

**BEFORE THE
TEACHERS' RETIREMENT BOARD
STATE OF CALIFORNIA**

CALSTRS LEGAL REC'D
MAR 22 2024
AM09:16

In the Matter of the Disability Retirement Benefit Effective

Date of:

DIANE DANIELIAN, Respondent

Agency Case No. STRS20230012

OAH Case No. 2023100563

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 28, 2024, by videoconference and telephone from Sacramento, California.

Jaismin Kaur, Litigation Counsel, represented the California State Teachers' Retirement System (CalSTRS).

Diane Danielian (respondent) represented herself. Karen Sproul, respondent's sister, assisted respondent in a non-legal capacity as a reasonable accommodation under the Americans with Disabilities Act.

Evidence was received and the record left open until March 1, 2024, to allow respondent to submit her handwritten statement read at hearing as an exhibit. On February 28, 2024, respondent uploaded that handwritten statement in six separate

documents, marked for identification as Exhibits W, X, Y, Z, AA, and AB. On March 1, 2024, Exhibits W through AB were admitted as argument, the record was closed, and the matter was submitted for decision.

ISSUE

Is respondent entitled to an earlier disability retirement benefit effective date (BED) than October 1, 2021?

FACTUAL FINDINGS

Jurisdiction

1. CalSTRS administers the State Teachers' Retirement Plan and Teachers' Retirement Fund, which provides retirement, disability, and survivor benefits for California's public school educators and their beneficiaries. Respondent is a retired member of CalSTRS who has been receiving a CalSTRS disability retirement benefit since October 1, 2021.

2. In a letter dated August 24, 2022, respondent requested CalSTRS to change her disability retirement BED from October 1, 2021, to July 2, 2020. On October 25, 2022, CalSTRS denied respondent's request. On November 27, 2022, respondent requested an Executive Review of CalSTRS's denial. On April 25, 2023, CalSTRS denied respondent's request for an Executive Review.

3. Respondent timely requested an administrative hearing to further appeal CalSTRS's denial. On September 7, 2023, William Perez, in his official capacity as Chief Benefits Officer for CalSTRS, filed the Statement of Issues for purposes of the appeal.

The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Background Facts

4. Respondent initially became a CalSTRS member on May 1, 2003. Upon membership, all members receive a Member Handbook, which is updated each year and available on CalSTRS's website. Members also receive annual Retirement Progress Reports. The Member Handbook and Retirement Progress Reports advise members of the availability of disability retirement benefits. Additionally, CalSTRS has published the Your Disability Benefits Guide, available on CalSTRS's website, which provides instructions on applying for disability retirement. Both the Member Handbook and the Your Disability Benefits Guide advise members to apply for disability retirement as soon as they believe they qualify because the BED cannot be earlier than the first day of the month the completed application was received by CalSTRS.

5. In March 2020, respondent's eyesight deteriorated significantly. Due to insurance coverage issues and her inability to drive, respondent could not be seen by an optometrist until July 2, 2020. At that time, the optometrist detected bleeding and swelling behind respondent's retinas and urgently referred her to an ophthalmologist. The ophthalmologist diagnosed respondent with diabetes and high blood pressure, and initiated treatment. Unfortunately, respondent's eyesight did not improve. Since at least July 2, 2020, respondent has been considered legally blind and unable to work. She cannot read any documents or websites that are not in large print. She relies on Ms. Sproul as her "second set of eyes." However, Ms. Sproul resides in Indiana, where she works as a full-time teacher.

6. On July 29, 2020, respondent spoke with a representative of her former employer, the Clovis Unified School District (CUSD), to inquire about disability retirement benefits. The CUSD representative stated that respondent did not have any disability retirement benefits by virtue of respondent's prior employment with the CUSD.

7. On July 30, 2020, respondent applied for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits from the Social Security Administration (SSA) with the assistance of an SSA phone representative. In December 2020, the SSA denied respondent's applications for SSDI and SSI. Subsequently, a SSA representative suggested that respondent call CalSTRS to inquire whether respondent had any available disability retirement benefits.

8. On March 8, 2021, respondent and Ms. Sproul called CalSTRS. At respondent's request, CalSTRS scheduled a telephonic individual benefits planning appointment for April 9, 2021, when Ms. Sproul would be on spring break. Before the CalSTRS representative could get respondent's contact number for the appointment, respondent disconnected from the call. Because respondent had not given CalSTRS permission to proceed without her, the CalSTRS representative asked Ms. Sproul to have respondent call CalSTRS back by March 9, 2021, to provide a contact number to keep the appointment. CalSTRS's records do not indicate that respondent called back prior to April 9, 2021.

9. On April 9, 2021, respondent and her sister did not receive a phone call from CalSTRS. CalSTRS's records indicate that it could not contact respondent for the telephonic appointment because there was no phone number on file. Respondent "assumed that someone from CalSTRS would contact [her] about [the missed appointment], but they never did."

10. On July 16, 2021, respondent and Ms. Sproul again contacted CalSTRS. CalSTRS scheduled another telephonic individual benefits planning appointment for August 16, 2021, which it represented was the earliest available appointment.

11. On August 16, 2021, CalSTRS conducted a telephonic individual benefits planning session with respondent and Ms. Sproul. CalSTRS records show that the parties discussed service retirement, disability retirement, and applying for service retirement during evaluation of a disability retirement application. The CalSTRS representative provided the number for CalSTRS's customer service contact center in the event that respondent had additional questions or wanted to request a hard copy of the disability retirement application available on CalSTRS's website.

12. On August 30, 2021, respondent and Ms. Sproul called the CalSTRS customer service contact center to request hard copies of the Your Disability Benefits Guide and the disability retirement application. CalSTRS mailed the requested hard copies that same day. Respondent and Ms. Sproul indicated that they would call back with any questions about the application.

13. On September 10, 2021, respondent and Ms. Sproul again contacted the CalSTRS customer service contact center. A CalSTRS representative assisted them with completing an online service retirement application. However, on September 13, 2021, another CalSTRS representative informed respondent and Ms. Sproul that they had completed the wrong application. On September 16, 2021, CalSTRS sent respondent a form to cancel the September 10, 2021 service retirement application along with a new disability retirement application.

14. On September 24, 2021, respondent submitted the form cancelling her service retirement application to CalSTRS. On October 15, 2021, respondent submitted

her completed disability retirement application to CalSTRS, which received it on October 19, 2021.

15. On March 3, 2022, CalSTRS approved respondent's application for disability retirement. CalSTRS noted that respondent's disability retirement application was received on October 19, 2021, and respondent's disability retirement BED was thus October 1, 2021, the first day of the month in which her disability retirement application was received. Subsequently, respondent requested an earlier disability retirement BED, as noted above.

Respondent's Arguments in Support of an Earlier BED

16. Respondent testified that she would have filed her disability retirement application earlier but for certain issues beyond her control. Specifically, she contends that her application was delayed because: (1) CUSD provided her with erroneous information regarding her disability retirement eligibility; (2) the COVID-19 pandemic frustrated her efforts to file an earlier application; (3) her visual impairment precluded her from filing an earlier application; and (4) a CalSTRS representative incorrectly advised her to file a service retirement application. These issues and delays caused respondent significant stress and she was forced to rely on family members' assistance with her living expenses.

17. Respondent requests a BED of July 1, 2020, on the basis that she was first deemed legally blind and unable to work on July 2, 2020. Alternatively, respondent requests a BED of February 1, 2021. She claims that she first initiated contact with CalSTRS in February 2021 to inquire about disability retirement benefits.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Respondent has the burden of proving by a preponderance of the evidence that she is entitled to an earlier BED. (Evid. Code, § 500 [“Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that [s]he is asserting”]; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) A preponderance of the evidence means “evidence that has more convincing force than that opposed to it.” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

2. California Education Code¹ section 24105 provides, in part:
- (a) A disability retirement allowance under this part shall become effective upon any date designated by the member, provided that all of the following conditions are met . . . (3) The effective date is no earlier than either the first day of the month in which the application is received at the system's headquarters office or the date upon and continuously after which the member is determined to the

¹ All further statutory references are to the Education Code, unless otherwise specified.

satisfaction of the board to have been mentally
incompetent

(§ 24105, subd. (a)(3).)

3. Subject to certain conditions, the Teachers' Retirement Board (Board) "may, in its discretion and upon any terms it deems just, correct the errors or omissions of any member" if the "error or omission was the result of mistake, inadvertence, surprise, or excusable neglect" and the "correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part." (§ 22308, 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." (*Id.*, subd. (b).)

Computation of Statutory BED

4. CalSTRS correctly computed respondent's statutory disability retirement BED. It is undisputed that CalSTRS received respondent's completed disability retirement application on October 19, 2021. There was no evidence that respondent was ever mentally incompetent. Thus, under section 24105, subdivision (a)(3), respondent's BED is October 1, 2021, the first day of the month in which respondent's application was received. The only remaining question is whether respondent has made a correctible error or omission that could entitle her to an earlier BED.

Correctible Error or Omission

5. Any delay based on erroneous advice by CUSD is not a correctable error or omission. Throughout her CalSTRS membership, and long before the onset of her visual impairment, respondent had access to the CalSTRS Member Handbook, Your

Disability Benefits Guide, and Retirement Progress Reports advising her of the availability of disability retirement benefits. Faced with conflicting information provided by CUSD, a reasonable member in like or similar circumstances would have made further inquiries to CalSTRS once she became disabled. Instead, respondent waited until March 8, 2021 to contact CalSTRS.²

6. Respondent also failed to articulate how the COVID-19 pandemic or her visual impairment delayed her from filing a disability retirement application for more than a year. Whenever respondent contacted CalSTRS, it promptly scheduled an appointment and/or provided her the requested information. Ms. Sproul was also available to remotely assist respondent with reading and completing documents as necessary. Indeed, respondent submitted applications to the SSA with the assistance of an SSA representative as early as July 2020.

7. However, respondent established by a preponderance of the evidence that she erroneously filed a service retirement application on September 10, 2021, based on the incorrect advice of a CalSTRS representative. It is reasonable for a member to rely on the advice and instructions provided by a CalSTRS representative. Thus, this is a correctible error. Had respondent filed the correct application on September 10, 2021, she would have been entitled to a September 1, 2021 BED. Given the foregoing, justice dictates that the Board exercise its discretion to change respondent's BED to September 1, 2021 pursuant to section 22308.

² Although respondent claims she first contacted CalSTRS about disability retirement benefits in February 2021, that claim is not supported by the records.

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ORDER

The appeal filed by respondent Diane Danielian is GRANTED IN PART and DENIED IN PART. Her disability retirement benefit effective date shall be changed to September 1, 2021, with all appropriate adjustments.

DATE: March 21, 2024

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings