

AGENDA

THE MEETING OF THE DISABILITY PROCEDURES AND SERVICES COMMITTEE and BOARD OF RETIREMENT*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

**300 NORTH LAKE AVENUE, SUITE 810
PASADENA, CA 91101**

9:00 A.M., WEDNESDAY, April 5, 2017 **

*The Committee may take action on any item on the agenda,
and agenda items may be taken out of order.*

COMMITTEE MEMBERS:

Vivian H. Gray, Chair
Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of March 3, 2017.

II. PUBLIC COMMENT

III. ACTION ITEMS

A. Late-Filed Applications
Government Code Section 31722.

IV. FOR INFORMATION

A. Flethez v. San Bernardino Employees Retirement Assoc.

B. Disability Technology Integration: Project Update II - Presentation as submitted by James Pu, Chief Information Officer.

V. GOOD OF THE ORDER

(For information purposes only)

VI. ADJOURNMENT

***The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

****Although the meeting is scheduled for 9:00 a.m., it can start anytime thereafter, depending on the length of the Board of Retirement meeting. Please be on call.**

Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.

Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to members of the Committee less than 72 hours prior to the meeting, will be available for public inspection at the time they are distributed to a majority of the Committee, at LACERA's offices at 300 North Lake Avenue, suite 820, Pasadena, California during normal business hours from 9:00 a.m. to 5:00 p.m. Monday through Friday.

Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling the Disability Retirement Services Division at 626-564-2419 from 7:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence.

MINUTES OF THE MEETING OF THE
DISABILITY PROCEDURES AND SERVICES COMMITTEE
and
Board of Retirement**

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
GATEWAY PLAZA - 300 N. LAKE AVENUE, SUITE 810, PASADENA, CA 91101

Friday, March 3, 2017 12:31 P.M. – 1:04 P.M.

COMMITTEE MEMBERS

PRESENT: Vivian H. Gray, Chair
Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

ABSENT: None

ALSO ATTENDING:

BOARD MEMBERS AT LARGE

Anthony Bravo
William Pryor
Vito M. Campese, M.D.

STAFF, ADVISORS, PARTICIPANTS

Gregg Rademacher	Ricki Contreras	Ricardo Salinas
JJ Popowich	Vickie Neely	Maria Silva
Steven Rice	Tamara Caldwell	Robert Hill
Vincent Lim	Anna Kwan	Mike Herrera
Eugenia Der	James Pu	Karla Sarni
Allison E. Barrett	Debbie Semnanian	Kerri Wilson
Frank Boyd	Mario Garrido	
Sandra Cortez	Debra Martin	
Angie Guererro	Marco Legaspi	
Maria Muro	Marilu Bretado	
Michelle Yanes	Thomas Wicke	
Barbara Tuncay	Hernan Barrientos	

ATTORNEYS
Thomas J. Wicke

GUEST SPEAKER
None

The meeting was called to order by Chair Gray at 12:31 p.m.

I. APPROVAL OF THE MINUTES

A. Approval of minutes of the regular meeting of February 1, 2017

Mr. Bernstein made a motion, Mr. Adams seconded, to approve the minutes of the regular meeting of February 1, 2017. The motion passed unanimously.

II. PUBLIC COMMENT

III. ACTION ITEMS

A. Job Analysis Presentation – Robert Liebman, M.S., CRC, CCM and Fernando R. Mora, B.A.

Ms. Contreras introduced Mr. Robert Liebman and Mr. Fernando Mora from Liebman & Associates. Mr. Liebman's firm contracts with LACERA to provide job analysis in conjunction with the processing of applications for disability retirement. Job Analysis is a process to identify and determine in detail the particular job duties and requirements and the relative importance of these duties for a given job.

Mr. Liebman's presentation was to define and provide insight into the process of conducting a thorough and in-depth job analysis. Mr. Liebman discussed the difference between a Job Analysis vs. a Job Description and the purpose of the job analysis and the many ways it can be used. Mr. Liebman indicated what steps his firm takes to conduct job analysis for LACERA and provide some examples of the type of information required by LACERA.

Mr. Liebman turned the presentation over to Mr. Fernando Mora. Mr. Mora provided a step-by-step discussion on how he conducts a job analysis, including setting up interviews with the employer and employee, equipment used (scales, cameras, weights), examples of what is observed and types of questions are asked during the interview, as well as examples of how his findings are documented. Mr. Mora added that the goal of a job analysis is to thoroughly document an employee's normal working environment.

Ms. Gray asked whether there is ever a discrepancy between what an employee states vs. what an employer states during the analysis and how his firm addresses the discrepancies. Mr. Liebman stated the goal is to get an accurate job analysis and they try to clarify any discrepancies with the employer and employee before finalizing the analysis. For example, if an employee states they lift 40 pounds and the employer states they only lift 25 pounds, the analyst would verify the information by using the necessary equipment to measure what is being lifted. Mr. Mora added that the role of Liebman & Associates was to provide a thorough description of a job and its associated job duties, along with clear documentation of the frequency and duration of activities performed while doing the job. The information contained in the job analysis can then be used by a medical doctor to determine whether an employee can or cannot perform certain job duties. Ms. Gray commented that it is especially important to Board members that each job analysis is as accurate as possible and she appreciates their effort in making this happen.

Ms. Gray asked legal counsel about LACERA's panel physicians' interpretation of information contained in the job analysis. Mr. Boyd stated that the panel physicians need to be specific about work restrictions, including frequency and duration of activities, otherwise, the case will not be submitted to the Board to review as they will not have enough information to make an informed decision.

Mr. Chery asked how often Liebman & Associates comes across applicant's information not being accurate and is it because the applicant forgets or is the information embellished and how is this resolved? Mr. Liebman clarified that this usually happens based on an employee's perception of their job duties. Mr. Mora provided an example; an employee states that they lift a box all day, every day, it is their perception that they are lifting the box 8 hours per day because they are doing it a few times throughout the day, but in reality they only lift the box for a few hours a day because they rest in between. In the end, the physical requirements are different from the tasks and those two are separated in the job analysis.

The Committee members thanked Mr. Liebman and Mr. Mora for their presentation.

IV. FOR INFORMATION

V. GOOD OF THE ORDER

VI. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 1:04 p.m.

**The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.



March 23, 2017

To: Each Member,
Disability Procedures & Services Committee

From: Francis J. Boyd, 
Senior Staff Counsel

Subject: **LATE-FILED APPLICATIONS
GOVERNMENT CODE SECTION 31722**

RECOMMENDATION

I recommend the Disability Procedures & Services Committee instruct staff to forward the proposed changes to LACERA's Late-Filed Application Policy, as described in this memorandum, to the Board of Retirement for final adoption.

INTRODUCTION

A recent decision decided by the Third Appellate District of the Court of Appeal, *Cameron v. Sacramento County Employees' Retirement System*,¹ prompted me to review the Board's current policy for late-filed applications under Government Code section 31722,² and I have determined that our current policy requires some adjustment.

DISCUSSION

I. "Discontinuance of Service" under Section 31722

Section 31722 provides:

The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, **from the date of discontinuance of service to the time of the application**, he or she is continuously physically or mentally incapacitated to perform his or her duties. (Emphasis added).

Section 31722 instructs that applications filed more than four months "**from the date of discontinuance of service**" require proof of continuous incapacity from the date of discontinuance of service to the time of the application.

¹ *Cameron v. Sacramento County Employees' Retirement System* (2016) 4 Cal.App. 5th 1266.

² All references hereafter to section will be to the Government Code unless otherwise indicated.

Understanding the legal definition of "discontinuance of service" under the statute is critical in implementing a policy that comports with the law.

"County service" is defined under Section 31640 as follows:

'County service' means the employment of a person by a county, district, municipal court, or superior court.

"Service" under the CERL is defined in Section 31641 as follows:

'Service' means uninterrupted employment of any person appointed or elected for that period of time:

- (a) For which deductions are made from his earnable compensation from the county or district for such service while he is a member of the retirement association.
- (b) In military service for which the county or district or member is authorized by other provisions of this chapter to make, and does make contributions.
- (c) For which he receives credit for county service or for public service or for both pursuant to the provisions of this article.
- (d) Allowed for prior service.

In *Weissman v. Los Angeles County Employees' Retirement Assoc.*,³ the Second District Court of Appeal addressed the phrase "discontinuance of service" in Section 31722 and stated:

The ordinary meaning given to the word 'discontinuance' is termination or cessation of activity. . . . [T]he statute defines 'service' in section 31641 as uninterrupted employment for a period of time for which deductions are made from the member's earnable compensation. It follows that 'discontinuance of service' plainly and ordinarily **means a member who has ceased to work for a salary from which deductions were made.**⁴

"Discontinuance of service," as used in Section 31722, was also at issue in the *Cameron* case. The facts in this case contained the following timeline:

December 8, 2007: Cameron stopped working.

³ *Weissman v. Los Angeles County Employees' Retirement Assoc.* (1989) 211 Cal.App. 3d. 40.

⁴ *Id.* at p. 46, emphasis added.

May 15, 2008: He received the balance of his vacation pay and sick leave. Though he remained in county service, he never received compensation from which deductions were made after May 15, 2008.

June 16, 2008: The medical evidence established that Cameron was continuously incapacitated beginning June 16, 2008 up through June 22, 2009 when his incapacity became permanent.

June 24, 2009: He filed an application for a service-connected disability retirement alleging incapacity due to his neck. At the time he had not retired or resigned and was still in county service.

The court, relying on Section 31641 and the *Weissman* decision, held that "discontinuance of service" under Section 31722 occurs when a member last receives compensation from which deductions were contributed into the retirement system regardless of whether the member is still in county service. The court specifically stated:

'Service' as defined in the CERL is the 'period of time' '[f]or which deductions are made from [a member's] earnable compensation.' Thus, when this period discontinues, the relevant section 31722 alternative time limitations for submitting an application for disability retirement are triggered. These alternatives do not turn on whether the member remains an employee of the county. They turn on the point in time when the member stopped being compensated for his employment and consequently, stopped making contributions to the retirement system.⁵

The court concluded that Cameron's June 24, 2009 application was not timely under Section 31722 because it was filed more than a year after he discontinued service and because the evidence failed to establish that he was continuously incapacitated from May 15, 2008 through June 24, 2009.

II. LACERA's Current Late-Filed Application Policy

On October 1, 2013, the Board of Retirement implemented a new policy for accepting late-filed applications for disability retirement. A copy of the policy is attached.

According to the policy, applications filed more than four months after service has ended are only accepted under the following circumstances:

- A. A physician's statement from the member's treating physician who was treating the member at the time member **went off work**,

⁵ *Cameron* at 1282.

stating the member has been continuously incapacitated for duty **from the time s/he left work** to present, OR

- B. A physician's statement from a current treating physician, in the specialty for which the member asserts incapacity for duty, dated within 6 months of the date the application is filed, stating the member has been continuously incapacitated for duty **from the time s/he left work to present AND a copy of the report, or off-work-slip**, [sic] from the member's prior treating physician, which [sic] took the member off work.

Applications which do not include the above information **will be rejected by staff** for processing. (Emphasis added.)

Historically, LACERA has considered members in service for purposes of measuring the timeliness of the application under Section 31722 if they are in still in "county service" under Section 31640.

III. LACERA's late-filed application process does not comply with Section 31722.

Our current policy for late-filed applications, which requires applicants to prove continuous incapacity from the time the member "went off work" instead of the time the member "discontinued service," does not comply with Section 31722. Also, LACERA has incorrectly considered members in service under Section 31722 if they are still in county service at the time the application is filed.

1. "Discontinuance of Service" vs. "Went off Work."

As noted earlier in this memorandum, Section 31722 instructs that applications filed more than four months **"from the date of discontinuance of service"** require proof of continuous incapacity from the date of discontinuance of service to the time of the application. The *Weissman* and *Cameron* decisions confirm that the term "service" as used in the statute turns on the point in time when the member stopped being compensated for his employment and consequently, stopped making contributions to the retirement system, not the time the member went off work. Oftentimes, members continue to receive compensation, such as sick leave and vacation pay, after they stop working. Because deductions are made from this compensation, the member would be considered in service under Section 31722.

2. Proof of a physician taking a member off work is not a prerequisite for a disability retirement under Section 31720.

Option B of our policy applies when the physician completing the physician's statement was not treating the member when they stopped working. In addition to having this

doctor attest that the member was continuously incapacitated from the time they left work to the time the application is filed, the physician statement form must include "a copy of the report, or off-work-slip [sic], from the member's prior treating physician, which [sic] took the member off work."

Entitlement to a disability retirement is established when members meet their burden to prove by a preponderance of evidence that they are permanently incapacitated for the performance of their usual duties.⁶ Neither Section 31720 nor any case requires that a member produce an off-work slip or a report from a doctor removing the member from work as prerequisite for a disability retirement. LACERA's policy therefore should not require a member to produce such a document to prove the threshold issue of whether or not an application is filed timely.

3. The Board of Retirement should determine whether or not an application meets the requirements under Section 31722, not staff.

LACERA's late-filed application policy states that applications which do not meet the criteria of either option A or B will be rejected by **staff** for processing. In doing so, members are denied an opportunity of having a hearing to prove their case.

The case of *Piscioneri v. City of Ontario*⁷ is on point. *Piscioneri* involved application of Government Code section 21154, a statute of limitations applicable to employees in the Public Employees Retirement System, which is similar to Government Code section 31722. The Court of Appeal held that the city could not deny a hearing in reliance on the fact that the application was not filed while the applicant was in service or within four months of discontinuance of service and ignore the fact that the application would be timely if the applicant was, from the date of discontinuance of service, continuously physically or mentally incapacitated to perform his or her duties. The court stated that the applicant must be given an opportunity to develop the facts to support his contention of continuous incapacity. The court specifically stated:

But we agree with the trial court that the question of incapacity is a factual question to be determined at the administrative hearing. It would be premature to decide it as a legal issue before a hearing was held. . .⁸

Likewise, the question of whether or not a LACERA member was continuously incapacitated from the date service discontinued through the date the application was filed is a factual question which should be heard and decided by the Board of

⁶ Government Code section 31720; *Lindsay v. County of San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 160; *Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332; *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; *Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 694-696; *Schrier v. San Mateo County Employees' Retirement Association* (1983) 142 Cal.App.3d 957, 961-962.

⁷ *Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037.

⁸ *Id.* at 1044-1045.

Retirement. And the member should be afforded the right to appeal the Board's decision and have an administrative hearing.

4. LACERA's Current Interpretation of Discontinuance of Service

As explained above, "discontinuance of service" under Section 31722 occurs when a member last receives compensation from which deductions were contributed into the retirement system. It is not based on whether a member is in "county service" as defined under Section 31640. LACERA's practice of using "county service" for purposes of measuring the timeliness of the application under Section 31722 is contrary to law as interpreted by the courts in *Weissman* and *Cameron*.

IV. Proposed changes to LACERA's Late-Filed Application Policy

Attached to this memorandum is a copy of the current LACERA Policy Statement, Criteria for Acceptance of Late-Filed Applications for a Disability Retirement with my recommended redlined changes. These changes include:

- The following statement defining the phrase "discontinuance of service" under Section 31722 will be added:

'Discontinuance of service' is defined as the date a member last received compensation from which deductions were contributed into the retirement system.

- Options A and B under the "Statement of Policy" have been removed and have been replaced with the following statement:

LACERA will accept an application for a disability retirement benefit in accordance with Section 31722. Applications filed after the statutory deadline of 4 months after discontinuance of service will be accepted if accompanied by a completed Physician Statement for Disability and/or Addendum to the Physician Statement for Disability stating the member has been continuously incapacitated for duty from the date service was discontinued to the present.

- The following paragraph has been removed:

Applications which do not include the above information will be rejected by staff for processing.

V. Implementation of Proposed Changes in Policy.


It is important for the committee to understand these proposed changes in policy will result in the following changes in Disability Retirement Service's (DRS) processing of late-filed applications:

- More applications will be subject to an analysis under Section 31722 by defining the discontinuance of service as date the member last received compensation from which deductions are contributed into the retirement system.
- Upon receipt of the application, DRS staff will be required to look at Member Service Workspace to confirm the date the member last received compensation from which deductions were contributed to LACERA to determine the date service was discontinued.
- The panel physician will need to know the date the member discontinued service and provide an opinion as to whether or not the evidence supports a finding that the member was continuously incapacitated from the date service discontinued to the date the application was filed.
- The Disability Retirement Evaluation Report will make a recommendation to the Board, based on the evidence obtained, to make a finding as to whether or not the application was timely filed.
- The Physician Statement and Addendum to the Physician Statement for Disability Retirement forms will need to be revised to reflect LACERA's changes in its late-filed application policy.

CONCLUSION

As noted in the current Late-Filed Application policy, the Board of Retirement has the fiduciary responsibility to administer the plan in accordance with County Employees Retirement Law of 1937. As demonstrated above, LACERA's current late-filed application policy does not comply with Section 31722. I therefore recommend that the Committee instruct staff to forward the proposed changes to the Board of Retirement for final adoption.

Reviewed and approved.



Steven P. Rice, Chief Counsel

Attachment

c: Each Member, Board of Retirement

LACERA POLICY STATEMENT**CRITERIA FOR ACCEPTANCE OF LATE FILED APPLICATIONS FOR A
DISABILITY RETIREMENT**

(Effective **October 1, 2013**)

Purpose

A member is entitled to a disability retirement when the member's County career is cut short by incapacity for duty (County Employees Retirement Law of 1937, GC §31720, GC §31451). CERL GC §31722 provides direction on when a member can submit their application for a disability retirement.

The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, from the date of discontinuance of service to the time of the application, he or she is continuously physically or mentally incapacitated to perform his or her duties.

"Discontinuance of service" is defined as the date a member last received compensation from which deductions were contributed into the retirement system.

This policy will provide direction to staff on what forms of documentation will be acceptable in order to determine whether an application filed more than 4 months after the discontinuance of service provided in the law will be accepted for processing.

I. Statement of Policy

LACERA will accept an application for a disability retirement benefit in accordance with Section 31722. Applications filed after the statutory deadline of 4 months after discontinuance of service, will be accepted if accompanied by ~~the following documents:~~ a completed Physician Statement for Disability Retirement and/or Addendum to the Physician Statement for Disability Retirement stating the member has been continuously incapacitated for duty from the date service was discontinued to the present.

~~A. A physician's statement from the member's treating physician who was treating the member at the time member went off work, stating the member has been continuously incapacitated for duty from the time s/he left work to present, OR~~

~~B. A physician's statement from a current treating physician, in the specialty for which the member asserts incapacity for duty, dated within 6 months of the date the application is filed, stating the member has been continuously~~

~~incapacitated for duty from the time s/he left work to present AND a copy of the report, or off-work slip, from the member's prior treating physician, which took the member off work.~~

~~Applications which do not include the above information will be rejected by staff for processing.~~

II. Implementation

This policy is established pursuant to the Board of Retirement's fiduciary responsibility to administer the retirement plan in accordance with the County Employees Retirement Law of 1937 and the Board of Retirement Bylaws. This policy may be modified in the future by Board of Retirement action.

Adopted: ~~July 3, 2013~~



March 24, 2017

To: Each Member,
Disability Procedures & Services Committee

From: Francis J. Boyd, 
Senior Staff Counsel

Subject: **FLETHEZ v. SAN BERNARDINO EMPLOYEES RETIREMENT ASSOC.**

FOR INFORMATION ONLY

On March 2, 2017, the California Supreme Court issued its opinion in the case of *Flethez v. San Bernardino County Employees Retirement Association*. A copy of the opinion is attached. Ashley K. Dunning of Nossaman LLP submitted an amicus curiae brief and presented oral argument on behalf of LACERA and six other counties.

In this case, the Supreme Court determined that prejudgment interest in litigation challenging whether a disabled retiree should receive an early effective date runs from the date the Board wrongfully denied benefits, not from the early effective date itself.

Facts

Frank Flethez¹ worked as an equipment operator beginning in 1991. In 1998, he was injured while performing his job duties, and his last day of work was January 28, 2000.

Administrative History

July 14, 2000: **Last day of regular compensation.** Flethez had back surgeries in 2001 and 2002 and received physical therapy through 2004.

June 12, 2008: **Service-connected disability retirement application date.** Flethez did not request an earlier effective date on his application. SBCERA granted Flethez's application for a service-connected disability retirement effective June 12, 2008, the date the application was filed. He filed an administrative appeal which was denied in April 2011. An administrative hearing was held and the hearing officer concluded that the effective date should be June 12, 2008.

October 4, 2012: **SBCERA's final decision date.** The Board adopted the hearing officer's decision and determined June 12, 2008 as the effective date of Flethez's disability retirement.

¹ Frank Flethez passed away while his case was being appealed, and his wife Leticia, as his surviving spouse and designated beneficiary, substituted in as plaintiff during the proceedings.

Appeal History

Superior Court:

Flethez filed a writ in superior court, seeking a July 15, 2000 (the day after his last day of regular compensation) effective date for his disability benefit. He also sought interest at the legal rate on all retroactive amounts. The superior court entered a judgment on the writ ordering that SBCERA pay Flethez retroactive benefits under Government Code Section 31724 with a July 15, 2000 effective date. The court also order SBCERA to pay Flethez prejudgment interest under Civil Code section 3287(a) at the legal rate from the date that each payment of retroactive disability retirement benefits would have been due, starting from July 15, 2000. The interest payments on all retroactive amounts totaled \$132,865.37.

SBCERA complied with the writ in part and paid Flethez retroactive disability benefits from July 15, 2000. However, it timely filed a notice of appeal "limited to the issue of interest."

Court of Appeal:

The Court of Appeal reversed the judgment insofar as it awarded prejudgment interest retroactive to July 15, 2000. It concluded that "in context of disability retirement benefits, a retiring member is entitled to recover section 3287(a) prejudgment interest on a court award of disability retirement benefits from the day on which his or her right to recover those benefit payments vested," which was "not until the retiring member establishes his or her entitlement" to those benefits. The Court of Appeal remanded the matter to the superior court for further proceedings to determine the date that Flethez had established his right to receive retroactive disability retirement benefits. Flethez sought a grant of review from the California Supreme Court.

Supreme Court

Issue: In litigation involving a retroactive award of service-connected disability retirement benefits under the CERL, should prejudgment interest under Civil Code section 3287(a) be calculated from the date on which the right to recover the retroactive payments vested or from the earlier effective date itself?

Rule: In litigation involving a retroactive award of service-connected disability retirement benefits under the CERL, prejudgment interest under Civil Code section 3287(a) is calculated from the date on which the right to recover the retroactive payments vested which is the date on which disability benefits are wrongfully denied by the retirement association.

Analysis

The Court first explained that in order to recover prejudgment interest under Civil Code section 3287(a), a claimant must show 1) an underlying monetary obligation; 2) damages which are certain or capable of being made certain by calculation; and 3) a right to recovery that vests on a particular day.

The Court analyzed Flethez's argument that if he did not receive the Civil Code section 3287(a) prejudgment interest on the entire retroactive disability retirement award that SBCERA ultimately paid him, he would be "denied the natural growth and productivity" of the retroactive benefits withheld by SBCERA and as a consequence, the SBCERA retirement system would be unjustly enriched by the use of his retirement allowance in the interim.

The Court rejected Flethez's argument and emphasized that "[SBCERA's] fiduciary duty to safeguard its trust fund for all of its members requires it not to pay benefits prior to the time the applicant meets his or her eligibility burden of proof."

The Court held that in analyzing both retroactive payment provisions of CERL, a member "was not wrongfully denied the use of the benefit moneys in any of the years prior to the [the retirement board's] decision on the request." The member was only injured when the retirement board made a decision denying the application, which a court later overturned as an erroneous denial. The Court explains:

There were no damages stemming from an underlying monetary obligation 'capable of being made certain' and his right to an award of retroactive disability benefits under the inability to ascertain permanency clause did not vest.

The Court went on to state:

[Flethez] experienced a wrongful withholding of his benefits when the Board erroneously denied his application for a retroactive disability retirement allowance . . . thus necessitating this mandamus action. His entitlement to prejudgment interest under section 3287(a) commenced on that date of wrongful denial.

In so holding, the Court disapproved a lower court of appeal decision in *Austin v. Bd. of Retirement*² which arguably had entitled a member to section 3287(a) prejudgment interest on retroactive disability retirement benefits under the CERL from the last day of the member's service. *Flethez* has now made it clear that a member is entitled to section 3287(a) prejudgment interest on retroactive disability retirement benefits under

² *Austin v. Bd. of Retirement* (1989) 209 Cal.App.3d 1528.

the CERL only for the period after which the CERL retirement board has wrongfully denied the benefit.

The Court also distinguished its conclusion in *Flethez* from those involving wrongfully withheld employment benefits such as salary, which would have been paid during the adjudicative proceeding but for the wrongful employment act. Instead, it relied on its own precedent in *American Federation of Labor v. Unemployment Ins. Appeals Bd.*,³ noting that "[o]nly if the Board wrongfully denies benefits . . . would the claimant be entitled to section 3287(a) interest . . ."

This case is also important because of its recognition of the critical and complex fiduciary role that CERL boards have as the gatekeeper to the provisions of disability retirement benefits. Restating the principles contained in *McIntyre v. Santa Barbara County Employees' Retirement System*,⁴ the Court stated that while retirement boards should not unreasonably delay in granting disability benefits when the members establish their statutory entitlement to them, the boards also carry out their critical fiduciary responsibilities when they investigate applications and pay benefits only to those members who are eligible.

As a result of the Court's decision, Flethez is entitled to Civil Code section 3287(a) prejudgment interest from the date SBCERA wrongfully denied his retroactive benefits, to the date SBCERA complied with the superior court's order to pay the benefit. The Court remanded the case to the trial court for a determination as to the date of wrongful denial.

³ *American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1022.

⁴ *McIntyre v. Santa Barbara County Employees' Retirement System* (2001) 91 Cal.App. 4th 730, 734.

IN THE SUPREME COURT OF CALIFORNIA

LETICIA FLETHEZ,)	
)	
Plaintiff and Respondent,)	
)	S226779
v.)	
)	Ct.App. 4/1 D066959
SAN BERNARDINO COUNTY)	
EMPLOYEES RETIREMENT)	
ASSOCIATION,)	
)	San Bernardino County
Defendant and Appellant.)	Super. Ct. No. CIVDS 1212542
_____)	

In this action for a writ of mandamus, the superior court determined that San Bernardino County Employees Retirement Association (SBCERA) wrongfully denied Frank Flethez the correct starting date for his disability retirement allowance.¹ The court then awarded Flethez prejudgment interest under Civil Code section 3287, subdivision (a) (section 3287(a)) as part of his damages, to be retroactively calculated from the same starting date.² On appeal, SBCERA challenged only the calculation of the prejudgment interest award.

¹ Frank Flethez recently passed away and his wife, as his surviving spouse and designated beneficiary, has been substituted in as plaintiff. (Code Civ. Proc., § 377.31.) Our references in the opinion to “Flethez” are to Frank Flethez.

² The Civil Code defines “damages” as monetary compensation for one “who suffers detriment from the unlawful act or omission of another.” (Civ. Code, § 3281.) Under specified conditions, an award of damages may include an award of prejudgment interest pursuant to section 3287(a).

The Court of Appeal agreed with SBCERA that the superior court had erred in its calculation of prejudgment interest and reversed the court's judgment to the extent it awarded section 3287(a) interest on all of Flethez's retroactive disability retirement benefits starting from the first date of those benefits — July 15, 2000. In doing so, the Court of Appeal expressly disagreed with the reasoning of *Austin v. Bd. of Retirement* (1989) 209 Cal.App.3d 1528 (*Austin*). We granted review to consider how prejudgment interest under section 3287(a) should be calculated when a retroactive award of service-connected disability retirement benefits under the County Employees Retirement Law of 1937 is ordered in an administrative mandamus proceeding.

As we will explain, we agree with the Court of Appeal that the superior court erred in its award of prejudgment interest.

I. BACKGROUND

A. County Employee Service Disability Retirements

Public employee retirement boards have plenary authority regarding, and fiduciary responsibility for, the administration of their retirement systems. (Cal. Const., art. XVI, § 17.) A county's retirement system is administered by a county retirement board, under the County Employees Retirement Law of 1937. (Gov. Code, § 31450 et seq. (hereafter the CERL).)

County retirement systems formed under the CERL provide both service retirements based on age and years of service (Gov. Code, § 31670 et seq.) and disability retirements based on an employee becoming permanently incapacitated for the performance of his or her work duties. (Gov. Code, § 31720 et seq.)

When the statutory requirements are met, an employee member of a county retirement system who is permanently incapacitated may separate from county service and receive either a service-related disability retirement and allowance, or

a general disability retirement and allowance. (Gov. Code, § 31720.) An application for either type of disability retirement must be made “[1] while the member is in service, [2] within four months after his or her discontinuance of service, [3] within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or [4] while, from the date of discontinuance of service to the time of the application, he or she is continuously physically or mentally incapacitated to perform his or her duties.” (Gov. Code, § 31722.)

Because a county retirement board is “required to administer the retirement system ‘in a manner to best provide benefits to the participants of the plan,” (*McIntyre v. Santa Barbara County Employees’ Retirement System* (2001) 91 Cal.App.4th 730, 734 (*McIntyre*); see also Cal. Const., art. XVI, § 17), it must “investigate[] applications and pay[] benefits only to those members who are eligible for them.” (*McIntyre*, at p. 734.) The board may require such proof as it deems necessary to determine the existence of a disability. (Gov. Code, § 31723.) “Permanent incapacity for the performance of duty shall in all cases be determined by the board.” (Gov. Code, § 31725.) The applicant bears the burden of proving his or her disability and that it is service related. (*Masters v. San Bernardino County Employees Retirement Assn.* (1995) 32 Cal.App.4th 30, 46; *Rau v. Sacramento County Retirement Bd.* (1966) 247 Cal.App.2d 234, 238.) “ ‘If the proof received, including any medical examination, shows *to the satisfaction of the board* that the member is permanently incapacitated,’ the board shall retire that member. (Gov. Code, § 31724, italics added.)” (*Masters*, at p. 46.) If the board is not satisfied that the member is permanently incapacitated according to the proof received, the request for disability retirement must be denied. (Gov. Code, § 31725.)

Government Code section 31724 governs the timing of disability retirements and allowances. The statute provides that when a county retirement board is satisfied that the member is permanently incapacitated and grants the member a disability retirement, *the retirement* is “effective on the expiration date of any leave of absence with compensation to which [the member] shall become entitled . . . or effective on the occasion of the member’s consent to retirement prior to the expiration of such leave of absence with compensation.” (Gov. Code, § 31724.) In the case of a member who has been granted or is entitled to sick leave, the statute provides that the retirement is not effective until the expiration of such leave with compensation, unless the member consents to an earlier date. (*Ibid.*)³

Government Code section 31724 also states the general rule that the member’s “disability retirement *allowance* shall be effective as of the date such

³ Government Code section 31724 reads in full: “If the proof received, including any medical examination, shows to the satisfaction of the board that the member is permanently incapacitated physically or mentally for the performance of his duties in the service, it shall retire him effective on the expiration date of any leave of absence with compensation to which he shall become entitled under the provisions of Division 4 (commencing with Section 3201) of the Labor Code or effective on the occasion of the member’s consent to retirement prior to the expiration of such leave of absence with compensation. His disability retirement allowance shall be effective as of the date such application is filed with the board, but not earlier than the day following the last day for which he received regular compensation. Notwithstanding any other provision of this article, the retirement of a member who has been granted or is entitled to sick leave shall not become effective until the expiration of such sick leave with compensation unless the member consents to his retirement at an earlier date. [¶] When it has been demonstrated to the satisfaction of the board that the filing of the member’s application was delayed by administrative oversight or by inability to ascertain the permanency of the member’s incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.”

application is filed with the [county retirement] board, but not earlier than the date following the last day for which [the member] received regular compensation.” (Italics added.) In other words, a retiree’s disability retirement allowance will typically be effective on the latter of two dates: the actual application date or the date following the last day for which regular compensation was received after separation. However, “[w]hen it has been demonstrated to the satisfaction of the board that the filing of the member’s application was delayed by administrative oversight or by inability to ascertain the permanency of the member’s incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.” (*Ibid.*) Here we are concerned with the latter provision — delay due to the inability to ascertain the permanency of the disability.⁴

B. The Flethez Matter⁵

In 1990, Flethez became an employee of San Bernardino County (County). He worked as an equipment operator from 1991 until 2000. In 1998, he was injured while performing his job duties. His last day of work was on January 28, 2000. He underwent spinal surgery for his 1998 injury on February 1, 2000. His last day of regular compensation was July 14, 2000. Flethez underwent additional surgeries in 2001 and 2002 and received physical therapy through 2004.

⁴ Flethez sometimes refers to this provision as the “deemer clause,” referring to the date “deemed” to be the application date under Government Code section 31724 because of the inability to earlier ascertain the permanency of the disability. We will instead adopt the “inability to ascertain permanency clause” as a shorthand term for this provision.

⁵ Because the historical facts and events established by the record are undisputed, we generally adopt the summary of the factual and procedural background from the decision of the Court of Appeal.

More than eight years after he last worked for the County, on June 12, 2008, Flethez filed an application with SBCERA for a service-related disability retirement and allowance. It was rejected for omission of a signed medical records authorization. A little more than one year later, Flethez filed a complete application, including a signed medical records authorization and a supporting physician's report. In August 2010, SBCERA granted Flethez's application for service-related disability retirement benefits, effective as of the date of his initial application in 2008. That is, Flethez's retirement allowance was made effective under the general rule of Government Code section 31724 granting retroactive benefits back to the date of his June 2008 application.

Flethez then filed a request for review and reconsideration limited to the question of the starting date for his benefits. Flethez does not dispute that this was the first time he contended that his retirement allowance should be retroactive, under the inability to ascertain permanency clause of Government Code section 31724, to July 15, 2000, the date following his last day of regular compensation. When SBCERA, in April 2011, maintained its original decision setting June 12, 2008 as the commencement date for his benefits, Flethez requested a formal administrative hearing on the issue. An administrative hearing was held and the hearing officer subsequently issued proposed findings of fact, conclusions of law, and a recommended decision denying Flethez's request for benefits retroactive to July 15, 2000. On October 4, 2012, SBCERA adopted the hearing officer's proposed decision and maintained the original June 2008 date as the effective date of Flethez's disability retirement benefits.

Flethez filed a petition for writ of mandate in the superior court pursuant to Code of Civil Procedure section 1094.5, seeking a writ ordering SBCERA to set aside its decision and grant him service-related disability retirement benefits

effective as of July 15, 2000. (Gov. Code, § 31724.) He also sought interest at the legal rate on all retroactive amounts.

The superior court found that the evidence submitted in the mandamus proceeding showed Flethez had not been able to ascertain the permanency of his incapacity by the date he stopped working and when he received his last compensation. It determined that the question of when Flethez thereafter became able to ascertain the permanency of his incapacity was irrelevant under Government Code section 31724 because under the unambiguous words of the statute, it was the “inability to ascertain the permanency” until after the date following the day of last regular compensation that triggers retroactive payments under the inability to ascertain permanency clause. The court further determined that the CERL sets no deadline for filing an application based on the date permanency is eventually ascertained. (Gov. Code, § 31722 [an application is timely if from “the date of discontinuance of service to the time of the application,” the member is “continuously” incapacitated].) The superior court issued a peremptory writ commanding SBCERA to grant Flethez a service-connected disability retirement allowance retroactive to July 15, 2000, the date after the last day he received regular compensation, i.e., the date that was deemed to be his application date under the inability to ascertain permanency clause of Government Code section 31724. SBCERA complied with the writ.

The superior court also ruled Flethez was entitled to prejudgment interest under section 3287(a) at the legal rate from the date that each payment of retroactive disability retirements benefits would have been due, starting from July 15, 2000. The interest payments on all retroactive amounts totaled \$132,865.37. SBCERA timely filed a notice of appeal “limited to the issue of interest.”

The Court of Appeal reversed the judgment insofar as it awarded prejudgment interest retroactive to July 15, 2000. It concluded that “in the context of disability retirement benefits, a retiring member is entitled to recover section 3287(a) prejudgment interest on a court award of disability retirement benefits from the day on which his or her right to recover those benefit payments became vested,” which was “not until the retiring member establishes his or her entitlement” to those benefits. The Court of Appeal remanded the matter to the superior court for further proceedings to determine the date that Flethez had established his right to receive retroactive disability retirement benefit payments.

As noted earlier, we granted review to consider how prejudgment interest under section 3287(a) should be calculated when a retroactive award of service-connected disability retirement benefits under the CERL is ordered in an administrative mandamus proceeding.

II. DISCUSSION

The interpretation of the prejudgment interest provisions of section 3287(a) as it relates to the provisions of the CERL is, as the parties acknowledge, a question of law subject to our independent review. (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 189; *Weber v. Bd. of Retirement* (1998) 62 Cal.App.4th 1440, 1444 (*Weber*).)

We begin by recognizing that “ ‘our fundamental task is to determine the Legislature’s intent so as to effectuate the law’s purpose.’ ” (*People v. Cole* (2006) 38 Cal.4th 964, 974.) Because statutory language is generally the most reliable indicator of legislative intent, we start with the language of section 3287(a). (*Fluor Corp. v. Superior Court* (2015) 61 Cal.4th 1175, 1198; *Martinez v. Combs* (2010) 49 Cal.4th 35, 51.)

Section 3287(a) provides that “[a] person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to

recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state.”

We have explained that in order to recover prejudgment interest under this language, “the claimant must show: (1) an underlying monetary obligation, (2) damages which are certain or capable of being made certain by calculation, and (3) a right to recovery that vests on a particular day.” (*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1022 (*American Federation of Labor*); *Tripp v. Swoap* (1976) 17 Cal.3d 671, 682 (*Tripp*), overruled on other grounds in *Frink v. Prod* (1982) 31 Cal. 3d 166, 180.) Prejudgment interest may be recovered “from any debtor,” including a public entity. (§ 3287(a).)⁶ This is “an exception to the general rule that interest cannot be

⁶ Section 3287 was first enacted in 1872 when the Civil Code was adopted. In 1955, it was amended to add the second sentence, making the provisions applicable to “any debtor, including any political subdivision of the State.” (Stats. 1955, ch. 1477, § 1, pp. 2689-2690.) In 1959, the second sentence was amended to further broaden the scope of the statute’s application to recovery of damages from “the State or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the State.” (Stats. 1959, ch. 1735, § 1, p. 4186.) In 1967, the existing provisions were designated as subdivision (a) of the section and provisions not pertinent here were added as subdivision (b). (Stats. 1967, ch. 1230, § 1, p. 2997.) In 2013, subdivision (c) was added. (Stats. 2013, ch. 424, § 1.) We uniformly use “section 3287(a)” to reference the applicable prejudgment interest provisions at issue here, even when the provisions at the time were contained simply in section 3287. We have previously observed, “[t]here is scant pertinent legislative history” regarding section 3287(a). (*American Federation of Labor, supra*, 13 Cal.4th at p. 1030.)

recovered against a state or municipality.” (*Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252, 262 (*Sanders*).

We have recognized that an employee who brings a successful mandamus action to recover wrongfully withheld salary payments may satisfy the requirements of section 3287(a). In *Mass v. Bd. of Education* (1964) 61 Cal.2d 612 (*Mass*), we concluded that a wrongfully suspended teacher was entitled to prejudgment interest as an element of his damages when the local board of education was ordered to reinstate him with full back pay. We stated that section 3287(a) “authorizes prejudgment interest on salary payments from the date of accrual to the entry of judgment.” (*Mass, supra*, at p. 624.) We rejected the argument of the board that interest accrued only “from the date when the board bore the legal duty to reinstate plaintiff because until that time the ‘right to recover’ did not ‘vest’ in him” as required by section 3287(a). (*Mass, supra*, at p. 625.) We explained as follows: “The Civil Code requires vesting . . . only in order to fix with sufficient certainty the time when the obligation accrues so that interest should not be awarded on an amount before it is due. Each salary payment in the instant case accrued on a date certain. Unless the suspension itself can be sustained and the board thus relieved of any obligation whatsoever, the salary payments became vested as of the dates they accrued. If plaintiff had not been wrongfully suspended, he would have obtained the benefit of the moneys paid as of those dates; he has thus lost the natural growth and productivity of the withheld salary in the form of interest.” (*Ibid.*)

Subsequent cases have relied on *Mass* to similarly award section 3287(a) prejudgment interest on damage awards of wages wrongfully withheld. (*Sanders, supra*, 3 Cal.3d at pp. 262- 263 [prejudgment interest awarded in mandamus action on wrongfully withheld salary and wage increases]; *Olson v. Cory* (1983) 35 Cal.3d 390, 401-402 (*Olson*) [prejudgment interest awarded in mandamus

action on claims for back salary]; *Currie v. Workers' Comp. Appeals Bd.* (2001) 24 Cal.4th 1109, 1118 (*Currie*) [Workers' Compensation Appeals Board has statutory authority to include prejudgment interest in backpay award when employee wrongfully denied reinstatement]; *Goldfarb v. Civil Serv. Com.* (1990) 225 Cal.App.3d 633, 635-637 (*Goldfarb*) [county and civil service commissions must include prejudgment interest on backpay award for wrongful demotion]; *San Diego County Sheriffs Assn. v. San Diego County Civil Serv. Com* (1998) 68 Cal.App.4th 1084, 1086-1087 (*San Diego County Sheriffs*) [local civil service commission must include prejudgment interest in award of backpay for wrongful termination].)

Relevant here are the cases that also recognize the applicability of section 3287(a) "on a trial court judgment following a successful administrative mandamus action to recover wrongfully withheld *benefits*." (*American Federation of Labor, supra*, 13 Cal.4th at p. 1022, original italics omitted, italics added.) In *Tripp, supra*, 17 Cal. 3d at pages 681-682, we concluded an award of prejudgment interest was properly included in a mandamus action for wrongfully denied welfare benefits under the former aid to the needy disabled program (Welf. & Inst. Code, former §§ 13500-13801). In *Aguilar v. Unemployment Ins. Appeals Bd.* (1990) 223 Cal.App.3d 239, 246, it was held that a trial court properly ordered the California Employment Development Department (EDD) to pay interest on unemployment benefits wrongfully withheld. In *Olson*, we concluded that the plaintiffs were entitled to prejudgment interest on wrongfully withheld judicial salary and pension increases. (*Olson, supra*, 35 Cal.3d at p. 406; accord, *Benson v. City of Los Angeles* (1963) 60 Cal.2d 355, 365-366 [interest on widow's pension benefits].)

The parties do not dispute that, under settled precedent, prejudgment interest was properly awarded in this mandamus action challenging SBCERA's

denial of Flethez's request for disability retirement benefits retroactive under the inability to ascertain permanency clause of Government Code section 31724. The parties advance, however, very different views as to *when* the right to such retroactive benefits was "certain" and "vested" for purposes of calculating the amount of interest due under section 3287(a).

Flethez argues that county employees have a vested property right in a disability retirement pension from the inception of their employment. He contends that a later court award of retroactive disability retirements benefits after the employee becomes disabled and retires carries with it a vested right to prejudgment interest from the date each retirement benefit payment fell due under the statutory effective date of the retirement allowance. In support, Flethez principally relies on the statements in *Mass, supra*, 61 Cal.2d 612, that section 3287(a) "authorizes prejudgment interest on salary payments from the date of accrual to the entry of judgment," that the statute "requires vesting . . . only in order to fix with sufficient certainty the time when the obligation accrues so that interest should not be awarded on an amount before it is due," that "[e]ach salary payment accrued on a date certain," and therefore, "the salary payments became vested as of the dates they accrued." (*Id.*, at pp. 624, 625; accord *Olson, supra*, 35 Cal.3d at p. 402 [prejudgment interest is recoverable "on each . . . pension payment from the date it fell due"].) Flethez also relies on *Austin, supra*, 209 Cal.App.3d 1528. In *Austin*, the reviewing court applied the reasoning of *Mass* to affirm an award of section 3287(a) prejudgment interest on a retroactive award of county disability retirement benefits — the same type of award of benefits ordered in this case. (*Austin*, at pp. 1533-1534.) Flethez asserts that absent such an award of interest here, he will be denied the benefit of the natural growth and productivity of the retroactive benefits withheld by the SBCERA and

correspondingly, the remainder of the members of the SBCERA retirement system will be unjustly enriched by the use of his retirement allowance in the interim.

SBCERA argues that county employees have only an inchoate right to a disability retirement pension, which vests only when the last contingency to the pension is removed. Specifically, SBCERA asserts that under the CERL, the right to a disability retirement and accompanying allowance is not vested until the retirement board to which an application is submitted has reviewed the submitted evidence and finally acts on the application, or at least has the opportunity to do so. Until such time, SBCERA contends, the applicant's benefits claim is also "not certain or capable of being made certain" as required by section 3287(a). According to SBCERA, it is only when the board *wrongfully* denies such an application and withholds disability retirement payments that prejudgment interest begins to run as damages under section 3287(a). SBCERA argues that this distinguishes the instant case from those cases awarding section 3287(a) interest on wrongfully withheld salary, wages, or service pensions — payments that do not require conditions precedent or the inherent delay of an administrative process to determine the plaintiffs' entitlement to them in the first instance. (*Mass, supra*, 61 Cal.2d 612; *Sanders, supra*, 3 Cal.3d 252; *Olson, supra*, 35 Cal.3d 390; *Currie, supra*, 24 Cal.4th 1109; *San Diego County Sheriffs, supra*, 68 Cal.App.4th 1084; *Goldfarb, supra*, 225 Cal.App.3d 633.) SBCERA relies principally on our decision in *American Federation of Labor, supra*, 13 Cal.4th 1017 and that of the Court of Appeal in *Weber, supra*, 62 Cal.App.4th 1440. SBCERA emphasizes that its "fiduciary duty to safeguard its trust fund for all of its members" requires it not pay benefits prior to the time the applicant meets his or her eligibility burden of proof.

SBCERA has the better argument. As SBCERA contends, vesting in the context of section 3287(a) must be understood in the framework of allowing

prejudgment interest as a component of damages. (§ 3287(a) [“A person who is entitled to recover damages . . . , is entitled also to recover interest thereon”].) As such, it has long been settled that the primary purpose of section 3287(a) “is to provide just compensation to the injured party for loss of use of the [underlying] award during the prejudgment period — in other words, to make the plaintiff whole as of the date of the injury.” (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 663; *Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 919.) It follows that where salary, wage or pension payments have been withheld because of wrongful acts (e.g., *Mass* — wrongful suspension; *Olson* — wrongful denial of salary and pension increases; *Currie* — wrongful refusal to reinstate; *Goldfarb* — wrongful demotion; *San Diego County Sheriffs* — wrongful termination), the plaintiff has been damaged by the failure to receive the payments to which he or she was entitled and would have otherwise received. As we explained in *Mass*, unless the underlying decision “can be sustained” and the defendant thus “relieved of any obligation,” the payments became “vested as of the dates they accrued.” (*Mass, supra*, 61 Cal.2d at p. 625.) In the absence of the wrongful act, the plaintiff would have “obtained the benefit of the moneys paid as of those dates.” (*Ibid.*)

The factual situation here is different. Flethez first applied for a service-related disability retirement in June 2008. He did not at that time request a starting date for his benefits earlier than his actual application date. In accordance with its duties under the CERL, SBCERA evaluated and granted his application for benefits retroactive to June 2008. (*McIntyre, supra*, 91 Cal.App.4th at p. 734.) Only then, did Flethez request an earlier starting date for his benefits pursuant to the inability to ascertain permanency clause of Government Code section 31724. If SBCERA had thereafter granted him the requested start date, as the trial court later determined it should have done, Flethez would have received an additional lump-sum payment for benefits calculated retroactively from the new deemed

application date in July 2000. But Flethez would not have been entitled to receive the benefit payments in 2000 or in any of the years preceding the decision of SBCERA. SBCERA could not by law pay Flethez *any* benefits before he applied for them (Gov. Code, § 31722) and carried his burden (*Rau v. Sacramento County Retirement Bd.*, *supra*, 247 Cal.App.2d at p. 238) of demonstrating his eligibility to SBCERA’s satisfaction. (Gov. Code, § 31724.)

In other words, Flethez was not wrongfully denied the use of the benefit moneys in any of the years prior to SBCERA’s decision on his request. (*Weber*, *supra*, 62 Cal.App.4th at p. 1450 [“That the payment is retroactive *does not mean that the Board wrongfully denied benefits for that period*”].) Flethez was injured only when SBCERA erroneously denied his request for a starting date under the inability to ascertain permanency clause of Government Code section 31724. For purposes of prejudgment interest as a component of damages under section 3287(a), until the SBCERA made its eligibility determination on his request, there were no damages stemming from an underlying monetary obligation “capable of being made certain” and his right to an award of retroactive disability benefits under the inability to ascertain permanency clause did not vest. (§ 3287(a).) As *amicus curiae*⁷ contend, county employees do not have a vested right to disability retirement benefits before such time. (*Weber*, *supra*, 62 Cal.App.4th at p. 1451 [until a member makes the necessary showing under the CERL, “his or her right is

⁷ In addition to the briefs of the parties, we have received an *amicus curiae* brief from the Alameda County Employees’ Retirement Association, Kern County Employees’ Retirement Association, Los Angeles County Employees’ Retirement Association, Marin County Employees’ Retirement Association, Sacramento County Employees’ Retirement Association, San Joaquin County Employees’ Retirement Association, Tulare County Employees’ Retirement Association, and Ventura County Employees’ Retirement Association.

merely inchoate”].) Rather, the “vested right” members possess is to have their CERL retirement board make an “eligibility-to-benefits determination.” (*County of Alameda v. Bd. of Retirement* (1988) 46 Cal.3d 902, 908.)

We find the CERL disability retirement framework to be similar in this regard to the unemployment insurance administrative process this court discussed in *American Federation of Labor, supra*, 13 Cal.4th 1017. In *American Federation of Labor*, we considered the “narrow question” of “whether an administrative law judge may award interest on a payment of retroactive unemployment insurance benefits.” (*Id.*, at p. 1021.) We answered that question in the negative, finding no express or implied authority for such an award. (*Id.*, at pp. 1022-1023, 1042-1043.) Of assistance here is our explanation that “[u]nder the administrative scheme of the Unemployment Insurance Code, the EDD has no underlying monetary obligation to the claimant until it determines the claimant is eligible for the benefits.” (*Id.*, at p. 1023.) “[T]he Unemployment Insurance Code allows the EDD, and unemployment insurance claimants, a reasonable time to process each legitimate claim. Benefits are not due immediately after a claim is filed following employment termination. Rather, they are due promptly only after a claimant has established benefit eligibility. [Citation.] The statutory scheme thus accounts for the fact that delays are inherent in the entitlement claim review process and are necessary to ensure [that] only those claimants who have established eligibility will receive benefits. . . . *The delays inherent in this system are not, however, tantamount to a ‘wrongful withholding’ of benefits giving rise to a right to section 3287(a) prejudgment interest once the Board rules in favor of the claimant.*” (*Id.*, at p. 1026, italics added.) Only if the Board *wrongfully* denies benefits, we explained, would the claimant be entitled to section 3287(a) interest as part of a court award of “compensation for the egregious *delay* in receiving benefits caused by the necessity of filing a mandamus action challenging the

Board’s denial.” (*American Federation of Labor, supra*, 13 Cal.4th at p. 1022.) “[C]laimants may not argue that their benefits have been *wrongfully* withheld until the Board erroneously determines they are ineligible” (*Id.*, at p. 1037.) “Thus, ‘[t]he central theme of [*American Federation of Labor*] ... is that interest is not available absent an agency decision or action which has resulted in wrongful withholding of, and corresponding delay in receiving, benefits to which the claimant is entitled.’ ” (*Currie, supra*, 24 Cal.4th at p. 1118.)

Like the unemployment insurance benefits at issue in *American Federation of Labor*, Flethez’s disability retirement benefits under the CERL were not due before SBCERA received his application and made a determination of his eligibility. Flethez experienced a wrongful withholding of his benefits when the Board erroneously denied his application for a retroactive disability retirement allowance under the inability to ascertain permanency clause, thus necessitating this mandamus action. His entitlement to prejudgment interest under section 3287(a) commenced on the date of wrongful denial.⁸ However, because the record before us is not entirely clear as to that date, we shall remand the matter for such factual determination.⁹

⁸ The reviewing court in *Austin, supra*, 209 Cal.App.3d 1528, concluded that plaintiff Austin was entitled to section 3287(a) prejudgment interest on the trial court’s award of retroactive disability retirement benefits under the CERL from the last day of his service — the date he became entitled to such benefits — up to the date upon which he was granted the benefits. (*Austin*, at pp. 1530-1534.) We disapprove *Austin v. Bd. of Retirement, supra*, 209 Cal.App.3d 1528 to the extent it is inconsistent with this opinion.

⁹ We note that Flethez has argued only that SBCERA’s erroneous denial of benefits entitles him to prejudgment interest calculated from July 15, 2000. He has not submitted any argument supporting an alternate date. Nor has he claimed that SBCERA’s decision was unreasonably delayed, and therefore we express no opinion on whether a demonstrated unreasonable delay in deciding an applicant’s

(footnote continued on next page)

III. DISPOSITION

The judgment of the Court of Appeal is affirmed. The matter is remanded to the Court of Appeal with directions that it remand the matter to the superior court for a determination of the date SBCERA wrongfully denied Flethez's application for a retroactive disability retirement allowance under the inability to ascertain permanency clause of Government Code section 31724 and a recalculation of the amount of prejudgment interest owed based on such date.

CANTIL-SAKAUYE, C. J.

WE CONCUR:

WERDEGAR, J.

CHIN, J.

CORRIGAN, J.

LIU, J.

CUÉLLAR, J.

KRUGER, J.

(footnote continued from previous page)

eligibility for benefits could result in a superior court finding that benefits were wrongfully withheld earlier than the retirement board's eligibility decision.

CONCURRING OPINION BY CUÉLLAR, J.

I concur in the majority opinion and its conclusion that prejudgment interest under Civil Code section 3287, subdivision (a) begins to run only when a county retirement board wrongfully denies a member's application for retroactive disability retirement benefits. I concur, too, in the court's decision directing the Court of Appeal to remand the matter to the superior court for a determination of the date on which the San Bernardino County Employees Retirement Association (SBCERA) wrongfully denied plaintiff's application for retroactive disability benefits. It would be helpful to the trial court on remand, though, for us to more fully explain when a wrongful denial occurs. The standard I endorse is the one articulated by SBCERA: A wrongful denial occurs on the date the retirement system's governing board should have determined that the member was entitled to retroactive benefits.

CUÉLLAR, J.

WE CONCUR:

WERDEGAR, J.

LIU, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Flethez v. San Bernardino County Employees Retirement Association

Unpublished Opinion
Original Appeal
Original Proceeding
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Judge: David Cohn

Counsel:

Michael P. Calabrese; Arias & Lockwood and Christopher D. Lockwood for Defendant and Appellant.

Nossman, Ashley K. Dunning, Michael V. Toumanoff and Catherine F. Ngo for Alameda County Employees' Retirement Association, Kern County Employees' Retirement Association, Los Angeles County Employees' Retirement Association, Marin County Employees' Retirement Association, Sacramento County Employees' Retirement Association, San Joaquin County Employees' Retirement Association, Tulare County Employees' Retirement Association and Ventura County Employees' Retirement Association as Amici Curiae on behalf of Defendant and Appellant.

Reed Smith, Harvey L Leiderman and Jeffrey R. Rieger for California Public Employees' Retirement System as Amicus Curiae on behalf of Defendant and Appellant.

Faunce, Singer & Oatman, Mark Ellis Singer, Edward L. Faunce and Larry J. Roberts for Plaintiff and Respondent.

Law Offices of John Michael Jensen and John Michael Jensen as Amici Curiae on behalf of Plaintiff and Respondent.

Counsel who argued in Supreme Court (not intended for publication with opinion):

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Fallbrook, CA 92028
(760) 451-7377



FOR INFORMATION ONLY

March 24, 2017

TO: Disability Procedures and Services Committee
Vivian H. Gray, Chair
Marvin Adams, Vice Chair
Alan Bernstein
Ronald Okum
David Muir, Alternate

FROM: James Pu, Chief Information Officer
Systems Division

SUBJECT: DISABILITY TECHNOLOGY INTEGRATION: PROJECT UPDATE II

The Disability Technology Integration Project is one of System Division's multi-year, multi-faceted organizational goals. It encompasses technology optimization and enablement for many aspects of LACERA's disability operation. As we continue to make steady progress, more processes are being automated and benefiting from technology augmentation.

During our last report, staff provided your Committee with an overview of the project phases. One significant phase is the Workspace Integration. To recap, Workspace is LACERA's unified member operations and services application. Integrating the Disability Tracker data and functions into Workspace provides efficiency and improved accuracy. Coupled with Workspace Integration, the Process Management phase implements workflow to inject further automation and improves visibility into each case. Together, these two systems will be the basis for system-generated performance metrics, reports, and tracking.

Another key phase is the Disability Document Portal. Its chief design criteria is to permit our business partners, such as physicians and TPAs, to securely submit documents and information in digital form. This system offers much improved function and security over the current paper methods.

During this presentation, Systems staff will provide your Committee with an updated look at how the Disability Tracker data has been integrated into Workspace, the implementation of the Disability Document Portal, and discuss the next steps in the project.

Noted and Approved:

Robert R. Hill
Assistant Executive Officer

3-28-2017
Date

Project Update: Disability Technology Integration

Technology Integration Plan

- Phase 1: Data Integration
- Phase 2: Process Management, workflow, and scanning of disability packages
- Phase 3: Document Management Integration
- Phase 4: Fully-digital Disability Board Packages **Completed** ✓

Phase 1: Data Integration The Goal

To integrate key data from the Disability Tracker into the LACERA enterprise member application, Workspace.

Phase 1: Data Integration The Milestones

- Document the current process to understand how the Disability Tracker is used
Completed on 12/31/2014
- Identify Disability Tracker features to integrate into Workspace
Completed on 12/31/2014
- Map the key features to new pages, functions, and letters to add to Workspace
Completed on 12/31/2014
- Implement the new pages, functions, and letters
On-going effort -- first phase completed on 6/15/2015, final phase to be completed by 6/30/2018

Phase 2: Process Management The Goal

Implement process management and workflow to gain insight, improve visibility, and improve efficiency

Phase 2: Process Management The Milestones

- Define key processes to implement in workflow
Completed on 12/31/2014
- Identify documents that will participate in the workflow processes
Completed on 12/31/2014
- Implement workflow management and document imaging for key processes
On hold pending completion of the DPC remodel
- Implement case management
Not started yet – to be completed by December, 2017
- Implement Board and Management Metrics reporting
Not started yet – to be completed by December, 2017

Demo

https://wsp-qa.lacera.com:8443/ - Member Service Workspace - Windows Internet Explorer

Member Service Workspace

Name: **TINA TESTCASE** Related Name: **TED TESTCASE (MEMBER, RELATED PAYEE)**
SSN: [REDACTED] Related SSN: [REDACTED]
Empl No: 555888
Status: **DISABILITY TRACKING STATUS: PENDING; ACTIVE DEATH**

▼ **Disability Cases** One Record Found

Application Status	Date of Application	Type of Application	Disability Condition	Investigator	Attorney	Select
Pending	01/01/2016	SCD	Ankle	Ricardo Salinas	In Pro Per	<input type="checkbox"/>

Search
Comprehensive
Member
Alerts
Beneficiaries
Contributions
Death
Disability
Disability Case
Disability Tracker
Estimate
Interest
Legal
Pending Payroll
Personal
Plans
Portal
Power Of Attorney
Purchases
Reciprocity
Rollover
Salary
Trial Payroll
Withdrawals
Payee
Interactions
Work
Batch
Disability
User
Under Construction

032117|534P|170321|31|RUBOWK|wsp-qa.lacera.com:8443|disability_case_member_list.jf

100%

https://wsp-qa.lacera.com:8443/ - Member Service Workspace - Windows Internet Explorer

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Application Status	Date of Application	Type of Application	Disability Condition	Investigator	Attorney	Select
Pending	01/01/2016	SCD	Ankle	Ricardo Salinas	In Pro Per	<input type="checkbox"/>

Disability Information

Physician's Report Date: 01/01/2016 Disability Id: [REDACTED]
 Supplemental: [REDACTED] Member Id: [REDACTED]

Injury: 60 - Emotional ; 27 - Back ; 32 - Cumulative Trauma

Mailing Address: 100 Main Street, Pasadena, CA 91101

Record Orders

Order Date	Ordered From	Ordered By	Received On	Days Elapsed
No Record Orders ...				

Interviews

Interview Date	Interviewee	Name	Position/Relation	Investigator	Mode	Days Elapsed	Status
No Interview Scheduled ...							

Medical Appointments

Requested On	Physician	Specialty	Physician's Address	Appointment Date	Report Received Date	Status
09/07/2016	[REDACTED]	Critical Care Medicine	[REDACTED]			

Case Notes

Effective Date	Note Type	Action	User	Case Notes
No Case Notes ...				

Physician Recommendations

Date	Recommendation	Used Board Date
No Physician Recommendations ...		

Staff Recommendations

Date	Recommendation	Used Board Date
No Staff Recommendations ...		

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https://wsp-qa.lacera.com:8443/ - Member Service Workspace - Windows Internet Explorer

Member Service Workspace

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Disability Information

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Case Notes

Effective Date	Note Type	Action	User	Case Notes
No Case Notes ...				

Physician Recommendations

Date	Recommendation	Used Board Date
No Physician Recommendations ...		

Staff Recommendations

Date	Recommendation	Used Board Date
No Staff Recommendations ...		

032117|534P|170321|31|RUBOWK|wsp-qa.lacera.com:8443|disability_case_member_list.jsf

https://wsp-qa.lacera.com:8443/ - Member Service Workspace - Windows Internet Explorer

Member Service Workspace

Name: **TINA TESTCASE** Related Name: **TED TESTCASE (MEMBER, RELATED PAYEE)**
 SSN: [REDACTED] Related SSN: [REDACTED]
 Empl No: 555888
 Status: **DISABILITY TRACKING STATUS: PENDING; ACTIVE DEATH**

▼ Referees Displaying Active, 20 of 53

Name ▲	Company	Active ▼ ▲	Select
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>
[REDACTED]	[REDACTED]	✓	<input type="checkbox"/>

032117552P[170321]31[RUBOWK]wsp-qa.lacera.com:8443[disability_contact_list.jsf?CONTACT=REFEREES] 100%

Phase 3: Document Management The Goal

Design and develop a document drop-off portal for business partners.

Phase 3: Document Management The Milestones

- Identify document that will be received from business partners
Bulk completed on 1/30/2015
- Define document submission guidelines
Completed on 2/28/2015
- Design and develop document submission portal
Completed on 3/15/2015
- Develop document drop-off portal for business partners
Released for testing 6/1/2016

Document Portal Features

- Follows design and presentation of Member Portal
- By Invitation Only system
- Business partner document drop-off
- Disability staff document management
- Copy Services management (Team Legal)
- Complete audit trail
- Integration to our ECM Infrastructure
- Extensive security validation
 - Tested twice by external auditors
 - Implemented industry's best security practices

My LACERA

Member Sign In

Email Address

Password

[I forgot my password](#)

Recognize This Computer? Yes No
⊗ This is a public computer, or one I don't use regularly

Sign In

New User? [Register Now](#)



Member Portal

Los Angeles County Employees Retirement Association

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Document Portal

LACERA Document Portal

Member Sign In

Password

[I forgot my password](#)

This is a private computer

Sign in

New User? [Register](#)



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LACERA Document Portal

Los Angeles County Employees Retirement Association

[Home](#) [Profile](#) [Sign Out](#)

[Documents](#) [Team Legal](#) [Types](#) [Invitations](#)

Subscription Invitations

Subscription invitations generated for the Portal.

[New](#) [Import](#) [Refresh](#)

Peter Winter

Emailed

[Resend](#) [Delete](#)

Email
winter@example.com

Requested by Peter Winter
12/08/2016

Company
Winter Consulting

Approved by administrator
12/08/2016

Date Sent
12/08/2016

Not Registered

Los Angeles County Employees Retirement Association

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Submitted Documents

All documents you and other users have submitted.

[Submit](#) [Refresh](#)

Document	Type	Submitted	Status
pluralsight-quote.pdf	DISFIND	10/25/2016 1:54 PM	Processed
pluralsight-quote.pdf	OTHER	10/25/2016 1:52 PM	Pending

Los Angeles County Employees Retirement Association


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The screenshot shows a modal window titled "pluralsight-quote.pdf" overlaid on the "Submitted Documents" page. The modal displays the following details:

- Status: Processed
- Type: DISFIND
- Member: [Full Administrator](#)
- Pages: 1
- File Size: 62.73 KB
- Submitted: 10/25/2016 1:54 PM
- by Full Administrator

At the bottom of the modal, there are four action buttons: [Preview](#), [Process](#), [Audit](#), and [Delete](#).

Copy Requests

 No matching copy requests found

 Import Request

Los Angeles County Employees Retirement Association

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Copy Request Import

* Service Name

Team Legal 

* SSN / Employee #

999-99-9999 

Member's Name



* Provider Name

Kaiser 

* Document Title

PDF-A_FAQ.pdf

Claim #

0126456

Request #

45965

Description

Sample Document

* Request Date

03/01/2016 

* Requested By

Eddie Paz

Upload Document

Notes



[Cancel](#)



Document Types

All available workflow document types.

[+ New](#) [↻](#)

Name	Group	Description ▲
DIS125 ⊗ Not Submissible	Disablty	.7 Request For Estimate
DISRPT ⊗ Not Submissible	Disablty	Appeal Summary
DISRPT-2 ⊗ Not Submissible	Disablty	Appeal Summary 2
DIS101 ⊗ Not Submissible	Disablty	Application For Disability Retirement
DIS121 ⊗ Not Submissible	Disablty	Application For Disability Retirement (Employer)
DISSCD ⊗ Not Submissible	Disablty	Application For Service-Connected Death
DIS119 ⊗ Not Submissible	Disablty	Application For Service-Connected Survivor Death Benefits

Audit Trail

Audit trail entries for the specified document.

[« Documents](#)

Entry ID	Date/Time ▲	Transaction	Description	Entry By	Workstation
393	10/25/2016 1:57:51 PM	2064424762	Updated a Document.	administrator	172.16.5.18
394	10/25/2016 1:57:51 PM	2064424762	Processed document	administrator	172.16.5.18
392	10/25/2016 1:54:56 PM	306608784	Added a new Document.	administrator	172.16.5.18

Phase 4: Digital Disability Board Packages The Goal

To deliver fully-digital Board Packages including summary and medical reports, and appeals packets.

Phase 4: Digital Disability Board Packages The Milestones

- Digital Summary Reports to iPads ✓
Completed on 3/2015
- Enhanced "Board Vantage" document reader ✓
Completed on 1/2016
- Full Digital Disability Case Distribution ✓
Completed on 3/2016
- Digital Appeals Packages Distribution ✓
Completed on 8/2016



The End