BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application for Full-Time Service Credit for Sabbatical Leave of: LYNDA KOOLISH, Respondent, and SAN DIEGO STATE UNIVERSITY, Respondent.	CASE NO. 7857 OAH NO. L-2008070277 **PRECEDENTIAL DECISION 09-01** **Effective: November 19, 2009**

PRECEDENTIAL DECISION

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, acting pursuant to Government Code Section 11425.60, concerning the application of LYNDA KOOLISH, hereby designates its final decision in the LINDA KOOLISH matter, as adopted by the Board on June 17, 2009, as a PRECEDENTIAL DECISION of the Board.

I hereby certify that on November 19, 2009, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the Board's final decision is a true copy thereof as adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
ANNE STAUSBOLL
CHIEF EXECUTIVE OFFICER

Dated: December 1, 2009

BY Original Signed
PETER H. MIXON
GENERAL COUNSEL

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application for Full-Time Service Credit for Sabbatical Leave of:	)	CASE NO. 7857 OAH NO. L-2008070277
LYNDA KOOLISH,	)	DECISION
Respondent,	)	
and	)	
SAN DIEGO STATE UNIVERSITY,	)	
Respondent.	)	

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own decision the Proposed Decision dated April 14, 2009, concerning the application of Lynda Koolish; RESOLVED FURTHER that this Board decision shall be effective 30 days following mailing of the decision.

* * * * *

I hereby certify that on June 17, 2009, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the administrative law judge's Proposed Decision is a true copy of the decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
ANNE STAUSBOLL
CHIEF EXECUTIVE OFFICER

Dated: September 29, 2009

BY Original Signed
DONNA RAMEL LUM
ASSISTANT EXECUTIVE OFFICER

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

In the Matter of the Application for Full-Time Service Credit for Sabbatical Leave of: LYNDA KOOLISH, Respondent, and SAN DIEGO STATE UNIVERSITY, Respondent.	Case No. 7857 OAH No. 2008070277

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 17, 2009.

Senior Staff Counsel Patricia B. Miles represented petitioner California Public Employees' Retirement System.

Respondent Lynda Koolish appeared on her own behalf.

There was no appearance by or on behalf of respondent San Diego State University.

The matter was submitted on March 17, 2009.

FACTUAL FINDINGS

1. Petitioner California Public Employees' Retirement System (CalPERS) made the statement of issues against respondents Lynda Koolish, Ph.D. (Respondent) and San Diego State University (SDSU). The statement of issues alleges that, based on erroneous salary data provided to CalPERS by the State Controller's Office, CalPERS credited Respondent with 0.706 years of service credit to which she is not entitled. CalPERS asserts that it is obligated to correct the error by reducing Respondent's account by a total of 0.706 years of service. Respondent requested a hearing.

2. Respondent is a professor at SDSU. She was first employed by SDSU in 1989. By virtue of her employment, Respondent is a member of CalPERS.

3. Respondent has taken three sabbatical leaves: from August 21, 1995, to August 26, 1996; from August 23, 1999, to August 21, 2000; and from January 8, 2004, to January 18, 2005. Based upon salary data provided to CalPERS by the State Controller's Office, CalPERS credited Respondent with one full year of service credit for each sabbatical leave and so informed her on her member statements.

4. At some time in 2004 or 2005, CalPERS discovered that the salary data provided by the State Controller's Office for each of Respondent's sabbatical leaves – and the salary data of approximately 1,300 other California State University employees similarly situated – had been reported incorrectly.

Respondent's retirement plan provides that, when a member goes on a sabbatical leave for which she is paid less than her usual compensation – a "difference in pay leave" – the member earns proportional rather than full service credit:

> Time during which a member is excused from performance of . . . her duties . . . and for which . . . she receives compensation, but in an amount less than the full compensation earnable by . . . her while performing . . . her duties . . . such as sabbatical leave, shall be credited as service in the proportion that the compensation paid to the member bears to the full compensation that would be earnable by . . . her while performing . . . her duties on a full-time basis.

(Gov. Code, § 21008; all statutory references are to the Government Code.)

During each of her sabbatical leaves, Respondent received compensation in an amount less than the full compensation she earned while performing her usual duties. For example, at the time of her first sabbatical leave, Respondent's full-time pay rate was $3,995 per month; on sabbatical leave, her compensation was reduced to $2,093 per month from September 1995 through June 1996, and to $2,131.50 per month for July and August 1996.[1] During each of Respondent's sabbatical leaves, however, the State Controller's Office reported her reduced compensation as her "full-time pay rate," thus causing her to be credited, incorrectly, with full service credit while on sabbatical leave. Under section 21008, the Controller's Office should have left Respondent's full-time pay rate unchanged, and shown her reduced earnings while on sabbatical leave. Respondent would have then have

[1] Respondent's full-time pay rate during her 1999-2000 sabbatical leave was $5,183 per month, but her compensation on sabbatical was $2,504 per month for the first ten months and $2,694 per month for the last two months. Her full-time pay rate during her 2004-2005 sabbatical leave was $6,613 per month, but her compensation on sabbatical was $3,578 per month.

been credited with only the proportional service credit to which she was entitled under section 21008.

5. On June 17, 2005, CalPERS wrote to Respondent and informed her that she may have been incorrectly credited with full-time service during the time she was on the sabbatical leaves. CalPERS told Respondent it was studying the issue and hoped to complete its review of her account by the end of the 2005-2006 fiscal year.

6. CalPERS concluded, and the evidence establishes, that 0.300 years of service credit were credited to Respondent's account in error for her 1995-1996 sabbatical leave; 0.271 years of service credit were credited to her account in error for her 1999-2000 sabbatical; and 0.135 years of service credit were credited to her account in error for her 2004-2005 sabbatical, for a total of 0.706 years of service credit erroneously credited to her account.

7. In three letters dated November 13, 2006, each letter pertaining to one of Respondent's sabbatical leaves, CalPERS informed Respondent of its conclusions. CalPERS told Respondent that the service credit identified in Finding 6, above, would be deleted from her retirement account. The letters informed Respondent that she was eligible to purchase the service credit CalPERS intended to delete.

Since November 2006, CalPERS has used several different methods to calculate the cost of repurchasing service credit. Under the calculations most favorable to Respondent, it would cost Respondent $10,250.37 to purchase the entire 0.706 years of service credit. CalPERS has offered Respondent the most favorable cost calculations. Respondent also has the option of purchasing the service credit associated with each sabbatical period separately ($5,170.09 for the 1995-1996 sabbatical, $2,753.74 for the 1999-2000 sabbatical, and $2,326.54 for the 2004-2005 sabbatical).

8. Respondent testified that if she had known that she would not get full service credit during her sabbatical leaves, she would have "had to think through" whether she could afford to take her sabbaticals. She candidly acknowledges, however, that she would still have taken her 1999-2000 leave, during which she produced an award-winning book. Respondent was upset to learn, in 2005, that she had less service credit than she thought. She cannot afford at this time to purchase the entire 0.706 years of service credit she has lost. Respondent must now work longer than she had planned to capture that time, but her health has been poor and she is not confident of her ability to continue working.

LEGAL CONCLUSIONS

1. Under section 21008, Respondent is not entitled to full-time service credit for her sabbatical leaves in 1995-1996, 1999-2000, and 2004-2005. For those leaves, Respondent was granted 0.706 years of service credit to which she is not entitled, due to errors in salary data provided to CalPERS by the State Controller's Office. (Findings 4 through 6.)

2. Under section 20160, subdivision (b), the board of CalPERS "shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system."

3. Respondent argues that CalPERS is equitably estopped from correcting her service credit account. The burden of proof is on Respondent. To establish equitable estoppel, Respondent must prove that when CalPERS sent her statements showing that she had earned one full year of service credit while on sabbatical, CalPERS knew the information was incorrect. Just the opposite is true: CalPERS did not know that the information it had provided Respondent (and others) was wrong until it learned, in 2004 or 2005, of the salary reporting errors by the State Controller's Office. Respondent must also prove that she relied on the incorrect service credit information on her statements to her detriment, a proposition that is not established by the evidence. There can be no issue of detrimental reliance as to Respondent's first sabbatical leave, and Respondent candidly acknowledges that she would have taken her second sabbatical leave in any event. With respect to her third sabbatical leave, the evidence established only that Respondent might not have taken the leave had she known that she would earn partial service credit. CalPERS is not precluded from correcting Respondent's account and crediting her with only the service credit to which she is entitled under section 21008.

ORDER

The appeal of respondent Lynda Koolish, from the determination by CalPERS that she is not entitled to full-time service credit for her three sabbatical leaves without further cost to her, is denied.

DATED: April 14, 2009

Original Signed

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings