

BEFORE THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application to)	CASE NO.: 3559
Purchase Military Service Credit by)	OAH NO.: N-2000100101
LEO W. MCINTYRE,)	BOARD DECISION
)	No.
Respondent.)	(Precedential)
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PRECEDENTIAL DECISION

This matter was heard before the Board of Administration of the California Public Employees' Retirement System at its regular meeting on June 20, 2001, at Sacramento, California, pursuant to the Board's determination at its meeting of March 21, 2001, to decide the matter itself rather than adopt the Proposed Decision of the Administrative Law Judge.

Respondent Leo W. McIntyre represented himself. Paul R. Ramsey, Senior Staff Counsel, appeared on behalf of the Chief Executive Officer of the California Public Employees' Retirement System.

After reviewing the record, and considering arguments, the Board of Administration of the California Public Employees' Retirement System, adopted its own decision as follows:

FINDINGS OF FACT

I

Respondent Leo W. McIntyre (hereinafter "Respondent McIntyre") was employed with the City of Monterey, a local contracting agency, as a Deputy Director of Engineering and Maintenance. By virtue of this employment, Respondent McIntyre was a local miscellaneous member of the California Public Employees' Retirement System (hereinafter "CalPERS").

II

In August, 1989, Respondent McIntyre retired from his position as Deputy Director of Engineering and Maintenance.

III

In 1997 with an effective date of January 1, 1998, the City of Monterey and CalPERS modified their contractual relationship to allow for the purchase of service retirement credit for prior military service of employees retiring from the City of Monterey.

IV

On November 20, 1998, Respondent McIntyre requested from CalPERS a "military cost quotation" and in conjunction therewith, submitted documentation attesting to his World War II military service from October 18, 1944 to July 2, 1946 and his Korean War military service from October 30, 1950 to July 19, 1952. Via the request for a "military cost quotation" and submission of military service records, Respondent McIntyre sought to purchase service retirement credit for both periods of his military service.

V

By letter dated May 4, 1999, CalPERS staff informed Respondent McIntyre, that after review of the documents submitted by him, CalPERS determined that he had two separate periods of active military service. This letter further informed Respondent McIntyre that he would be permitted to "select which period of service to elect to receive military credit. **Only one (1) period may be elected** (emphasis in original).

VI

By letter dated May 12, 1999, Respondent McIntyre stated his objection to CalPERS staff's determination that he could only elect one of his two periods of active military service and further contended that he should be allowed to utilize in combination both of his two periods of active military service up to the statutory maximum of four (4) years pursuant to Government Code Section 21027.

VII

By letter dated January 31, 2000, CalPERS, through its Chief Executive Officer, informed Respondent McIntyre that it had considered his request to purchase both of his periods of active military service, but rejected same on the ground that the provisions of Government Code section 21027 limited him to the election of only one period of active military service.

VIII

By letter dated February 9, 2000, Respondent McIntyre appealed CalPERS staff's determination that pursuant to the provisions of Government Code section 21027, he could only purchase one of his two periods of military service for purposes of service retirement credit.

IX

A hearing on Respondent McIntyre's appeal was held before an Administrative Law Judge on December 12, 2000. In a Proposed Decision dated January 18, 2001, the Administrative Law Judge affirmed CalPERS staff's decision and denied Respondent McIntyre's appeal.

X

At its March 21, 2001 meeting, the Board considered the Proposed Decision of the Administrative Law Judge and concluded not to adopt it, but instead to decide the matter itself on the record after affording the parties the opportunity for further argument.

DETERMINATION OF ISSUES

I

In the absence of a statutory provision to the contrary, the moving party bears the burden of proof, and that burden is unaffected by the rule that pension statutes are to be liberally construed. (See 1 California Public Agency Practice, Section 39.03.) As held by the court in *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, “[a]s in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the burden of going forward and the burden of persuasion by a preponderance of the evidence”. (*Id.* at 1051.) Respondent McIntyre as asserting the affirmative right to purchase for purposes of service retirement both periods of his military service, thus bears the burden of going forward and the burden of persuasion by a preponderance of the evidence.

II

At issue in the instant case is whether Respondent McIntyre is entitled to purchase for purposes of service retirement credit both periods of his prior military service. The statutory entitlement to purchase for purposes of service retirement credit prior military service and the provisions governing this right are set forth in Government Code section 21027. Government Code section 21027 provides in pertinent part:

- (a) Public Service with respect to a local member who retired pursuant to this part before the effective date of the election of his or her employer to be subject to section 21024 also means active service with the Armed Forces or the Merchant Marines of the United States...
- (c) The public service shall not include military service (1) in any period for which credit is otherwise given under this Article or Article 4 (commencing with Section 20990), (2) that is not continuous, or (3) to the extent that total credit under this Section would exceed four years.
- (d) Notwithstanding Section 21034, a retired person may select which of two or more periods of continuous service entitles him or her to receive public service under this section.

III

Pursuant to the foregoing statutory provisions, Respondent McIntyre contends that he is entitled to purchase for purposes of service retirement credit both of his two distinct periods of military service. Conversely, CalPERS staff contends that the foregoing statutory provisions limit Respondent McIntyre for purposes of the purchase of service retirement credit to only one of his two distinct periods of military service.

The parties' differing interpretations of the provisions of Government Code section 21027 present for this body an issue of statutory interpretation. The interpretation of a statute is an exercise in ascertaining the intent of the legislature. (*Dyna-Med, Inc. v. Fair Employment and Housing Comm.* (1987) 43 Cal.3d 1379, 1386.) In construing a statute, the meaning of each and every word contained therein is to be given effect. (*Cal. Teachers' Assn. v. Governing Bd. Of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 634.) In giving meaning to each word within a statute, the usual and ordinary understanding of each word is afforded. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Unless specifically defined within the statute, the usual and ordinary meaning of a statutory word is its dictionary definition. (*Ceja v. J.R. Wood, Inc.* (1987) 196 Cal.App.3d 1372, 1375.) The construction of a statute in a fashion that renders any of its terms meaningless or otherwise nonessential is to be avoided. (*G.E. Capital Auto Fin. Services, Inc. v. Superior Court* (2001) 88 Cal.App.4th 136, 143.)

In defining “public service”, the first statutory dictate is that the military service be “active”. (Government Code section 21027(a)). There is no dispute presented as to whether both periods of Respondent McIntyre’s military service were “active” within the meaning of Government Code section 21027.

The second statutory dictate for purposes of qualifying as “public service” is that the active military service be “continuous”. (Government Code section 21027(c)). As established by the documentation proffered by Respondent McIntyre, each of his two periods of active military service were chronologically uninterrupted and thus can only be classified as “continuous”, at least individually. Consequently, in and of themselves each distinct period of Respondent McIntyre’s active military service was “continuous”.

What is disputed by the parties is whether the term “continuous” requires that both of Respondent McIntyre’s distinct periods of active military service be “continuous” in relation to each other or, in other words, whether his service period must be uninterrupted. In support of the interpretation of the statutory dictate that both periods of active military service must be “continuous” in conjunction with each other, CalPERS staff references the permissive statutory provision codified in Government Code section 21027(d) that the member may “select which of two or more periods of continuous service” to utilize for purposes of purchasing service credit. This interpretation is premised upon the construction of the term “which” in a singular sense. Similarly referencing the provisions of Government Code section 21027(d), Respondent McIntyre proffers a differing interpretation of the term “which” supported by reference to the dictionary definition that the term encompasses the alternative of a singular or plural selection. (See Webster’s New World Dictionary (3d ed. 1988), at p. 1521.)

Both of the foregoing statutory interpretations constitute reasonable readings of the provisions of Government Code section 21027. As such, an ambiguity exists. It is black-letter law that pension statutes are to be liberally construed to achieve their

beneficent purpose, provided the intent of the legislature is not violated. (See *City of Huntington Beach v. Board of Administration, Public Employees' Retirement System* (1992) 4 Cal.4th 462, 472.) Acceptance of the statutory interpretation proffered by Respondent McIntyre is also consistent with the avowed purpose of Government Code section 21027, which is to extend to local employees of contracting agencies the right to purchase service credit for purposes of retirement for up to four years of active military service. (See e.g., *Lungren v. Deukmejian, supra* at 735.) Allowing the member to purchase military service credit when he actively served in the military on multiple occasions rather than limiting same to only active service on one occasion but for four or more years clearly serves the overriding purpose of the legislature.

CalPERS staff's construction also runs afoul of the legislative interpretation maxim that one should not read words into a statute that the legislature did not utilize. (See e.g., *Lungren v. Deukmejian, supra* at 735.) CalPERS staff's construction of the term "continuous" is more akin to the term "contiguous" in requiring that all distinct periods of active military service be in a continuous line of service. As the term "continuous" was chosen by the Legislature rather than the term "contiguous", it would be inappropriate to adopt CalPERS staff's position. Further and aside from the express omission of the term "contiguous", the Legislature had it intended that all periods of active military service in conjunction be "continuous" presumptively rather than utilizing the selection term of "which of two or more", would have utilized the term of selection "which one of two or more".

IV

Respondent McIntyre has met his burden of proof and persuasion that he is entitled to purchase for purposes of service credit both of his periods of active military service up to the statutory maximum of four years pursuant to Government Code Section 21027.

ORDER

1. Respondent is entitled to purchase for purposes of service retirement credit both of his periods of active military service up to the statutory maximum of four years pursuant to Government Code Section 21027.
2. Pursuant to Government Code Section 11425.60, the Decision is certified for publication as a Precedential Decision in its entirety.

I certify that on August 15, 2001, The Board of Administration, California Public Employees' Retirement System, at its meeting at Sacramento, California, made and adopted the foregoing Decision.

BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
JAMES E. BURTON, CHIEF EXECUTIVE OFFICER

Dated: August 24, 2001

BY _____
BARBARA HEGDAL
ASSISTANT EXECUTIVE OFFICER