

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal of Final Compensation
Reciprocity with San Diego City Employees' Retirement
System of:**

MELANIE A. DOYLE, Respondent

Agency Case No. 2022-0741

OAH No. 2023051011

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on November 6, 2023.

Melanie A. Doyle, respondent, represented herself.

Preet Kaur, Senior Attorney, represented complainant, Renee Ostrander, Chief, Employer Account Management Division, Board of Administration, California Public Employees' Retirement System (CalPERS).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 6, 2023.

ISSUES

1. Is respondent, a CalPERS member, entitled to the full reciprocity benefit of final compensation exchange for a position she held from 2018 through 2022 with the City of San Diego, which is a part of the San Diego City Employees' Retirement System (SDCERS)?

2. Is respondent entitled to have her CalPERS monthly retirement benefit allowance based on her SDCERS salary under the doctrine of equitable estoppel?

FACTUAL FINDINGS

Jurisdiction and Background

1. CalPERS is a defined benefit retirement plan for qualified employees of the State of California and contracting local agencies. Benefits for its members are funded through member and employer contributions and investment earnings on those contributions.

2. When a CalPERS member retires, the member's monthly benefit retirement allowance is calculated based on, among other factors, a member's years of service and final compensation. Only those items allowed under the California Public Employees' Retirement Law (Gov. Code, § 20000 et seq.) are included in the member's final compensation calculation.

3. Reciprocity, which is defined and controlled by statute, allows members to move from a CalPERS public employer to a public employer under a different retirement system, within a specified amount of time, without losing valuable

retirement and related benefit rights. SDCERS is a reciprocal retirement system with CalPERS. Each time an employee moves from one CalPERS employer to a different public retirement system that shares reciprocity with CalPERS, it is known as a "movement."

4. Respondent first established membership with CalPERS by virtue of her employment with San Diego County Schools on April 16, 1990. Respondent separated from that employment on May 26, 1992.

5. On June 1, 1992, respondent began working for the City of San Diego, whose retirement system is administered by SDCERS. Respondent requested reciprocity between CalPERS and SDCERS for this first movement in employment, which became effective June 1, 1992. Respondent separated from her employment with the City of San Diego on April 27, 2006.

6. On May 8, 2006, respondent began working for the California State University, San Diego (CSUSD), a CalPERS employer. By letter dated June 21, 2006, SDCERS approved respondent's reciprocity with CalPERS for this second movement in employment, which became effective May 8, 2006. Respondent separated from her employment with CSUSD on January 15, 2010.

7. Thereafter, respondent sought employment with different employers that were neither a part of CalPERS nor SDCERS. On February 5, 2018, approximately eight years after she separated from her CSUSD position, respondent returned to work for the City of San Diego. Respondent never requested reciprocity for this third movement in employment.

8. On October 8, 2021, respondent submitted an application for service retirement.

9. Respondent retired from the City of San Diego effective January 3, 2022.

10. On January 3, 2022, CalPERS sent a letter to respondent informing her of her effective retirement date, final compensation calculation, and projected monthly allowance of \$1,857.48. Respondent began receiving her monthly retirement allowance on February 8, 2022.

11. Respondent disagreed with the amount of her monthly retirement allowance because it was calculated using her final compensation with her last CalPERS employer, CSUSD; an employer she left in 2010. Respondent believed that, prior to her retirement, she had established reciprocity with SDCERS, so she contends that the final compensation used to calculate her monthly retirement allowance should have been calculated using the higher compensation she earned with the City of San Diego, during her employment between 2018 and 2022.

12. On May 23, 2023, complainant filed this Statement of Issues in her official capacity. Respondent timely filed a Notice of Defense; this hearing followed.

Documentary Evidence

13. The reciprocity respondent established between CalPERS and SDCERS for the first and second movements between employers, as detailed above, are not in dispute. Respondent properly submitted documents to the relevant retirement systems for each movement to inform them of her request to establish reciprocity and obtained findings regarding reciprocity. A letter dated June 21, 2006, from SDCERS to respondent indicated reciprocity "has been granted" with respect to respondent's employment with the City of San Diego from June 1, 1992 through April 27, 2006, and respondent's employment with CSUSD, a CalPERS employer, which commenced on

May 8, 2006. The letter further advised respondent if she wanted reciprocity to apply, she would have to retire from both CalPERS and SDCERS concurrently.

14. In April of 2021, respondent requested a reciprocity determination from CalPERS concerning her employment with the City of San Diego. Thereafter, two letters from CalPERS, each dated May 11, 2021, indicated that reciprocity was established for these first two movements in employment, and specified the dates of employment for those movements. No such letter was provided to respondent at that time concerning reciprocity for her then current employment with the City of San Diego, which had commenced in 2018.

15. On October 7, 2021, respondent utilized CalPERS' online system to request a retirement estimate based on her projected retirement date of January 3, 2022. CalPERS issued a response based on the information respondent provided. Respondent provided her highest compensation using her earnings at her current employer, the City of San Diego, where she had worked since 2018. The amount she entered was \$9,700.77. Based on that amount, the document provided a number of monthly retirement allowance values, depending on which options respondent chose. The document clearly indicated that it was based on "the information [respondent] provided on her estimate request form." Most important, it stated:

You indicated that you have established reciprocity with another public retirement system. Reciprocity is an agreement among public retirement systems that allows a member to move from one public employer to another within a specific time limit, which may be used to qualify for service retirementInformation regarding reciprocity can

be found within the When You Change Retirement System (PUB-16) that's available online at www.calpers.ca.gov.

16. CalPERS submitted three versions of PUB-16. In the 2005 version, it indicated on page 4 that in order to establish reciprocity with another system, it must occur within six months of leaving employment with the previously qualified system. It also indicates that reciprocity is determined by the law in effect at the time of the movement between employers and retirement systems. The same information regarding the six-month requirement can be found on page 6 in the PUB-16 effective in 2009, and on page 8 in the PUB-16 effective in 2017.

17. Respondent submitted an application for service retirement on October 8, 2021, with an expected retirement date of January 3, 2022.

18. A letter dated November 7, 2021, stated that respondent met the first requirement for reciprocity eligibility by separating from the SDCERS on April 27, 2006, and entering CalPERS on May 8, 2006. However, this letter did not express an opinion concerning any further requirements for reciprocity or reciprocity for respondent's then current employment with the City of San Diego that had commenced in 2018.

19. A note in CalPERS' Customer Touch Point Report system showed that an employee entered a note into the system on November 8, 2021, indicating that respondent listed SDCERS in her retirement estimate, but that her last employer for purposes of calculating her monthly benefit was PERS, so her highest compensation from that PERS employer would be used. A note dated November 9, 2021, shows something similar, indicating that respondent was informed at a retirement seminar that reciprocity had not yet been established because certain documents were not yet received from the City of San Diego, and that it might take some time. Notes in the

system for December 2021 and early January 2022 also show respondent's CalPERS salary would be used because there was no reciprocity for respondent's City of San Diego employment from 2018 to 2022.

20. Respondent called CalPERS on January 27, 2022, inquiring about when her retirement pay warrant would be issued, and CalPERS employee advised her it would be 30-45 days.

21. On January 31, 2022, CalPERS sent a letter to respondent indicating that her monthly retirement allowance would be calculated based on salary information reported through her most recent CalPERS employment, which ended in 2010, and not her City of San Diego salary. As such, instead of the final compensation amount of \$9,700.77 that respondent thought was going to be used to calculate her monthly retirement benefit, CalPERS used \$7,617.67, resulting in a much lower than expected monthly retirement benefit. Respondent was already retired at this time.

22. Thereafter, notes reflect that CalPERS diligently worked to determine respondent's reciprocity for the 2018 to 2022 employment; ultimately finding that they were correct in determining respondent's final compensation based on her final compensation with the CalPERS employment (CSUSD) that ended in 2010, and not her final compensation from the 2018 to 2022 SDCERS employment. The notes also reflect respondent's discontent with that determination because she felt she had established reciprocity for her 2018 to 2022 employment with the City of San Diego. CalPERS spent a lot of time over the ensuing months trying to explain that, because respondent had a longer than six-month lapse between the 2010 CalPERS employment and 2018 SDCERS employment, reciprocity did not apply.

23. On March 23, 2022, a CalPERS employee emailed respondent, which stated:

In addition, I would like to be able to direct your inquiry to the proper unit, as it relates to appealing this matter. CalPERS makes a reciprocal determination for every movement between retirement systems. As you know, you do have established reciprocity with SDCERS outgoing, (06/01/1992 reciprocity effective date) and incoming (05/08/2006 reciprocity effective date), however, it is only that last movement in which we are unable to establish reciprocity, as there was a several year lapse, which prevents reciprocity from being established for that particular movement. . . .

The employee also referred respondent to applicable portions of the PERL that specifically state reciprocity is prohibited if there is a break in service over six months between CalPERS and another reciprocal retirement system.

24. On April 19, 2021, another CalPERS employee sent respondent an email in response to respondent's request about what she felt was an incorrect retirement estimate that had been provided in October 2021. The employee explained, as many others had, that it was just an estimate and it was based on the salary information respondent provided. The response further provided:

On 9/21/2021 we received your estimate request you sent us from your myCalPERS account. You requested Reciprocity and provided your reciprocal salaries of

\$9700.77, to apply on your estimate. At the time when we received your estimate, we only had Reciprocity setup for 6/1/1992 and 5/8/2006. The analyst that had your request allowed your reciprocal salaries you provided since you had "Full Reciprocity" for the appointments I just stated. Your latest reciprocal entitlement was not setup until 3/10/2022, which was for Vesting only, due to a lapse in Service. I mentioned that Estimates, does not have salaries validated and we are not in communication with your reciprocal system, but at retirement the Retirement Section will contact Reciprocal systems.

I also stated that on the estimate letter, on page 5, there's a snippet that states reciprocity was requested and at retirement we will confirm if the member has full reciprocity, and if dates are concurrent for final compensation exchange.

After discussing the estimate process, and that you understood how your estimate was processed, you were still waiting for a response regarding the miscommunication that you were informed you had Reciprocity and you understood it as you were set to have the highest final compensation apply to your CalPERS benefit. I explained that each time a member moves or enters a reciprocal system they must setup reciprocity for each movement. All movements can be different, such as your case with your

latest entry with San Diego Retirement system. You stressed that was never explained to you and that information should be provided to members. Because of the miscommunication you retired not realizing you were not getting the highest final compensation from San Diego, and you lost out on money you were expecting in your retirement. . . .

Respondent's Testimony

25. Respondent's testimony, and pertinent documents she referred to, are summarized as follows: From the beginning of her career, she understood the importance of establishing reciprocity. After she established reciprocity between CalPERS and SDCERS for the first and second movements, she thought she had the "golden ticket." Respondent said nobody ever communicated to her that she would not be eligible for reciprocity if there was a more than six-month break in service.

26. In preparation for her retirement, respondent requested a retirement estimate. She utilized the online CalPERS website and entered her final compensation for her then current position with the City of San Diego. Respondent believed by virtue of having established reciprocity in the past, that she qualified for reciprocity for the third movement, which would make her then current compensation her final compensation for retirement purposes. Respondent reviewed all three versions of PUB-16, and feels it is misleading because it does not indicate to members that they have to establish reciprocity for every movement.

27. Respondent communicated multiple times with CalPERS after she submitted her request for a retirement estimate because she wanted to be sure about

reciprocity. At a “virtual” meeting with retirement counselors, respondent raised the issue of reciprocity and was assured that she had established it. Based on the information respondent received, she retired in January 2023.

28. Approximately two months after respondent retired, she was told she did not meet the requirements for reciprocity for the third movement. Thus, her final compensation would be calculated using her last CalPERS employment, or when she worked at CSUSD. This rendered her monthly retirement benefit substantially less than she had planned for.

29. Respondent pointed to the CalPERS touch point notes showing her discussions with employees regarding reciprocity. Specifically, she pointed to a note in the system by employee Rosalie Camacho, which she said verified she was told she was approved for reciprocity. The note, however, simply indicated that respondent was contesting how her salary was calculated; Ms. Camacho did not represent that respondent had established reciprocity for the third movement. Moreover, a note dated February 9, 2022, showed respondent “knows that SDCERS salary was not calculated and was told it was under review” Nothing in any of the notes indicate that any CalPERS employee told respondent she established reciprocity for all three movements between CalPERS and SDCERS employment.

30. Respondent also referred to documents from a case entitled, *In the Matter of the Application to Establish Reciprocity of Fred Guido, respondent, and City of Cudahy, respondent*, Case No. 9711, OAH No. 2012030387 (The Guido case). That case involved a respondent, Fred Guido, who appealed an adverse reciprocity determination made by CalPERS concerning his pension calculation. Respondent submitted only a “Notice of Hearing” and “Proposed Decision” granting Mr. Guido’s appeal; she did not submit the final decision. CalPERS did submit the final decision,

which is controlling in the Guido case, and it does not support respondent's position. The Guido case is discussed further in the legal conclusions.

31. Respondent believed that when she submitted her retirement application on October 8, 2021, CalPERS would verify reciprocity. Respondent believes CalPERS violated its fiduciary duty to her by not doing so, and CalPERS should not be able to rely on any statute to overcome that fiduciary duty. CalPERS does not validate salary prior to a member's retirement, and respondent believes they should. If respondent had known she did not meet the requirements for reciprocity for her third movement, which would have utilized her final compensation with the City of San Diego in 2021 to calculate her monthly retirement benefit rather than the CalPERS salary from the second movement that terminated in 2010, she would have made different retirement plans.

LEGAL CONCLUSIONS

Applicable Law

1. Members of CalPERS, once vested, participate in a defined benefit retirement plan that provides a monthly retirement allowance under a formula comprising factors such as final compensation, service credit (i.e., the credited years of employment), and a per-service-year multiplier. The retirement allowance consists of an annuity (funded by member contributions deducted from the member's paycheck and interest thereon) and a pension (funded by employer contributions, and which must be sufficient, when added to the annuity, to satisfy the amount specified in the benefit formula). (*In re Marriage of Sonne* (2010) 185 Cal.App.4th 1564, 1568.) The determination of what constitutes a member's final compensation is crucial to the

computation of the member's monthly retirement benefit. (*City of Sacramento v. Public Employees Retirement System* (1991) 229 Cal.App.3d 1470, 1478.)

2. Government Code section 20350, provides:

Notwithstanding Section 20638, if a member on deferred retirement from this system is eligible to retire for service from a reciprocal retirement system and does so retire prior to the time the member becomes entitled to retire under this system, his or her retirement shall be deemed a concurrent retirement for purposes of computing final compensation under Section 20638.

3. Government Code section 20351 provides:

The provisions of this part extending rights to a member of this system, or subjecting him or her to any limitation by reason of his or her membership in a county retirement system, apply in like manner and under like conditions to a member of this system by reason of his or her membership in any retirement system established under Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 with respect to which an ordinance complying with Section 45310.5 has been filed with and accepted by the board or by reason of his or her membership in a retirement system established by or pursuant to the charter of a city or city and county or by any other public agency of this state and that system, in the opinion of the board, provides a similar

modification of rights and benefits because of membership in this system and with respect to which the governing body of the city, city and county or public agency and the board have entered into agreement pursuant to this section. An agreement under this section shall provide that the governing body shall modify its retirement system to conform to any amendments to this part affecting a member's right because of membership in a county retirement system, and may contain other provisions consistent with this section as the board deems appropriate. This section applies only to a member whose termination and entry into employment resulting in a change in membership from this system to the other system or from the other system to this system occurred after the acceptance by the board or after the effective date specified in the agreement. However, provisions relating to computation of final compensation apply to any other member if the provision would have applied had the termination and entry into employment occurred after the acceptance or determination by the board.

4. Government Code section 20353 provides:

Any public agency that has pursuant to the provisions of Section 20351 entered into an agreement to establish a reciprocal retirement system with this system shall be deemed to have obtained the same rights and limitations

with respect to all other public agencies who have entered into those agreements and established reciprocity as well as with respect to county retirement systems and under Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 that have established reciprocity with this system pursuant to Section 20351.

5. Government Code section 20355 provides:

Wherever in this part the rights of a member, because of membership in another retirement system, are conditioned upon employment within 90 days of termination of membership in this system or another retirement system, with respect to that employment that occurs on and after January 1, 1976, the period shall be **six months** rather than 90 days.

This section shall also be applicable to members who were permanent employees of the state who were laid off because of a reduction in work force and whose break in service between retirement systems occurred prior to January 1, 1976, but not before April 1, 1970. [Emphasis Added].

6. Government Code section 20638 provides:

The highest annual average compensation during any consecutive 12- or 36-month period of employment as a member of a county retirement system shall be considered

compensation earnable by a member of this system for purposes of computing final compensation for the member provided:

(a) (1) Entry into employment in which he or she became a member in one system occurred on or after October 1, 1957, and within 90 days of discontinuance of employment as a member of the other system.

(2) This subdivision shall not deny the benefit of this section to any person retiring after October 1, 1963, who entered membership prior to October 1, 1957, if he or she entered the employment in which he or she became a member within 90 days of termination of employment in which he or she was a member of the other system, and he or she became a member within seven months of entry into employment, or, if an employee of a district as defined in Section 31468, became a member at the time the district was included in a county retirement system.

(b) He or she retires concurrently under both systems and is credited with the period of service under the county system at the time of retirement.

Evaluation

7. An applicant for retirement benefits has the burden of proving that he or she is entitled to it. (*Greatorex v. Bd. of Administration* (1979) 91 Cal.App.3d 54). The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.) In this

matter, respondent had the burden of proving that, under applicable law, she is entitled to reciprocity for her employment with SDCERS from 2018 to 2022, such that the final compensation used to calculate her monthly retirement benefit would use her higher salary from SDCERS, and not her CalPERS salary from 2010. The standard of proof is a preponderance of the evidence. (Evid. Code, §§ 115; 500.) Respondent did not meet her burden.

RESPONDENT'S 2018 TO 2022 EMPLOYMENT WITH THE CITY OF SAN DIEGO DOES NOT MEET THE STATUTORY REQUIREMENTS FOR RECIPROCITY

8. Respondent made several moves in employment throughout her career. After establishing membership in CalPERS in the 1990s, respondent later established reciprocity between CalPERS and SDCERS for the first two movements. The second movement, which was respondent's employment with CSUSD, ended in 2010. Thereafter, she went on to other non-public jobs, and eventually re-entered employment with the City of San Diego and SDCERS membership from February 5, 2018, through January 3, 2022. This third movement is not eligible for reciprocity. Under applicable law, a member must establish reciprocity for each movement made between systems; respondent could not do this for the third movement because there was a break of more than six months between the second and third movements. As such, regardless of whether respondent had requested reciprocity for the third movement earlier, and regardless of whatever misunderstanding occurred between respondent and CalPERS during respondent's pre-retirement discussions in 2021, respondent was never entitled to reciprocity for the third movement, and CalPERS properly calculated respondent's final compensation by using the salary obtained in her most recent CalPERS employment at CSUSD between May 8, 2006, and January 15, 2010.

9. Respondent utilized an online system to request an estimate from CalPERS in 2021 for her impending retirement. On October 7, 2021, CalPERS issued an estimate based on the information respondent provided (respondent entered her final compensation from SDCERS not CalPERS). The estimate clearly indicated that it was based on "the information [respondent] provided on her estimate request form." Most important, the letter stated:

You indicated that you have established reciprocity with another public retirement system. Reciprocity is an agreement among public retirement systems that allows a member to move from one public employer to another within a specific time limit, which may be used to qualify for service retirementInformation regarding reciprocity can be found within the When You Change Retirement System (PUB-16) that's available online at www.calpers.ca.gov.

10. The October 7, 2021, estimate was just that – an estimate based on information respondent provided. It also directed respondent to the publication regarding reciprocity, PUB-16. PUB-16 indicates on page 4 that in order to establish reciprocity with another system, it must occur within six months of leaving employment with the previously qualified system. It also indicates that reciprocity is determined by the law in effect the time of the movement between employers and retirement systems. The same information regarding the six-month requirement can be found on page 6 in the PUB-16 effective in 2009, and on page 8 in the PUB-16 effective in 2017. Thus, every version of PUB-16, which respondent was referred to prior to submitting her retirement application, put respondent on notice that reciprocity for her 2018 to 2022 employment with CSUSD would not apply due to her

break in service between the end of her 2010 CalPERS employment and the beginning of her 2018 SDCERS employment.

11. Further, another letter from CalPERS dated November 7, 2021, stated that respondent met the first requirement for reciprocity eligibility by separating from SDCERS employment on April 27, 2006, and entering CalPERS on May 8, 2006. However, this letter did not express an opinion concerning any further requirements for reciprocity or reciprocity for respondent's 2018 through 2022 employment with the City of San Diego. Thus, again, long before respondent retired, it was clear that reciprocity had not been determined for her third movement.

12. Respondent thereafter filed her retirement application with an effective retirement date of January 3, 2022. Respondent called CalPERS on January 27, 2022, inquiring about when her retirement pay warrant would be issued, and CalPERS employee advised her it would be 30-45 days. Thereafter, notes reflect that CalPERS diligently worked to determine respondent's reciprocity for the 2018-2022 employment; ultimately finding that they were correct in determining respondent's final compensation based on her final compensation with the CalPERS employment that ended in 2010, and not her final compensation from the 2018-2022 SDCERS employment. The notes also reflect respondent's discontent with that determination, and that CalPERS spent a lot of time over the ensuing months trying to explain that, because respondent had a longer than six-month lapse between the 2010 CalPERS and 2018 SDCERS employment, reciprocity did not apply.

13. Accordingly, respondent's 2018-2022 employment with the City of San Diego, or the third movement, does not qualify for reciprocity under the PERL.

ESTOPPEL IS NOT AVAILABLE AGAINST CALPERS

14. Under the PERL, respondent is not entitled to the full reciprocity benefit of final compensation exchange, because more than six months elapsed between the date respondent terminated her employment with a CalPERS employer in 2010 and the date she entered SDCERS employment in 2018. (Gov. Code, §§ 20638, subd. (a)(1), 20355.) Nonetheless, respondent contends she is entitled to a CalPERS monthly benefit calculated using her higher SDCERS salary achieved between 2018 and 2022 under the doctrine of equitable estoppel.

15. The doctrine of equitable estoppel is available in certain circumstances to those who detrimentally rely on representations made by another. It is “based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped from obtaining the benefits of his misconduct.” (*Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1567.) In order for equitable estoppel to apply, the following requirements must be met: (1) the party to be estopped must be apprised of the facts; (2) the party to be estopped must intend that his or her conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must rely upon the conduct to his injury. (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.)

16. Although the doctrine of equitable estoppel can be applied against the government “where justice and right require it,” it cannot be applied against the government where to do so would effectively nullify a “strong rule of policy, adopted for the benefit of the public” (*City of Long Beach v. Mansell, supra*, 3 Cal.3d at p. 493.) Where the rule of policy is clearly embodied in statutory or constitutional

limitations, courts have not invoked the principles of equitable estoppel. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28; *Chaidez v. Board of Administration* (2014) 223 Cal.App.4th 1425, 1431-32; *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 869.) Nor can estoppel be applied where to do so would enlarge the power of a governmental agency or expand the authority of a public official. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28.)

17. Grounds do not exist to apply equitable estoppel against CalPERS. CalPERS has the authority to pay benefits to a member only when the statutes authorize it, and then, only in the amount authorized. Applying equitable estoppel would provide respondent a benefit that she would not otherwise be entitled to under the PERL. Here, respondent was never entitled to have her final compensation calculated using her 2018 to 2022 employment with the City of San Diego because of the greater than six-month time gap between her exit from a CalPERS employer in 2010 (CSUSD) and re-employment with the City of San Diego, an SDCERS employer, in 2018. Government Code sections 20638 and 20355 embody a clear policy that final compensation exchange shall not apply where a member's movement between reciprocal systems occurs over a period greater than six months. Applying equitable estoppel in this case would effectively nullify that policy and afford respondent a windfall by increasing her monthly retirement benefit based on a calculation contrary to the PERL. Accordingly, whether the facts of this case meet the individual elements of equitable estoppel is not relevant.

18. Even if estoppel did apply, the elements were not satisfied.

(1) The party to be estopped must be apprised of the facts. CalPERS was apprised of the facts at issue in this case.

(2) The party must intend or reasonably believe that its conduct will be acted upon or must so act that the party asserting the estoppel had a right to believe it was so intended. There was no evidence that CalPERS ever represented to respondent that reciprocity had been established for her third movement and that her final compensation would be calculated based on her salary from that third movement. To the contrary, the only official letters provided by both CalPERS and SDCERS indicated reciprocity was established for the first two movements. Respondent's October 2021 retirement estimate was simply that – an estimate. CalPERS did not represent that the estimate was, in fact, what her final official monthly retirement benefit would be. The touchpoint notes also indicated that CalPERS employees continuously worked to respond to respondent's inquiries regarding reciprocity – but at no time was it ever deemed conclusively established for the third movement. CalPERS provided respondent with official information regarding reciprocity determinations that had been made for the first two movements, and CalPERS reasonably believed that respondent would make her decisions based on that official information provided.

(3) The party asserting the estoppel must be ignorant of the true state of facts. Respondent was not ignorant of the true state of facts. Respondent was notified of CalPERS's reciprocity determinations for the first two movements, and never received a similar official reciprocity for the third movement prior to making the decision to submit her retirement application. The PERL, in effect at all times relevant to respondent's employment during all three movements, always indicated that reciprocity would not apply if there was a break in service between retirement systems in excess of six months. The CalPERS reciprocity determination, which ultimately came after respondent retired and her first monthly retirement benefit check was issued, was made in accordance with the applicable provisions of the PERL. Respondent could have, but did not, wait for a formal and official determination regarding reciprocity

concerning her third movement, rather than relying on the October 2021 estimate that was obtained based on information she input into the CalPERS online system. The warning signs regarding reciprocity not being applicable to the third movement were all there; as such, respondent was not ignorant of the true state of the facts.

(4) The party asserting the estoppel must rely upon the other party's conduct to his detriment. CalPERS provided respondent official determinations regarding reciprocity for the first two movements; but never provided an official determination regarding reciprocity for the third and final movement. Rather, she relied on the unofficial estimate from October 2021, and ignored the fact that none of the letters regarding reciprocity ever showed she established reciprocity for the third movement. Had respondent recognized the lack of an official determination regarding reciprocity for the third movement, and delayed submitting her retirement application until that determination was official, she would have known that her CalPERS benefit would be based on her CSUSD salary that ended in 2010 and not her City of San Diego salary from 2022.

The Guido Case

19. Respondent submitted the Guido case in support of her argument that complainant should effectively increase her monthly retirement benefit based on a calculation contrary to the PERL by using the salary she obtained between 2018 to 2022. The Guido case involved a respondent who appealed an adverse reciprocity determination made by CalPERS concerning the calculation of his monthly retirement allowance. Respondent submitted only a "Notice of Hearing" and "Proposed Decision" granting Mr. Guido's appeal. The ALJ in the Proposed Decision had determined that, pursuant to applicable law, reciprocity was not established. However, under the doctrine of equitable estoppel, the ALJ nonetheless granted Mr. Guido's appeal.

The board did not adopt the Proposed Decision. Instead, the board set the matter for a full board hearing on December 18, 2013. Respondent's Exhibit Q was therefore incomplete; it did not contain the ultimate outcome of that full board hearing. CalPERS, however, did provide a copy of the board's final decision and order in the Guido case in Exhibit 23. In the final decision, the board determined that Mr. Guido did not meet the statutory requirements for reciprocity, and therefore, equitable estoppel did not apply. The board denied Mr. Guido's appeal. Thus, the Guido case does not support respondent's position. If anything, it supports CalPERS's decision to deny reciprocity under applicable law and to deny relief under the theory of equitable estoppel.

20. Accordingly, respondent is not entitled to the full reciprocity benefit of final compensation exchange for her 2018 to 2022 City of San Diego employment, and she is not entitled to have her CalPERS monthly retirement benefit calculated using the final compensation she earned while employed at the City of San Diego between February 5, 2018, and January 3, 2022, under the doctrine of equitable estoppel.

Whether CalPERS Breached A Fiduciary Duty Or Provided Misinformation Does Not Warrant a Finding of Estoppel

21. Respondent contends CalPERS breached a fiduciary duty in general by not providing proper and accurate information to members regarding reciprocity prior to retirement, and that CalPERS provided misinformation to her concerning the application of reciprocity to her retirement, which she relied on to her detriment. It was not established, however, that CalPERS breached any fiduciary duty or provided misinformation concerning reciprocity. The PERL contained the six month rule at all times relevant to respondent's employment, and all three versions of PUB-16 concerning reciprocity provided accurate information. Further, because the PERL

clearly establishes that reciprocity is barred if there is more than a six-month break in service between reciprocal systems, and estoppel cannot overcome a statutory bar, whatever communications occurred between CalPERS and respondent, or the adequacy of the information CalPERS provides to its members, does not change the outcome of this matter. Put another way, regardless of what was said or how it was understood, respondent was never entitled to reciprocity for her third movement, and she therefore cannot use the doctrine of equitable estoppel to avail herself of a right she never had to begin with.

22. Based on the foregoing, respondent is not entitled to the full reciprocity benefit of final compensation exchange with SDCERS for the third movement, and she is not entitled to a CalPERS retirement benefit based on her City of San Diego salary earned between 2018 and 2022 under the doctrine of equitable estoppel.

ORDER

CalPERS correctly determined respondent's final compensation for purposes of calculating her monthly retirement benefit. Final compensation exchange with SDCERS for respondent's employment with the City of San Diego between February 5, 2018, and January 3, 2022, is barred by law from being considered in determining respondent's final compensation, and no legal doctrine provides otherwise. Respondent's appeal is dismissed.

DATE: November 29, 2023



KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings