

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues Against:**

**ERIC C. LUND, and CALIFORNIA HIGHWAY PATROL,**

**Respondents**

**Agency Case No. 2019-0700**

**OAH No. 2019110122**

**PROPOSED DECISION**

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via telephone and video conference on September 30, 2021, from Sacramento, California.

Charles Glauberman, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Susannah Lund, Attorney at Law, represented respondent Eric C. Lund, who was not present at hearing.

There was no appearance by or on behalf of the California Highway Patrol (CHP). CalPERS established that it served the CHP with a Notice of Hearing.

Consequently, this matter proceeded as a default hearing against the CHP pursuant to Government Code section 11520, subdivision (a).

Oral and documentary evidence was received. The record was held open to allow the parties to file closing and reply briefs no later than November 18, 2021, at which time the record would close. CalPERS's briefs were marked for identification as Exhibits 25 and 26. Respondent's briefs were marked for identification as Exhibits F and G. The briefs were admitted as argument. At 4:51 p.m. on November 18, 2021, CalPERS submitted a Request for Official Notice. On November 19, 2021, respondent objected.<sup>1</sup> Given the late hour of CalPERS's request, the record was re-opened for the limited purpose of accepting respondent's objection. The record closed and the matter was submitted for decision on November 19, 2021.

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<sup>1</sup> CalPERS submitted a Request for Official Notice of a prior, nonprecedential, CalPERS decision involving felony forfeiture (*In re Danser*, OAH No. 2010060641). That case involved a municipal court judge who was convicted of conspiracy to obstruct justice when he and a police officer conspired to dismiss traffic tickets or offer other favorable treatment to their friends or people of high standing. CalPERS initiated forfeiture proceedings under Government Code section 75526, which applies to judges. Respondent objected to CalPERS's request on relevancy grounds.

CalPERS's request is denied for multiple reasons. The decision is nonprecedential and may not be given any affect. Additionally, the *In re Danser* fact pattern as well as the felony forfeiture statute are so distinguishable from the instant matter as to render them irrelevant.

## **ISSUES**

1. Whether respondent established CalPERS was incorrect in its determination that respondent's retirement benefit was subject to felony forfeiture, and whether CalPERS's implemented forfeiture and repayment plan should be upheld.
2. Whether respondent established the CHP should reimburse him for his attorney fees.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. The CHP employed respondent starting on September 26, 1988. From that date until his retirement, respondent was a state safety member of CalPERS. On or about September 25, 2014, respondent submitted an application for service retirement. He retired for service effective December 15, 2014. Respondent received his first retirement pay warrant on January 5, 2015.
2. On October 30, 2018, in the Solano County Superior Court, respondent was convicted by a jury of possession of over 600 images of child or youth pornography in violation of Penal Code section 311.11, subdivision (c)(1), a felony. The District Attorney's complaint against respondent alleged he committed this felony "between June 20, 2014 and October 16, 2014." Prior to deliberations, the court instructed the jury:

It is alleged that the crime occurred between June 13, 2014 and October 16, 2014. The People are not required to prove

that the crime took place exactly on that day but only that it happened reasonably close to that day.<sup>2</sup>

3. Respondent was sentenced to five years in prison. He appealed his conviction. In a published decision, the appellate court affirmed respondent's conviction. (*People v. Lund* (2021) 64 Cal.App.5th 1119.) No evidence of further appeal was presented.

4. In a letter dated May 14, 2019, CalPERS explained to respondent that it had been informed of his conviction. The letter also stated:

Further, we have been informed that the felony conduct arose out of the performance of your official duties as an employee for the [CHP], and the earliest date of commission of the felony was on June 20, 2014. Accordingly, pursuant to the statute cited below, a portion of your retirement benefit is subject to forfeiture.

5. Government Code section 7522.72 provides in pertinent part:

[¶] . . . [¶]

(b)(1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for

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<sup>2</sup> The reason for the discrepancy between the court's date and the District Attorney's date was not explained at hearing. CalPERS argued in its closing brief that the forfeiture date should be June 13, 2014. The May 14, 2019 determination letter states forfeiture would begin from June 20, 2014.

conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

[¶] . . . [¶]

(c) (1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. . . .

6. On a one-page "Forfeiture of Benefits Employer Form," dated December 12, 2018, the CHP informed CalPERS respondent was convicted of a felony on October 30, 2018. The "Job Related" box on the form was checked. Written in the "Earliest Date of Commission of the Felony" box was: "June 13, 2014 but some evidence dates back to 2009." Hand-written in different handwriting and ink was "Docs have 6/20/14."

7. CalPERS determined that based on a "first commission of the felony" date of June 20, 2014, and a retirement date of December 11, 2014, respondent forfeited 0.536 years of service credit. CalPERS recalculated respondent's retirement benefit based on his adjusted service credit, which was 29.279 years. Respondent received a retirement benefit from January 5, 2015, through May 2019 based on the

original service credit years, which resulted in an overpayment of \$40,644.21 for that period. Under Government Code section 7522.72, subdivision (d)(1), respondent was entitled to a return of his contributions without interest between the first date he committed the felony and his retirement date. CalPERS subtracted respondent's returnable contributions, \$6,616.42, from the overpayment, for a total due to CalPERS of \$34,027.79.

8. CalPERS attached a repayment election form to the May 14, 2019 letter. Respondent had two options: a lump sum repayment or an "actuarial equivalent reduction" (AER). The latter is a permanent \$158.34 reduction in his monthly benefit amount. CalPERS gave respondent until June 15, 2019, to return the form or present "argument, information, or documentation," to CalPERS "relative to the determination outlined in this letter." If CalPERS did not receive the form or a response, it would choose the AER, which would start with the August 1, 2019 pay warrant.

9. By letter dated June 12, 2019, respondent appealed. Among his arguments, respondent stated due process required he be afforded a hearing regarding whether the felony was job-related.

10. Starting on the July 1, 2019 pay warrant, CalPERS adjusted respondent's benefit amount based on the felony forfeiture. Respondent did not return the form to choose a lump sum repayment or monthly reduction. His appeal letter focused on whether felony forfeiture applied and CalPERS's failure to afford him due process. CalPERS received respondent's letter of appeal and did not respond. On August 1, 2019, respondent's benefit was reduced again based on the AER.

11. On November 1, 2019, CalPERS filed a Statement of Issues against respondent seeking to uphold the felony forfeiture and its finding that the felony

“arose out of and in the performance of” respondent’s official duties. CalPERS explained the issues in this matter are limited to “whether CalPERS is correct in its determination that as a result of the final conviction of felony against [respondent] on October 30, 2018,” respondent’s service credit should be reduced by 0.536 years and he should reimburse CalPERS the overpayment he received from January 2015 until May 2019.

12. Respondent submitted an appeal to CalPERS’s May 14, 2019 determination letter as noted above. No Notice of Appeal or Defense was submitted at hearing regarding the Statement of Issues. There was no challenge to jurisdiction based on the absence of a Notice of Defense. An administrative hearing was held before an Administrative Law Judge of the Office of Administrative Hearings pursuant to Government Code section 11500 et seq.

## **CalPERS’s Evidence**

### **CALPERS’s FELONY FORFEITURE DETERMINATION**

13. Robin Owens is an Associate Governmental Program Analyst in CalPERS’s Retirement Administration and Support section. Her duties include calculating retirement benefits and addressing idiosyncrasies. Ms. Owens has been on the “felony forfeiture team” since 2013, when Government Code section 7522.72 was first effective. She testified at hearing regarding her review and CalPERS’s determinations relating to respondent’s retirement benefit.

14. As a member of the felony forfeiture team, Ms. Owens receives complaints from members, reviews the validity of the complaints and forfeitures, and communicates with the employer regarding the nature of the felonies. She stated: “with the court documentation and the information we receive from the employer, we



determine whether or not we feel felony forfeiture applies based on the statute and the job relatedness....” The team removes service credit and adjusts the benefit if the member has retired.

15. Ms. Owens considers the “Forfeiture of Benefits Employer Form” that the employer fills out when making the determination. In respondent’s case, the court documentation established there was a felony conviction. To determine job-relatedness, CalPERS reviewed the jury verdict, the court’s “Abstract of Judgment,”<sup>3</sup> CHP’s employer form, and media coverage. CalPERS informed the CHP that felony forfeiture would apply if the felony “is arising out of or in the performance of official duties,” but gave no specific information regarding how to make the determination. The CHP reported there was evidence found in respondent’s CHP locker that contributed to the felony conviction and checked the box on the employer form that the felony was job-related. Consequently, CalPERS determined the felony was “job related” and the first commission date was June 20, 2014.

16. Ms. Owens also explained the AER is based on a calculation of how long a person is projected to receive the benefit (how long he will live), how much the person owes, and how long it will take to pay the full amount. For respondent, the calculation resulted in a \$158 monthly deduction for the lifetime of the benefit. Because CalPERS did not receive the election form stating whether respondent

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<sup>3</sup> The jury verdict is on a standard form dated October 30, 2014, that states the jury found respondent guilty of Count 1, a violation of Penal Code section 311.11, subdivision (c)(1). The Abstract of Judgment, dated May 1, 2019, also states respondent was convicted of a felony violation of Penal Code section 311.11, subdivision (c)(1), and that the imposed sentence was five years.

preferred a lump sum repayment or a monthly deduction, CalPERS initiated the monthly reduction.

17. Ms. Owens explained she is not aware of any criteria CalPERS offers to employers to determine whether the felony is job-related. She also stated the employer or CalPERS can make the determination, explaining "I don't think it's one or the other," but it's CalPERS's decision that is final. Here, CalPERS based its final determination on the fact that the illegal material was found in respondent's "personal CHP locker." CalPERS determined the contraband was "in [respondent's] possession on the job."

18. Regarding the "earliest commission of the felony," CHP informed CalPERS the earliest child pornography files found on the flash drive in respondent's locker dated back to 2009. CalPERS did not have information regarding when the flash drive was recovered, but CHP affirmed there was "job-related felony conduct" starting in June 2014.

19. Based on this information, Ms. Owens initiated forfeiture procedures. On May 13, 2019, she entered a note in respondent's CalPERS file stating the account had been adjusted to reflect the forfeiture. The following day, CalPERS sent respondent the notice of forfeiture informing him they had learned of his felony, he was overpaid based on the retroactive forfeiture, and he had a choice between the lump sum repayment or the monthly AER. The letter allowed respondent until June 15, 2019, to respond. On June 12, 2019, however, Ms. Owens entered a note that the AER was to be effective for the July 1, 2019 pay warrant. She later corrected that to be effective on August 1, 2019. Ms. Owens explained she has to put the change into the controller's office "pretty far in advance" to affect a change in a pay warrant.

## **DETECTIVE JEFF DATZMAN'S TESTIMONY**

20. Jeff Datzman is a detective with the City of Vacaville Police Department (Vacaville PD). He is the lead detective with the digital investigations unit, which investigates digital crimes using, for example, the Internet, computers, or cell phones. Detective Datzman was the primary investigating officer for Vacaville PD assigned to investigate respondent's criminal activities. He testified at hearing.

21. Mr. Datzman also testified in respondent's criminal trial regarding his investigation. At hearing and during the criminal trial, he explained in detail the process law enforcement uses to identify when child pornography files are accessed, downloaded, and shared. His trial court testimony and underlying investigation is exhaustively detailed in the appellate court decision *People v. Lund* (2021) 64 Cal.App. 5th 1119.

22. Based on his investigation, Detective Datzman obtained a warrant to search respondent's car. When respondent arrived at the CHP for his shift on October 16, 2014, officers searched his personal vehicle. In the vehicle were a laptop, an external hard drive, and multiple USB flash drives. Detective Datzman confirmed there were child pornography files on the hard drive.

23. The CHP conducted its own investigation, which included a search of respondent's locker. The CHP seized a flash drive from respondent's CHP locker. The drive had deleted child pornography files as well as files related to respondent's official duties. The files were dated between October 2009 and December 22, 2013. The flash drive was provided to Detective Datzman following a court order. He was not informed of the date the CHP seized the flash drive.

## **Respondent's Evidence**

24. Respondent submitted a performance evaluation dated March 20, 2014, in which he was rated "excellent" or "proficient" in all areas. His supervisor added a note commending respondent for his "unparalleled commitment to the area and [his] shift." In a probationary review of respondent in his position as sergeant, respondent was rated as excellent or proficient in all areas. His supervisor wrote that respondent's level of commitment was apparent, ability to accept responsibility was commendable, and his calm demeanor was an asset to his leadership role. The evaluations were admitted as administrative hearsay.

## **PRINCIPLES OF LAW**

### **Burden of Proof**

25. 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. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) In the absence of a statutory provision to the contrary, the applicant has the burden of proving a right to the claimed entitlement or benefit; said burden is unaffected by the general rule that pension statutes are to be liberally construed. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) Additionally, Evidence Code section 664 creates a presumption that CalPERS's official duty has been regularly performed. Respondent bears the burden of rebutting that presumption.

26. Respondent argued to the contrary that CalPERS bears the burden to prove the felony forfeiture was proper. Respondent's arguments were not persuasive.

The party asserting the affirmative bears the burden, and respondent asserts he is entitled to his retirement benefit based on his years served. Respondent must also rebut the presumption that CalPERS's official duty of processing the felony forfeiture was "regularly performed."

## **Felony Forfeiture Provisions**

27. Government Code section 7522.72 states, in relevant part:

(a) This section shall apply to a public employee first employed by a public employer or first elected or appointed to an office before January 1, 2013, and, on and after that date, Section 7522.70 shall not apply.

(b)(1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

[¶] . . . [¶]

(c) (1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.

[¶] . . . [¶]

(e) (1) Upon conviction, a public employee as described in subdivision (b) and the prosecuting agency shall notify the public employer who employed the public employee at the time of the commission of the felony within 60 days of the felony conviction of all of the following information:

(A) The date of conviction.

(B) The date of the first known commission of the felony.

(2) The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(f) The public employer that employs or employed a public employee described in subdivision (b) and that public

employee shall each notify the public retirement system in which the public employee is a member of that public employee's conviction within 90 days of the conviction. The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

[¶] . . . [¶]

## **ANALYSIS**

28. There is no dispute respondent was convicted of a felony. On October 30, 2018, a jury found him guilty of possession of child pornography in violation of Penal Code section 311.11, subdivision (c)(1). He was sentenced to five years in prison. Respondent appealed. The appellate court denied his appeal and affirmed the conviction. The issue before the administrative body, however, is not the details of the felony conviction, but whether CalPERS's determination that respondent was subject to felony forfeiture under Government Code section 7522.72 was proper and whether respondent is entitled to his full retirement benefit.

29. CalPERS presented evidence that its analyst, Ms. Owens, learned of respondent's felony conviction from the CHP and requested the CHP submit a Forfeiture of Benefits Employer Form. CalPERS gave the CHP no instruction about how to fill out the form, including how to determine whether the felony was "job-related," except to recite the language of the statute, which is that the felony is "arising out of or in the performance of" the employee's duties. Ms. Owens testified she also reviewed the jury's verdict and the court's abstract of judgment.

30. Government Code section 7522.72 states that if a member is convicted of a felony for conduct "arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement or other benefits," he "shall forfeit" his accrued rights and benefits. The date of forfeiture is the date of the earliest commission of the felony. CalPERS did not argue respondent's felony was "in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement or other benefits." Consequently, as Ms. Owens identified, the initial inquiry must be to determine whether the felony arose out of or was in the performance of respondent's official duties. If it did not, the earliest commission date is irrelevant.

31. The jury did not convict respondent of a per se, job-related felony. They convicted him of possessing child pornography. The judge specifically instructed the jury that the exact time he possessed the material need not have been proved. The exercise here is not to revisit the details of respondent's felony, but to determine if CalPERS's determination was correctly made.

32. CalPERS's evidence at hearing from Detective Datzman was detailed and persuasive testimony that respondent engaged in the felonious acts for which the jury found him guilty. Those facts were also detailed in the appellate court's decision, which was published and publicly available. But Detective Datzman's testimony and the appellate decision, which issued on June 1, 2021, were not before CalPERS in May 2019 when it determined respondent's felony was job-related.

33. Ms. Owens stated that CalPERS based its ultimate decision that respondent's felony was job-related on the CHP's assertion about the flash drive found in respondent's CHP locker. She stated CalPERS asked, "specifically how was this [felony] job-related, and they relayed that it was due to the information being stored



at the member's personal CHP locker." When asked whether the material being in the locker "was the determinative factor for CalPERS," Ms. Owens responded: "To determine job relatedness, yes."<sup>4</sup>

34. This fact, though probative, does not answer the mandate of the statute, which is that the felony arose out of or was in the performance of the employee's official duties. The CHP provided Ms. Owens no information as to how the flash drive in the locker arose out of respondent's duties as a CHP sergeant. Nor was Ms. Owens able to articulate how respondent was using the flash drive with the offending files on it "in the performance of his official duties." On the contrary, without providing any criteria or factors, she stated she used the information CalPERS gathered to determine "whether or not we feel felony forfeiture applies."

35. CalPERS argued, without citation, in its closing brief:

Only a loose nexus between employment and felony is required for felony forfeiture purposes. Once an employee enters the employers' property, such as the parking lot, felony forfeiture applies. CalPERS need not point to a specific duty being performed at the time of the felony commission. Instead, committing the felony while being on

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<sup>4</sup> CalPERS never learned when the contraband was found in respondent's locker. Ms. Owens noted she was told the files dated back to 2009 and the CHP's Forfeiture of Benefits Employer Form listed the "earliest date of commission of the felony" as June 13, 2014. CalPERS used the date June 20, 2014. The only place that date appears is the criminal complaint against respondent.

the employers' property, or while being on duty, satisfies the statute.

While CalPERS's argument supports Ms. Owen's assertion that the felony forfeiture team reviews the available information and determines whether they have a "feeling" that the felony was job related, it does little to offer a legal standard. CalPERS also asserted that merely by being present on his employer's grounds, he is performing official duties. CalPERS's arguments on this point are not persuasive.<sup>5</sup>

36. To be sure, neither the language of the statute nor any court have provided a test as to how to determine if a felony is job-related. The court in *Wilmot v. Contra Costa County Employees' Retirement Association* (2021) 60 Cal. App. 5th 631, 662-663), review denied (May 12, 2021), inquired as to the purpose of forfeiture statutes and found a primary purpose of public employee pensions is to induce faithful service. (*Id.* at p. 662.) Withholding the inducement for performance that is not faithful is a logical explanation for the statute. Other cases have found a basis for job-related felony forfeiture involving, for example, an employee who draws public pay while stealing public property, embezzling public funds, or using public facilities or

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<sup>5</sup> Also not persuasive are CalPERS's citations to workers' compensation case law that put forth the idea that a workplace injury is compensable if the employee was engaged in an act that is "reasonably contemplated by the employment." (CalPERS's Post Hearing Brief at p. 6.) If anything, the citations directly contradict CalPERS's arguments, as possession of child pornography is not an act that is reasonably contemplated by employment as a CHP officer.

equipment to run an illegal business, present “the antithesis of a ‘faithful’ servant of the public trust.” (*Id.* at p. 663.)

37. This reasoning seems to require more than a “loose nexus” and physical proximity. CalPERS offered no evidence that its determination was based on respondent’s faithless service. On the contrary, respondent argued his service was commendable as noted in his employee evaluations. While respondent’s locker may be related to his job, Ms. Owens identified no official duty respondent was engaging in when he stored the flash drive in his CHP locker, and how respondent’s performance of that duty demonstrated his faithless service. Because the fact of the flash drive in the locker was the basis of CalPERS’s decision and CalPERS offered no other rationale, the forfeiture determination cannot be upheld.

### **Respondent’s Other Arguments**

38. Respondent put forth several arguments at hearing and in his briefing related to the constitutionality of Government Code section 7522.72, the administrative hearsay presented at hearing, and CalPERS’s lack of jurisdiction. The arguments have been considered and found either not persuasive or not properly before this administrative tribunal. In addition, most of the arguments are moot given the findings.

39. Even so, CalPERS’s actions in implementing the forfeiture are concerning. CalPERS offered respondent no opportunity to respond to the felony forfeiture prior to initiating the retirement benefit reduction. On May 13, 2019, Ms. Owens entered a note into respondent’s CalPERS file stating the felony forfeiture had been initiated and would take effect in his July 1, 2019 pay warrant. On May 14, 2019, CalPERS sent respondent a letter stating it determined he was convicted of a felony and that felony

was related to his job. The letter also stated he was required to repay the overage he was paid between January 2015 and May 2019. The letter informed respondent that he had 30 days, until June 15, 2019, to return the repayment option form or to respond "relative to the determination outlined in this letter."

40. On June 12, 2019, three days prior to the deadline, Ms. Owens entered a note stating the AER would be applied as of the July 1, 2019 pay warrant (later corrected to August 1, 2019). CalPERS received respondent's appeal on June 13, 2019. The appeal right is made illusory by CalPERS's acting on the felony forfeiture prior to sending the letter and acting on the repayment stemming from that forfeiture prior to receiving respondent's appeal, which was timely submitted.

41. Respondent was entitled to due process, which includes, "written notice reasonably calculated to apprise him of the pendency of the section 7522.72 action, and the right to present his objections before an impartial decision maker." (*Hipsher v. Los Angeles County Employees Retirement Association* (2020) 58 Cal. App. 5th 671, 685, review denied (Mar. 17, 2021) [finding the retirement entity must afford due process to an employee subject to forfeiture].) The operative word here is "pendency," which implies the employee is entitled to due process *prior* to the retirement system taking a portion of his retirement benefit. Here, the forfeiture was implemented before CalPERS's determination letter issued. The *Hipsher* court found the lack of due process was prejudicial, which may also have been the case here, but for respondent's opportunity to appeal. He has now been afforded a hearing before an impartial decision maker.

## **ATTORNEY FEES**

42. Respondent also argued he is due attorney fees from the CHP based on its failure to appear at hearing. Government Code section 11520, subdivision (b), states, in part, that if a respondent defaults by failing to file a Notice of Defense or to appear at hearing:

The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

43. Respondent argued the proceeding turned on "the truth of the allegation from [the CHP] that the felony was job related." Respondent was "forced to appear and defend the taking, from which CHP has benefited." As stated above, CalPERS must make the final determination regarding the felony forfeiture. While the CHP gave CalPERS information and opined on the felony's job-relatedness, CalPERS made the ultimate decision, and it is that decision at issue. Additionally, respondent failed to explain how the CHP's failure to appear caused him to incur attorney fees. Regardless of the CHP's appearance, respondent appeared to defend his rights, and is responsible for the fees he incurred.

44. The parties' remaining arguments have been considered and are not found to be persuasive.

## LEGAL CONCLUSIONS

1. Respondent established by a preponderance of the evidence that CalPERS was not correct in its determination that his retirement benefit was subject to felony forfeiture. Consequently, the forfeiture already imposed must be reversed.
2. Respondent did not establish that the CHP should reimburse him for costs, including attorney fees, under Government Code section 11520.

## ORDER

The appeal of Eric C. Lund of CalPERS's felony forfeiture determination is GRANTED. CalPERS shall take all actions necessary to effectuate the reversal of the implemented felony forfeiture.

DATE: December 10, 2021

*Heather M. Rowan*

Heather M. Rowan (Dec 10, 2021 16:52 PST)

HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings