability has been continuous from last day of pay through the date of application and is currently ongoing. There was no end in sight as Respondent kept hope that with therapies and treatments she could return to work. It was only after COVID that she realized it would not be possible for her to return to work at all given her physical and mental conditions

weakened by Valley Fever and the increased risk she would be at with exposure to anything given her immunocompromised health due to Valley Fever. It is unreasonable for Respondent to apply for Industrial Retirement as soon as she left while on regular disability. Also, Respondent was under the impression that she hopefully could eventually return to work.

Respondent was in continuous disability since last pay day and CalPERS has all the doctor's reports to support that. Therefore, Respondent's date of industrial retirement should be December 19, 2013.

**DEPARTMENT OF STATE HOSPITALS, COALINGA SECURE TREATMENT
FACILITY HAS NO OBJECTION TO CalPERS ACCEPTING THIS MEMBER'S
REQUEST FOR AN EARLIER RETIREMENT.**

Per CalPERS MEMO of June 28, 2021 Joseph Tran, SSM I, Personnel-Transactions/C&P response to DR/IDR Application for Janice Adams question 5 asked "Would Department of State Hospitals, Coalinga Secure Treatment Facility object if CalPERS accepts this member's request for an earlier retirement? Answer: "No." (Exhibit 10 A66). Therefore, there is no objection by the Department of State Hospitals to the earlier retirement date for Respondent.

CONCLUSION

Respondent, Janice Adams, requests that the Proposed Decision for case number 22-0824 be declined or remanded for further consideration. Respondent argues she proved she is entitled to an earlier retirement date of December 19, 2013 by a preponderance of the evidence because there was an excusable neglect correctable under Government Code section 20160(a).