

ATTACHMENT E

THE PROPOSED DECISION

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

In the Matter of the Appeal of Unused Sick Leave of:

BLAINE M. MICHAELIS, and CITY OF SAN DIMAS,

Respondents

Agency Case No. 2023-0316

OAH No. 2023080587

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 28, 2023, in Sacramento, California.

Austa Wakily, Senior Attorney, represented Kimberlee Pulido, Chief, Retirement Benefit Services Division, California Public Employees' Retirement System (CalPERS).

Blaine M. Michaelis (respondent) appeared and represented himself.

There was no appearance by or on behalf of the City of San Dimas (City). A notice of hearing was properly served on the City. Consequently, this matter proceeded as a default against the City under Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on November 28, 2023.

ISSUES

(1) Whether CalPERS can convert 125.50 days of sick leave credit that respondent was compensated for into .502 years of service credit; and (2) Whether CalPERS is required and authorized to collect the overpayment of retirement benefits due to improper reporting by the City.

FACTUAL FINDINGS

Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. Respondent became a CalPERS member through his employment with the City of Claremont in 1981. Respondent was last employed as the City Manager for the City. By virtue of his employment, respondent is a local miscellaneous member of CalPERS.

2. Respondent retired on May 4, 2019. He was credited with a total of 35.516 years of service.

3. By letter dated December 20, 2021, CalPERS notified respondent that his service credit was being adjusted from 35.516 years to 35.014 years. Respondent appealed CalPERS's reduction of his years of service credit by letter dated January 15, 2022. On August 16, 2023, Complainant, in her official capacity as Chief of the CalPERS Retirement Benefit Services Division, signed and thereafter filed the Statement of

Issues for purposes of respondent's appeal. The matter was set for evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California.

CalPERS's Evidence

4. The City is a public agency that contracts with CalPERS for retirement benefits for its employees. The City's contract with CalPERS is governed by the California Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.) As a contracting agency with CalPERS, the City must comply with the PERL and its implementing regulations.

5. CalPERS is a defined benefit plan. Member benefits are funded by the member and employer contributions and by interest and other earnings on those contributions. The amount of a member's contributions is determined by applying a fixed percentage to the member's compensation. A public agency's contribution is determined by applying a rate to the payroll of the agency. Using certain actuarial assumptions specified by law, the CalPERS Board of Administration sets the employer contribution rate on an annual basis.

6. The amount of a CalPERS member's retirement allowance is calculated by applying a percentage figure based on the member's age and compensation at retirement and the member's final compensation. In calculating a member's retirement allowance, CalPERS staff may review the salary reported by the member's employer to ensure only those items allowed under the PERL are included in the member's final compensation for the purpose of calculating his retirement allowance.

7. Respondent applied for service retirement on January 5, 2019, and requested an effective retirement date of May 4, 2019. On May 6, 2019, CalPERS sent

respondent a first payment letter confirming his retirement date of May 4, 2019, his payment election, and his monthly retirement benefit based on City payroll reported through April 20, 2019. Respondent began receiving his retirement allowance on June 1, 2019.

8. When respondent retired, the City compensated him for 125.50 days of unused sick leave that he accrued during his career with the City. The City did not remove the sick leave from respondent's payroll account after it compensated him. During an audit performed by CalPERS's Office of Audit Services for the City, CalPERS found out about the 125.50 days of unused sick leave respondent was compensated for when he retired. CalPERS also confirmed that the days were added to respondent's total years of service credit. Therefore, CalPERS concluded those days were erroneously used to calculate respondent's 35.516 years of total service credit, which was in turn used to calculate his monthly retirement benefits.

9. The City removed the 125.50 days from respondent's payroll reporting on October 25, 2021. CalPERS removed them from respondent's retirement calculation on December 13, 2021. CalPERS recalculated respondent's monthly retirement allowance after removing the 125.50 days from his total years of service credit. The removal of the 125.50 days reduced respondent's total service credit from 35.516 years to 35.014 years.

10. The reduction of respondent's service credit required a recalculation of his retirement benefits based on 35.014 years of service. The recalculation decreased respondent's monthly retirement allowance by \$228.06. CalPERS also determined that it overpaid respondent \$7,212.50 in retirement benefits and took action to collect the overpayment. Respondent repaid the amount in full on December 28, 2021.

Respondent's Evidence

11. Respondent testified at hearing. He is 69 years old and resides with his wife in Southern California.

12. Respondent always took a "detailed interest" in his retirement benefits throughout his career. He attended CalPERS seminars and asked clarifying questions to learn how his retirement benefits were calculated. He used the information available on the CalPERS website, including the retirement benefits calculator, so he could make his final retirement decisions with as much accurate information as possible. He was never informed that his retirement benefits could potentially be adjusted nearly three years after he retired, and he is extremely frustrated with how long it took for the matter to go to hearing.

13. Respondent admits he was compensated for the 125.50 days of unused sick leave when he retired, and he admits the amount of unused sick leave reported by the City was accurate. He was under the impression he would receive both compensation and service credit for the unused time. He believes the 125.50 days remain unused because he did not actually use them to take off work when he was sick. He believes this interpretation is consistent with the policy of encouraging employees to regularly go to work rather than use sick days as a means of vacation.

Analysis

14. CalPERS proved by a preponderance of the evidence that respondent was compensated for 125.50 days of unused sick leave when he retired in 2019. While perhaps well-meaning, respondent's contention that his sick leave remained unused after he was compensated for it is misplaced. Sick leave enables employees to still be compensated when they are unable to go to work due to illness. When an employee is

unable to work an eight-hour day, they may use eight hours of sick leave at their normal payrate. However, using sick leave correspondingly reduces the employee's sick leave balance. In this case, respondent elected to use his entire sick leave balance by being compensated for it when he retired. When that occurred, respondent's sick leave balance reduced to zero hours.

15. CalPERS also proved by a preponderance of the evidence that the 125.50 days of sick leave for which respondent was compensated upon retirement were erroneously used to calculate his total years of service credit for purposes of determining his monthly retirement benefits. Thus, CalPERS was obligated to collect the overpayment of benefits, and did so within three years of the money being paid.

LEGAL CONCLUSIONS

1. Complainant initiated this action by signing and filing a Statement of Issues in response to respondent's appeal from a CalPERS determination. (Cal. Code Regs., tit. 2, § 555.2.)

2. Complainant bears the burden of proof in this matter because CalPERS seeks to change the status quo. (*Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388; *McCoy v. Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) The CalPERS determination from which respondent appealed was a decision to reduce the retirement benefit allowance it was paying to respondent and to recoup money it alleges was distributed in error. CalPERS must show that its decision to reduce respondent's years of service credit and thereby reduce his monthly retirement benefit allowance complies with the PERL.

3. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115; *Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

4. CalPERS is a "prefunded, defined benefit" retirement plan. (*Oden v. Bd. of Administration* (1994) 23 Cal.App.4th 194, 198.) The formula for determining a member's retirement benefits takes into account: (1) years of service; (2) a percentage figure based on a member's age on the date of retirement; and (3) final compensation. (Gov. Code, §§ 20037, 21350, 21352, 21354; *City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, 1479.)

5. Final compensation is determined, in part, by determining a member's compensation earnable. "Compensation" means the remuneration paid out of funds controlled by the employer in payment for the member's service performed during normal working hours or for time during which the member is excused from work for specified reasons. (Gov. Code, § 20630, subd. (a).) "Compensation earnable" consists of "payrate," and "special compensation" of the member. (Gov. Code, § 20636, subd. (a).)

6. "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. (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).)

7. The CalPERS Board of Administration must correct actions CalPERS has taken because of an error. (Gov. Code, § 20160, subd. (b).)

8. Government Code section 20163, subdivision (a), provides, in pertinent part:

If more or less than the correct amount of contribution required of members, the state, or any contracting agency, is paid, proper adjustment shall be made in connection with subsequent payments, or the adjustments may be made by direct cash payments between the member, state, or contracting agency concerned and the board or by adjustment of the employer's rate of contribution.

9. In cases where CalPERS has made erroneous payment to a member, its right to collect repayment shall expire three years from the date of payment. (Gov. Code, § 20164, subd. (b)(1).)

10. Government Code section 20965, subdivision (a), provides:

A local miscellaneous member and a local safety member, whose effective date of retirement is within four months of separation from employment with the employer that granted the sick leave credit, shall be credited at the members retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by the member's employer. The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of the member's employment and shall not include any additional days of sick leave reported for the purpose of increasing the member's retirement benefit. Reports of unused sick days shall be subject to audit and retirement benefits may be adjusted where improper reporting is found.

11. Based on the Factual Findings and Legal Conclusions as a whole, CalPERS proved by a preponderance of the evidence, and respondent concedes, that he was compensated for 125.50 days of sick leave when he retired from the City.

12. Based on the Factual Findings and Legal Conclusions as a whole, CalPERS proved by a preponderance of the evidence that the 125.50 days of sick leave for which respondent was compensated were erroneously attributed to his years of service credit and used to calculate his monthly retirement benefits, and CalPERS was legally obligated to correct the error in total years of service credit.

13. Based on the Factual Findings and Legal Conclusions as a whole, CalPERS lawfully collected repayment of retirement benefits in the amount of \$7,212.50, within three years of overpayment.

ORDER

The appeal of respondent Blaine M. Michaelis is DENIED. CalPERS's decision to adjust respondent's retirement benefits because of the City's error is AFFIRMED. CalPERS lawfully collected the overpayment of retirement benefits from respondent in the amount of \$7,212.50.

DATE: December 20, 2023

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings