

**ATTACHMENT A**

**THE PROPOSED DECISION**

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

**In the Matter of the Appeal Regarding the Final  
Compensation Calculation of**

**NICHOLAS R. MEIGS, Respondent**

**and**

**STANISLAUS CONSOLIDATED FIRE PROTECTION DISTRICT,  
Respondent**

**Agency Case No. 2021-1142**

**OAH No. 2022040279**

**PROPOSED DECISION**

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video conference on August 10, 2022, from Sacramento, California.

Austa Wakily, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Nicholas R. Meigs (respondent Meigs) appeared and represented himself.

Stacey Sheston, Attorney at Law, represented the Stanislaus Consolidated Fire Protection District (respondent District).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 10, 2022.

## **ISSUE**

Whether Temporary Upgrade Pay and Holiday Pay reported by the District on behalf of respondent Meigs can be used in the calculation of respondent Meigs's final compensation.

## **FACTUAL FINDINGS**

1. Renee Ostrander, Chief of the Employer Account Management Division of CalPERS, filed the Statement of Issues while acting in her official capacity.

Respondent Meigs timely filed an appeal, and this hearing followed.

2. On July 8, 2003, respondent Meigs became a CalPERS member through his employment with respondent District, and was last employed as a Fire Engineer. By virtue of his employment, respondent Meigs is a local member of CalPERS.

3. Respondent District is a public agency that contracts with CalPERS for retirement benefits for its eligible employees. The provisions of respondent District's contract with CalPERS are contained in the California Public Employees' Retirement Law (PERL), which is set forth at Government Code section 20000 et seq. As a contracting agency with CalPERS, respondent District agreed to comply with the California Code of Regulations and the PERL.

4. CalPERS is a defined benefit plan. Benefits for its members are funded by member and employer contributions and by interest and other earnings on those contributions. The amount of a member's contribution is determined by applying a fixed percentage to the member's compensation. A local public agency's contribution is determined by applying a rate to the member compensation as reported by the agency.

5. The amount of a member's service retirement allowance is calculated by applying a percentage figure based upon the member's age on the date of retirement to the member's years of service and the member's "final compensation." In computing a member's retirement allowance, CalPERS staff may review the salary reported by the employer for the member to ensure that only those items allowed under the PERL are included in the member's final compensation for purposes of calculating the retirement allowance.

6. Respondent Meigs retired for industrial disability effective January 15, 2020. He has been receiving his retirement allowance since on or around February 3, 2020.

7. On or about March 5, 2020, CalPERS Office of Audit Services (OAS) completed an employer compliance review of a sample set of employee records for the period of January 1, 2017, through March 28, 2019. With respect to respondent Meigs, the OAS determined that respondent District incorrectly reported Temporary Upgrade Pay and Holiday Pay compensation.

8. Temporary Upgrade Pay is a type of special compensation paid to employees who are required to work in an upgraded position/classification for a limited duration. Respondent District incorrectly reported a retroactive salary

adjustment due to a salary increase as Temporary Upgrade Pay. The correction of this error did not affect respondent Meigs's retirement allowance.

9. Respondent District incorrectly reported Holiday Pay as a lump sum amount. Holiday pay should have been reported as respondent Meigs earned it. In addition, Respondent District incorrectly reported Holiday Pay in excess of the maximum 216 hours per year as specified in the memorandum of understanding regarding employee compensation. The correction of these errors resulted in a \$42.86 reduction in respondent Meigs's retirement allowance.

## **LEGAL CONCLUSIONS**

1. In an administrative hearing concerning retirement benefits, the party asserting the claim 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, note 5.)

2. Under the PERL, an employee's compensation for use in the calculation of a pension benefit "is not simply the cash remuneration received, but is exactly defined to include or exclude various employment benefits and items of pay." (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 198.) Which benefits and items of pay constitute "compensation" and "compensation earnable" is crucial to the computation of an employee's ultimate pension benefits.

3. Final compensation is determined, in part, by determining a member's compensation earnable. "Compensation" is generally defined as "the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours." (Gov. Code, § 20630, subd. (a).)

"Compensation earnable" consists of "payrate" and "special compensation" of the member. (Gov. Code, § 20636, subd. (a).)

4. "Payrate" means "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules." (Gov. Code, § 20636, subd. (b)(1).) Special compensation "includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions." (Gov. Code, § 20636, subd. (c)(1).)

5. The PERL also specifies the manner in which compensation and special compensation must be reported to the Board. For example, when reporting compensation, the employer must identify the pay period in which the compensation was earned regardless of when the compensation was reported or paid. (Gov. Code, § 20630, subd. (b).) The same statute provides that compensation shall be reported in accordance with Government Code section 20636. (*Ibid.*) Under Government Code section 20636, subdivision (c)(3)(A), when reporting special compensation to the Board, the employer must identify the pay period in which the special compensation was earned.

6. Furthermore, the Board has promulgated California Code of Regulations, title 2, section 571 (Regulation 571), which exclusively identifies and defines special compensation items for members employed by contracting agency and school employers. Under Regulation 571, subdivision (b)(5), all special compensation must be "paid periodically as earned."

7. The Holiday Pay at issue constitutes special compensation under Regulation 571, subdivision (a)(5), because it is "additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays." Pursuant to Government Code sections 20630, subdivision (b), and 20636, subdivision (c)(3), and Regulation 571, subdivision (b)(5), respondent Meigs's Holiday Pay, as a form of special compensation, must be reported during the pay period in which it was earned, and not as a lump sum amount.

8. Given the foregoing, the preponderance of the evidence in this case supports CalPERS's determination to exclude respondent Meigs's Holiday Pay in lump sum amounts and to recalculate his final compensation and retirement allowance based on reporting of the Holiday Pay during the period in which it was earned, and in amounts limited by the operative memorandum of understanding.

9. Government Code section 20160, subdivision (b), requires CalPERS to correct any errors made by a contracting agency. Government Code section 20163 provides that "[a]djustments to correct overpayment of a retirement allowance may also be made by adjusting the allowance so that the retired person or the retired person and his or her beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled." Under these circumstances, and based on the applicable laws and regulations, CalPERS properly recalculated respondent Meigs's retirement allowance.

## ORDER

Respondent Nicholas R. Meigs's appeal of CalPERS's re-calculation of his retirement benefit is DENIED.

DATE: August 30, 2022

*Timothy Aspinwall*

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings