

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Arnold Carson (Respondent) is employed by the California Department of Corrections and Rehabilitation and by virtue of this employment is a member of CalPERS. Respondent signed an election form to purchase 1.00 year of additional retirement service credit (ARSC) on August 30, 2004. Respondent signed a second election form to purchase 1.00 year of ARSC on July 31, 2009, and CalPERS staff allowed him to make this purchase with funds rolled over from Respondent's 457 plan (State Savings Account). Respondent signed an application form to purchase a third 1.00 year of ARSC on March 28, 2010.

Section 20909 of the California Public Employees' Retirement Law (PERL) allows purchase of ARSC in one year increments, for a total of five years, but only one purchase of ARSC can be made. Thus, if a member elects to purchase only one year, the member is not eligible to purchase additional years after that. When CalPERS staff reviewed Respondent's third request, they discovered they had made a mistake when they allowed him to purchase the second year. They determined his second purchase of 1.00 year of ARSC was invalid, deleted it from his retirement account and refunded the cost by issuing a check to his 457 account, and they denied Respondent's application to purchase a third year. Respondent appealed and a hearing was held on October 11, 2012.

Respondent was present at the hearing and represented himself. Respondent did not dispute the basic facts of his two purchases of ARSC. He testified as to his strong belief that section 20909 is confusing and that CalPERS made a mistake in allowing him to purchase a second year of ARSC and although his purchase price was refunded, he should be reimbursed for lost interest or market share during the year his funds were in CalPERS instead of his 457 account.

CalPERS introduced evidence showing that the ARSC purchase option became effective on January 1, 2004, and CalPERS explained ARSC's requirements and limitations to members in both written and electronic format. Before Respondent's initial purchase of ARSC in early 2004, the CalPERS website included information notifying members that ARSC "must be purchased in whole year increments and only one election can be made [even if you choose to purchase less than five years of credit]." It included a frequently asked question of: "If I buy two years now, can I buy the remaining three years later?" and the answer stating: "No. Only one election is permitted under the new law." Similar language was in the CalPERS publication, "A Guide to Your CalPERS, Service Credit Purchase Options" published September 2006, 2007 and January 2009. CalPERS records show this publication was mailed to Respondent on August 1, 2007, before he made his second 1.00 year purchase. The information was included in the forms Respondent signed when he made his first and second purchases.

Although CalPERS staff made an error when it allowed Respondent to make his second purchase, the PERL requires staff to correct their mistake. The money Respondent paid for his second year earned interest while it was held by CalPERS, and the accrued interest remains in his account and will be paid out to him or his beneficiary upon retirement or death.

In the Proposed Decision, the Administrative Law Judge (ALJ) concludes that Respondent did not meet his burden of proof to establish that CalPERS erroneously interpreted section 20909, that he had a right to correct an error, or that CalPERS was equitably estopped from correcting its error.

The ALJ's Proposed Decision states that section 20909 of the PERL plainly dictates that a member may only elect to purchase ARSC credits on a single occasion, regardless of the number of years he or she purchases. Respondent used all of his ARSC rights by electing to purchase one year of ARSC in 2004. Section 20160 (b) of the PERL requires CalPERS to correct its error of allowing Respondent to purchase a second year of ARSC, and Respondent was on notice of the limits of ARSC purchases and to the extent he failed to read or understand the limits, he failed to make reasonable inquiry. CalPERS is not equitably estopped from correcting its mistake because to do so would nullify a strong rule of policy enacted for public benefit and would also result in expanding CalPERS powers. Respondent's claims of lost market share during the time CalPERS held his funds is entirely speculative. His funds earned six percent annual interest that will remain in his account and ultimately be paid out to him or his beneficiaries.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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