

S226779

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

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FRANK FLETHEZ

Frank A. McGuire Clerk

Deputy

Petitioner,

v.

SAN BERNARDINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION,

Respondent

San Bernardino Superior Court Case Number CIVDS 1212542
Fourth District, Division One Number D066959

ANSWER TO PETITION FOR REVIEW

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I

**INTRODUCTION AND STATEMENT WHY REVIEW
SHOULD NOT BE GRANTED**

This case is controlled, and was properly decided below, by a correct application of governing law. Where a petitioner seeks a disability benefit from a public retirement system whose governing law requires him or her to file an application and submit proof to that agency and to receive an award of that benefit only after an administrative process leading to a determination by that agency's governing board that the application should be granted, the agency's failure to award that benefit will not give rise to an award of prejudgment interest unless and until the agency has rendered an erroneous decision denying the benefit, after the applicant has established a right to receive the benefits sought. Even where such an error does occur, and prejudgment interest caused by the agency's wrongful delay comes to be owed, it will not ordinarily begin to run until the date of the agency's final, erroneous decision on the merits.

Where the benefit at issue is an award of retroactive disability benefits under the County Employees Retirement Act of 1937, this question has been conclusively decided by Weber v. Bd. of Retirement (1998) 62 Cal.App.4th 1440, which held:

The event which triggers retirement and the right to allowance payments is the disability determination by the Board. Until that time, the member is not retired, and [the retirement system] has no monetary obligation to the member...*[A]s soon as the Board's decision is made, retirement and the right to payments vest.*

[P]rejudgment interest under section 3287(a) is

designed to compensate for the lengthy delay resulting from the mandamus action made necessary to *vindicate* the claimant's rights following the Board's *wrongful denial of benefits*. Weber, 62 Cal.App.4th at 1448-1450 (italics in original; underlining supplied).

The Respondent here does not deny that some interest is owed. Rather, it concedes that it owes prejudgment interest from the date of its final decision to deny the pre-application retroactive portion of Petitioner's benefits, which the trial court later found to be erroneous. But no prejudgment interest is owed from before that date, unless Respondent unreasonably delayed making its decision after petitioner presented sufficient evidence to establish his entitlement to the retroactive benefits.

The principle established in Weber is that prejudgment interest is awarded to compensate the disability applicant for any damages caused by an agency's *wrongful* failure to award what is due in a manner that causes unreasonable delay. A certain amount of delay is built into the administrative process itself, but the applicant is not damaged by that inevitable delay and hence is not entitled to the recovery of prejudgment interest for it unless the agency caused the delay to be unreasonable by its own wrongful actions.

Petitioner's argument conflates the award of prejudgment interest with the award of retroactive benefits, but that is not the law. The prejudgment interest award is separate from the benefits, and allowed for different reasons to serve a different purpose, namely to compensate for damages arising from a wrongful delay caused by the agency. Ordinary administrative delays inherent in the administrative process do not justify such damages.

The prejudgment interest statute itself makes this distinction because

it does not authorize the award of prejudgment interest for damage caused by a petitioner rather than by the respondent, or caused by the respondent agency's legal inability to grant the benefits sought. Civil Code § 3287(a) provides:

Every 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 him upon a particular day*, is entitled also to recover interest thereon from that day, *except during such time as 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 such debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state. (Emphasis supplied.)

The fallacy in petitioner's argument is apparent. Petitioner cannot have been damaged by any delay caused by his own repeated delay in filing an application and failures to provide the retirement board with the evidentiary basis to act on his claims. Petitioner did not file his first application for disability retirement until 2008, almost 8 years after his last day in paid status. By statute, disability benefits cannot be paid until there is an application for them together with sufficient evidence to support the claim.

Further, if the applicant wishes to establish a pre-application effective date for the start of his disability retirement, he or she must present additional evidence beyond that necessary to establish a right to the disability retirement itself, which ordinarily takes effect no earlier than the date of his or her application. Until evidence has been presented that would authorize the Board to grant the requested additional relief, and the

retirement system has been given a reasonable time to complete the ordinary administrative processes, including preparation and finalization of a hearing officer's report and recommendation following a hearing, before submitting the matter to the retirement board for consideration and a final decision, the petitioner has not been damaged by any unreasonable delay caused by the retirement board. Rather, it is his or her own inaction or the inherent delays built into the administrative process that caused that portion of the delay, and neither the statute itself, nor the controlling case law, permit the recovery of prejudgment interest for that period.

As discussed in more detail below, the record shows that Petitioner's last day in paid status occurred in 2000, yet he did not file his original application for disability retirement until 2008, did not file a complete application for disability until 2009, and the Retirement Board granted his application for disability retirement in 2010, effective as of his earliest application date in 2008. However, Petitioner then sought retroactive, pre-application benefits effective from 2000 forward, but did not submit any evidence to explain his claimed entitlement to pre-application retroactive benefits until the end of 2011. Processing objections and finalizing the hearing officer's report and recommendation for submission to the Board was completed only in July of the following year, and partially as a result of a request for a one month continuation by Petitioner from the September Board meeting, the Board did not consider the report and recommendations and make its decision on such claim for additional, retroactive benefits until its meeting on October, 4, 2012. Nevertheless, the trial court awarded prejudgment interest going back to 2000, eight years before Petitioner's initial application, 11 years before he made any attempt to meet his burden of proof on retroactive pre-application effectiveness, and 12 years prior to the Board's decision on that retroactivity issue.

The Court of Appeal properly reversed and remanded, noting that prejudgment interest cannot begin to run until an agency's wrongful denial of benefits, or its unreasonable delay in making its decision after the petitioner had established his right to the retroactive award. Because the issue of when Petitioner had presented sufficient proof to establish his right to a retroactive pre-application effectiveness date could not be decided by the Court of Appeal as a matter of law, the decision properly remanded the case to the superior court to make that factual determination governing the start date for prejudgment interest.

No matter when that date of establishment occurred, it is patent that it could not have occurred before the Petitioner filed his initial application in 2008, and should not properly be deemed to have occurred before Petitioner finally offered testimony supporting his demand for a pre-application effectiveness date in 2011, and the retirement system was given adequate time for the ordinary administrative processes to occur before the matter was submitted to the Retirement Board for its consideration and final decision on such additional requested retroactivity.

The application of this legal principle by the Court of Appeal is fully consistent with the governing case law and statute, and is fair to both retirement boards and the applicants before them because it awards prejudgment interest only for any wrongful delay caused by the retirement boards, not delay caused by the applicants themselves or by the ordinary delays inherent in the disability application process. The decision below was entirely consistent with the statute and the extant case law. There is no serious doubt as to either the law or its application to this case. Accordingly, the Petition for Review should be denied.

II

REAL ISSUE PRESENTED BY THE PETITION

The petition ignores most of the evidence and it ignores the actual holdings of the cases it cites. The real issue presented by this petition is: Does prejudgment interest begin to run (1) before an application for retirement benefits is filed, and (2) before an applicant presents sufficient evidence to overcome a statutory presumption that there are no pre-application date benefits, and (3) before the Board has an opportunity to consider the evidence supporting a claim for pre-application date retroactivity and render a final decision?

Stated otherwise, the question is whether applicants for disability retirement can obtain huge windfalls by being paid 7% prejudgment interest for years prior to applying for benefits and for years prior to presenting sufficient evidence to overcome a statutory burden of proof to establish entitlement to a pre-application effective date.

III

BRIEF SUMMARY OF THE CASE

Petitioner was an employee of the County of San Bernardino, and thus a member of the San Bernardino County Employees Retirement Association (“SBCERA”) for nine years, concluding in 2000. In 2008, he filed an application for disability benefits, which was rejected because he refused to allow SBCERA to review his medical records. In 2009, he filed a complete application.

SBCERA’s Board, in its initial decision on August 5, 2010, granted his disability application, with benefits effective as of the earliest application date, in 2008. But Petitioner then sought benefits retroactive to 2000. By statute, it is presumed that benefits are not retroactive prior to the

date of the application. To qualify for retroactive benefits prior to that date, the applicant must present evidence to overcome the presumption. The SBCERA Board did not award a retroactive pre-application effective date for the benefits in 2010, finding nothing in the record then before it that would justify such an additional retroactive award. Petitioner then requested an administrative hearing, and finally presented evidence to support his request for retroactive pre-application benefits at an administrative hearing in 2011. The hearing officer, and thereafter the Board, found Petitioner's testimony at the administrative hearing insufficient to meet his burden of proof to establish his right to pre-application benefits. In a subsequent writ proceeding the trial court disagreed and awarded retroactive benefits, which SBCERA has now granted. The retroactivity of benefits starting in 2000 is no longer at issue in this case.

Petitioner then sought prejudgment interest on the retroactive benefits, also retroactive to 2000. Even though Petitioner made no contact with SBCERA until 2008, did not file his complete application until 2009, and did not submit testimony to justify an award of retroactive benefits until 2011, and SBCERA's Board had not taken final action until 2012, the trial court awarded prejudgment interest retroactive to 2000. The result was an award of over \$132,000 in interest, at a rate far higher than Petitioner could have obtained at any bank.

The court of appeal reversed. It held that prejudgment interest does not begin to run until Petitioner filed an application and submitted evidence through the regular procedures sufficient to establish the petitioner's right to overcome the statutory presumption against such a retroactive pre-application effectiveness date. It remanded for determination of that precise "establishment" starting date of prejudgment interest because it

could not be determined as a matter of law on the record before the Court of Appeal. Petitioner then sought review in this Court.

IV

STANDARD OF REVIEW

Respondent accepts the Petition's contention that, should the Court decide to hear this case, the standard of review would be de novo.

V

THE RECORD AND CITATIONS THERETO

Most of the record is the three volume administrative record. It will be cited as [volume] AR [page].

Additional documents were filed in an appellant's appendix before the court of appeal and will be cited as AA [page].

The reporter's transcript will be cited as RT [page].

VI

THE PURPOSE AND ROLE OF THE SAN BERNARDINO COUNTY PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

County employee retirement associations such as SBCERA are public entities established pursuant to the County Employees Retirement Law of 1937 ("CERL"), Government Code § 31450 et seq. Although they are set up to provide retirement benefits for employees of counties, other local agencies may join. SBCERA serves over 34,000 members from 17 agencies.

Contributions from active members and their employers are held in trust and invested, and then paid in retirement benefits pursuant to statutory formulas, including disability retirement benefits in appropriate cases.

County retirement associations such as SBCERA are required to make quasi-judicial decisions about whether applications for disability retirement should be granted or denied. Masters v. San Bernardino Employees' Retirement Ass'n (1995), 32 Cal.App.4th 30, 45. SBCERA's Board cannot properly perform this function "unless it investigates applications and pays benefits only to those members who are eligible for them. [Citations]" McIntyre v. San Bernardino County Employees Retirement Ass'n (1995) 91 Cal.App.4th 730, 734.

VII

APPLICABLE ADMINISTRATIVE PROCEDURES

County employees can retire for service only if they reach a sufficient age and have worked a sufficient number of years. However, they can retire for disability, without meeting these criteria, if they can prove that they have become permanently incapacitated as a result of injury or disease, and these disability benefits are higher if they can prove that the disability was caused by their employment. Government Code §§ 31720, 31720.1.

When an application for a disability retirement is filed, the applicant is required to file documents including (a) an application, (b) a statement of facts and circumstances describing the basis for the claim, (c) a physician's statement, and (d) authorizations to obtain the medical records relevant to the claim. (Government Code § 31721 ["A member may be retired for disability upon the application of the member . . ."]; SBCERA's By-Laws, pages 22-24; see 1 AR 20 [application], 24 [statement of facts and circumstances], and 29 [physician's statement].)¹

¹The bylaws are available at SBCERA.org.

The applicant has the burden of proving that a disability exists, and if there is a contention that it was caused by employment, that a disability is service-connected, by a preponderance of the evidence. McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044, 1051, n. 5 (“As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence”); Glover v. Board of Retirement (1989) 214 Cal.App.3d 1327, 1337 (“the burden was on him to prove by a preponderance of the evidence that such disability was caused by his employment”); Masters, supra, 32 Cal.App.4th at 46 (“The applicant also bears the burden of proving that the disability is work-related”).

Staff obtains copies of the relevant medical records. (See 1 AR 62 to 3 AR 1583) The application and records are first reviewed by Staff and by a medical advisor, and often the applicant is examined by an independent medical examiner. (See 1 AR 46) Staff then makes a recommendation to the Board. (See 3 AR 1585)

The Board reviews the Staff recommendation and makes an initial decision. If the applicant is dissatisfied with the Board’s initial decision, the applicant can request reconsideration. (See 1 AR 22)

If the applicant is still not satisfied, the applicant can request a formal hearing. If that occurs, an independent hearing officer is appointed and the issues are addressed de novo before the hearing officer. (SBCERA’s By-Laws, page 29; Wieser v. Bd. of Retirement (1984) 152 Cal. App. 3d 775, 781-782.)

The hearing officer holds an administrative hearing at which evidence is presented anew (see AR 1599), and closing briefs are filed. (See AR 1649, 1662, 1680) The parties have the right to call witnesses by

subpoena. (See 1 AR 6) The hearing officer prepares a written report and recommendation. (See AR 1689) The decision of the hearing officer is a recommendation which the Board then accepts, rejects or modifies. (SBCERA's Bylaws, page 30; see 3 AR 1689)

If the applicant is still dissatisfied with the decision after fully exhausting the administrative remedies described above, the applicant is entitled to file a petition for writ of mandate in superior court. The administrative decision is reviewed under Code of Civil Procedure § 1094.5.

VIII

IT IS PRESUMED THAT DISABILITY RETIREMENT BENEFITS ARE NOT RETROACTIVE TO BEFORE THE APPLICATION DATE

In the trial court, Petitioner was granted the requested disability benefits retroactive to the date after his last day of regular employment in 2000, and was granted attorney's fees. SBCERA did not appeal those rulings and has paid the retroactive benefits as ordered by the trial court. The only issue on appeal is the starting date for prejudgment interest on the pre-application retroactive benefits.² The court of appeal did *not*, as Petitioner contends, limit interest to post-judgment interest; its actual decision is addressed below.

It is presumed that the starting date of retirement benefits is the later of the date of the application or the end of regular compensation. The first paragraph of Government Code § 31724 contains the presumption that, once granted, a member's disability retirement allowance:

²To be clear, contrary to some assertions in the Petition for Review, SBCERA is not contending that no prejudgment interest at all is owed.

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.

The second paragraph of § 31724 allows an earlier starting date of benefits, but only if the applicant meets a specified burden of proof to overcome the presumption.

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.

The Board could not have awarded Petitioner's requested benefits on a pre-application retroactive basis until he presented evidence supporting his inability to ascertain the permanency of his disability at the time he left county service, and the Board had time to consider that evidence, find it satisfactory, and render a decision on it. Thus, no pre-application retroactive payments could lawfully have been made until the Board's final decision on that topic at the administrative level.

IX

STATEMENT OF THE CASE

A. ADMINISTRATIVE PROCEEDINGS

Last day of regular compensation

Petitioner's last day of regular compensation was July 14, 2000. (1 AR 59)

Initial incomplete application

On June 12, 2008, Petitioner tried to file an application for disability retirement. The application was not accepted at that time because Petitioner refused to sign an authorization to obtain the relevant medical records (1 AR 11; 3 AR 1663), one of the basic parts of an application. Government Code § 31723 (the Board “may require such proof, including a medical examination at the expense of the member, as it deems necessary or the board upon its own motion may order a medical examination to determine the existence of the disability.”).

Complete application

Petitioner filed a complete application on July 16, 2009. (1 AR 20)

Agreement to deem the 2009 application retroactive to 2008

Petitioner threatened to sue over the refusal to accept the incomplete application in 2008. That issue was resolved by an agreement that the later filed application would be deemed filed on June 12, 2008 for purposes of the starting date for benefits. (1 AR 11; 3 AR 1663)

Petitioner’s statement of facts and circumstances

The statement of facts and circumstances submitted in support of the 2009 application stated that Petitioner was employed by the County of San Bernardino as a grounds caretaker I. It lists two injuries. First, on April 5, 1993 he was rear ended while driving a dump truck. Second, on July 14, 1998 he was injured when using a power pruner to trim trees. (1 AR 24)

Staff Recommendation and Initial Board Decision

Staff reviewed the records and arranged for a review by a medical advisor. (See 1 AR 46) Staff recommended findings that:

1. Petitioner was permanently disabled and his disability is service-connected based on cervical and lumbar spine injuries.
2. Petitioner was not capable of gainful employment.

3. The starting date of benefits should be June 12, 2008, the date of the original application. (3 AR 1585)

On August 5, 2010 the Board reviewed the application and accepted the Staff Recommendation. (3 AR 1588)

Request for Review and Reconsideration

SBCERA's rules allow a party to seek review and reconsideration, though that step is optional. On September 30, 2010 Petitioner filed a request for review and reconsideration limited to the question of the starting date for benefits. (1 AR 22, 23) Per SBCERA's procedures, Petitioner then had six months to submit additional evidence in support of the contention that, at the time he left county service, he could not have ascertained the permanency of his disability. Petitioner submitted no additional evidence during this six month period. After that period had elapsed, Staff recommended continued denial of retroactive pre-application benefits. (3 AR 1586) On April 7, 2011 the Board maintained its original decision. (3 AR 1591)

Request for Administrative Hearing

On April 14, 2011 Petitioner filed a request for a formal hearing, again limited to the question of the starting date for benefits. (1 AR 23) An independent hearing officer was appointed to review the issue and make a recommendation to the Board. (1 AR 6)

Evidence and initial briefing before the administrative hearing

SBCERA's rules require each side to file a prehearing statement. (See 1 AR 6) SBCERA's prehearing statement cited the lack of evidence to show that the Petitioner had been unable to ascertain the permanence of his disability when he left county service in 2000, which would be needed to support an effective date prior to the agreed upon 2008 filing date. (1 AR 10) Petitioner did not submit any additional evidence with his prehearing

statement, and only referenced his intention to present his own testimony. (3 AR 1594)

Administrative hearing

On December 15, 2011, the hearing officer held a formal hearing. (3 AR 1599) Petitioner submitted no exhibits at the hearing. (3 AR 1603, 1605) The sole evidence Petitioner presented was his own testimony. (3 AR 1615-1640)

Hearing Officer's Report and Recommendation

The hearing officer prepared a detailed report and recommendation on May 25, 2012. (Government Code § 31533; 3 AR 1989) Both sides submitted objections to the initial report and recommendation. (Government Code § 31534; 3 AR 1714, 1716) The hearing officer prepared a final report and recommendation on July 16, 2012. (3 AR 1722) The hearing officer found that Petitioner had failed to carry his burden of proof of showing an exception to the general rule that benefits are effective as of the date of filing the application.

Final Board Decision

On July 30, 2012 Petitioner requested that the Board postpone consideration of the matter from the Board's September to its October meeting. (3 AR 1726) The hearing officer's final report and recommendation was presented to the Board and considered and adopted by it on October 4, 2012. (3 AR 1739)

B. TRIAL COURT PROCEEDINGS

Petitioner filed a petition for writ of mandate. (AA 1) The trial court awarded retroactive benefits (RT 1-8), awarded attorney's fees (RT 9-13, 17-23), and awarded \$132,865.37 in prejudgment interest at 7% per annum, *retroactive to 2000*, on all disability payments Petitioner would have received if he had filed a disability retirement application the day he

stopped working. (RT 23-23; AA 127)

The retroactive benefits and attorney's fees have been paid and were not an issue on appeal. (AA 59 [writ], 61 [return to writ])

X

SUMMARY OF THE ISSUE DECIDED BY THE COURT OF APPEAL

The sole issue on appeal was the starting date for prejudgment interest on the retroactive pre-application benefits. An applicant who wants pre-application date benefits, which are thus retroactive to the last day of employment, is required to submit evidence to prove an entitlement to them to overcome the statutory presumption.

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. Government Code § 31724, second paragraph.

There was never any contention that filing of the application was delayed by administrative oversight. Petitioner was therefore entitled to retroactive benefits only if he overcame the presumption by proving "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." The question on appeal is whether SBCERA should pay prejudgment interest *prior* to the date Petitioner met his burden of proof under § 31724 in order to establish his entitlement to pre-application-date

retroactivity, and the usual administrative procedures had been conducted leading to the Retirement Board's decision on the issue.

Nothing in the retirement statutes gives any right to interest on retroactive disability benefit awards. The sole basis for requesting and awarding prejudgment interest is Civil Code § 3287(a). That statute provides, as noted above, that when a plaintiff's right to recover damages "is vested in him upon a particular day," such plaintiff "is entitled also to recover interest thereon *from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt.*" (Emphasis supplied.)

SBCERA recognizes that some prejudgment interest is owed. The only issue is when it began to run. The court of appeal correctly ruled that interest cannot start to run before an applicant has submitted sufficient evidence to establish his right to the benefit that was erroneously denied and the agency has been given sufficient time to conduct the ordinary administrative processes to make its decision on the evidence submitted to it. Petitioner's testimony in support of his "inability to ascertain the permanency" of his incapacity was not presented until the formal hearing on December 15, 2011. (3 AR 1599) The Board itself, which is the only entity with the power to actually award such pre-application date benefits, had no opportunity to consider that evidence until after the hearing officer's report and recommendation was finalized on July 16, 2012, and the matter was returned to the Board. Pursuant to Petitioner's request submitted to SBCERA on July 30, 2012, Board consideration of the hearing officer's recommendation was set for October 4, 2012. (3 AR 1736, 1739)

It would have been an unconstitutional gift of public funds to have paid Petitioner retroactive benefits prior to the time he met his burden of proof. See San Marcos Water Dist. v. San Marcos Unified Sch. Dist.

(1986) 42 Cal. 3d 154, 167 (paying an invalid assessment would be a gift of public funds). Paying benefits, regular or retroactive, before Petitioner met his burden of proving entitlement to them, also would have violated SBCERA's statutory and fiduciary mandate to investigate claims and only pay those benefits that are valid. McIntyre v. San Bernardino County Employees Retirement Association (1995) 91 Cal.App.4th 730, 734.

XI

THE COURT OF APPEAL DECISION

The court of appeal simply held that when a person is required to file an application and to meet a specified burden of proof to overcome a statutory presumption, prejudgment interest does not begin to run until the application is filed, sufficient evidence has been presented to establish the applicant's entitlement to the benefit sought, and the retirement board has been given sufficient time to complete the administrative procedures to rule on that evidence. The court of appeal cited multiple cases holding that prejudgment interest is awarded to compensate for benefits "wrongfully withheld," and it stated that benefits have not been wrongfully withheld unless and until there is both an application for them and proof sufficient to overcome the statutory presumption. (Slip opinion pages 8-16.) See, in particular, AFL-CIO v. Unemployment Insurance Appeals Board (1996) 13 Cal.4th 1017, 1026, discussed in the slip opinion at pp. 9-10 ("Benefits . . . are due promptly only after a claimant has established benefit eligibility. . . . The delays inherent in this system are not, however, tantamount to a 'wrongful withholding' of benefits giving rise to section 3287(a) prejudgment interest. . . ."); and San Diego Deputy Sheriffs Assn. v. San Diego County Civil Service Comm. (1998) 68 Cal.App.4th 1084, 1094, discussed in the slip opinion at p. 10 ("The central theme of AFL . . . 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.”).

Further examination of the cases shows a consistent principle. Prejudgment interest begins to run when the money is unconditionally owed and should have been paid, and not before. Thus, where an employer wrongfully fails to pay an employee the proper wages, interest will run from the date of each paycheck that the employee was denied, because the employee’s entitlement existed without any need of an administrative decision, and that entitlement would have been fulfilled but for the employer’s wrongful act. (See, e.g., Currie v. Workers' Comp. Appeals Bd. (2001) 24 Cal.4th 1109 [wrongful termination]; Olson v. Cory (1983) 35 Cal.3d 390 [pay wrongfully reduced]; Mass v. Bd. of Education (1964) 61 Cal.2d 612 [wrongful termination]; Goldfarb v. Civil Service Comm'n (1990) 225 Cal.App.3d 633 [wrongful demotion]). Where, in contrast, the plaintiff’s entitlement to receive the payment does not exist independently, but requires an application supported by evidence upon which an administrative agency is obligated to act, the payment has not been wrongfully denied unless and until the agency actually makes a decision that erroneously denies payment, or unreasonably delays such a decision after sufficient evidence has been submitted. (See, e.g. AFL-CIO, *supra*, 13 Cal.4th at 1022 [interest on unemployment benefits not due unless and until such benefits are wrongly denied; the purpose of interest in such a case is to compensate for “the egregious delay in receiving benefits *caused by the necessity of filing a mandamus action*”] [emphasis supplied]; Tripp v. Swoap (1976) 17 Cal.3d 671, 682-83 [interest on wrongfully denied welfare benefits is owed “once eligibility is determined” and runs “as of the date the applicant is first entitled to receive the aid”]; Weber v. Board of Retirement

(1998) 62 Cal.App.4th 1440 (1998) [interest on disability retirement benefits not due unless and until such benefits are wrongly denied]).

Against this backdrop of uniformity of principle, Austin v. Board of Retirement (1989) 209 Cal. App. 3d 1528, 1534, is the lone potential exception, discussed at slip opinion pp. 12-13 (“If Austin had not been wrongfully denied disability retirement benefits, he would have obtained the benefits of the moneys paid as of the date of the accrual of each payment.”) However, the court of appeal in the instant case, which is the same court of appeal and division that previously decided Austin, explicitly disagreed with Austin, and declined to follow it, to the extent that it could be read to require interest to begin running during “the period before [Petitioner] filed his application for, and proved his entitlement to, the disability benefits.” (Slip Op. at 16).

The key holding with respect to the proper start date for the running of prejudgment interest appears on page 17 of the slip opinion as follows:

Although the trial court in this case properly found, and SBCERA does not contest on appeal, Flethez was entitled to retroactive disability retirement benefits from the day following the last day he received regular compensation (i.e., July 15, 2000), it erred by awarding him section 3287(a) interest on those retroactive benefit payments attributable to the period from July 15, 2000, through the time he applied for, and proved his right to receive, such payments. [Footnote] However, based on the record on appeal, we cannot conclude with certainty on what date Flethez, in fact, established his right to receive retroactive disability retirement benefit payments pursuant to Government Code section 31724. SBCERA asserts that date was December 15, 2011, the date

of the administrative hearing. However, the parties briefing and evidence in the record cited on that issue is insufficient for us to make that factual finding on appeal. On remand the court is directed to conduct further hearings to determine that question of fact and then award Flethez the appropriate amount of section 3287(a) prejudgment interest from that date.

The court of appeal's decision rests firmly on the legal principle that prejudgment interest is awarded on a separate basis from the award of the retroactive benefits themselves, and runs only from and after the date that the applicant's right to the benefit has been established. This is fully consistent with the governing case law and statute, which awards prejudgment interest only for any *wrongful* delay caused by the retirement board, not delay caused by the applicants themselves or by the ordinary delays inherent in the disability application process.

Petitioner contends the court of appeal opinion conflicts with other cases. That contention misstates the record, ignores most of the analysis of the court of appeal, ignores Petitioner's burden of filing an application and proving a basis for a pre-application retroactive disability retirement, and misstates the holdings of the cited cases. Most importantly, the Petitioner's argument misstates the holding on prejudgment interest in the controlling case, Weber v. Board of Retirement (1998) 62 Cal.App.4th 1440. Footnote 3 on page 6 of the Petition proffers Weber's conclusion, at page 1449, that disability benefits themselves can "vest retroactively" to support its assertion that prejudgment interest automatically follows the same rule whenever such benefits are granted. In fact, the Weber decision rejected precisely that argument:

Petitioners argue that implicit authority to award

section 3287(a) interest is contained in Government Code section 31724's requirement that the disability retirement allowance "shall be effective" as of a date which precedes the eligibility determination. Such requirement, petitioners reason, constitutes a "statutory mandate" that beneficiaries be compensated with interest. *There is no mandated interest implied in the requirement that payment of benefits be retroactive to an earlier "effective" date.* Weber, *supra*, 62 Cal.App.4th at p. 1449 (emphasis supplied).

In summary, all of the cited cases, possibly excepting the court of appeal's own prior decision in Austin, are consistent with the holding of the court of appeal that when a party is required to file an application and to meet a specific burden of proof to overcome a statutory presumption, prejudgment interest does not begin to run until benefits are wrongfully withheld, and withholding does not become wrongful until (1) the required application is filed and (2) the burden of proof is met through evidence provided in regular proceedings, and (3) only a reasonable time to allow the ordinary administrative procedures to consider that evidence has passed before there is a final decision. The purported conflict among the cases does not exist.

CONCLUSION

Civil Code § 3287 provides that prejudgment interest does not begin to run until the right is "vested on a particular day" and does not run "during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt." Here, SBCERA was prevented by law (Government Code § 31724) from paying disability retirement benefits to Petitioner until he proved his legal entitlement to them to the SBCERA Board of

Retirement and the Board acted on his application.


As to his claim for disability benefits for the period *preceding his filing his disability retirement application*, Petitioner did not even seek to rebut the application-filing-date presumption until after August 5, 2010, when the Board granted his original claim for disability retirement benefits retroactive to 2008.

Accordingly, no prejudgment interest for damages caused by the Retirement Board's alleged wrongful delay could have accrued until sometime after August 5, 2010, providing sufficient time for the Board to conduct the ordinary administrative processes necessary to evaluate the claim for additional retroactive benefits.

In the decision below, the court of appeal concluded that it could not determine that precise date and thus remanded to determine those facts based on the wrongful delay principle described in Weber. Because there is no serious question of the correctness and fairness of the legal principle applied by the decision below, this Court should deny the Petition.

DATED: June 18, 2014

ARIAS & LOCKWOOD

By 
Christopher D. Lockwood
Attorneys for respondent
SBCERA

WORD COUNT CERTIFICATION

This brief was prepared in Times New Roman 13 point type.
According to Word Perfect, it contains 6206 words.


Christopher D. Lockwood

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action. My business address is 225 West Hospitality Lane, Suite 314, San Bernardino, California 92408.

On June 18, 2015, I served the following document described as **ANSWER TO PETITION FOR REVIEW** by placing a true copy of the original thereof enclosed in sealed envelopes addressed as follows:

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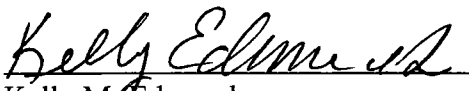
Civil Division
SAN BERNARDINO COUNTY SUPERIOR COURT
303 West Third Street
San Bernardino, California 92415-0210
(Case No.: CIVDS 1212542)

California Court of Appeal,
Fourth District, Division One
Symphony Towers
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 18, 2015 at San Bernardino, California.


Kelly M. Edmunds