

ATTACHMENT A
RESPONDENT'S PETITION FOR RECONSIDERATION

Michael Campbell

January 10, 2013

**Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
Post Office Box 942701
Sacramento, California 94229-2701**

Petition for Reconsideration

**Subject: In the Matter of the Appeal of the Removal of Service Credits of
MICHAEL T. CAMPBELL, Respondent, and CITY OF LANCASTER,
Respondent**

Dear Ms. Swedensky:

I disagree with the Board's decision upholding the Administrative Law Judge, David B. Rosenman, decision items one (1) through seventeen (17). I disagree with his ruling on several points of interest.

Judge Rosenman has chosen not to apply the rules of Estoppel in this case, because in doing so "effectively nullifies a strong rule of policy adopted for the benefit of the public". I feel his reasoning for not applying estoppel in this case is by doing so the Respondents request would enlarge the authority of the Public Employees Retirement System regarding the granting of beneficiaries allowance in excess of the amount authorized by statute.

It is my understanding, after consulting with several current and past employees of the Members Services Department as well as the Legal Department, this practice has occurred on numerous occasions in the past. This practice was endorsed and sanctioned by the Legal Department of CalPERS. I do agree in the Judge's decision, item 15, "the Board owes a fiduciary duty of trustee to a trust and it's beneficiaries. It cannot ignore a mistake that benefits one person any more than it can refuse to correct one that insures to it's benefit.

CalPERS is contracted with governmental agencies to accurately collect, calculate, and distribute benefits on the members behalf. CalPERS has failed

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this fiduciary responsibility and continues this practice standing behind "a strong public policy" and not what is ethically and morally correct.

It appears that in the past correcting CalPERS mistakes by staff must have been in violation of the Board's rules, regulations, and public policy. I disagree with the judge's comment that allowing estoppel to be applied would result in an unfunded liability and would also have a direct impact on my former employer, the City of Lancaster. The unfunded liability should not be passed onto the tax payers or members because of continued errors and omissions by CalPERS staff. The retirement contract between CalPERS and the City of Lancaster does not indemnify the City for mistakes that CalPERS routinely generates.

CalPERS made corrections to the accrual of my service credit time only after repeated inquiries and requests of actual statements. CalPERS sent me, in essence, a contract stating the exact amount of service credit that my retirement and benefits would be calculated on. This information was verified, verbally, by a CalPERS representative prior to my signing a legal document of resignation with the City of Lancaster. Only days later I received an additional phone call increasing the amount of years of service that my retirement would be calculated on. Approximately sixty days after signing the contract, CalPERS advised me they had found their first mistake.

This clearly presents a promissory estoppel condition. Promissory estoppel serves as a "consideration substitute" in contract law that renders certain promises otherwise lacking in consideration binding and enforceable. In such cases, the promisee's reliance is treated as an independent and sufficient basis for enforcing the promise. Promissory estoppel can be viewed as a legal device that prohibits the promissor for denying the existence of a contract for lack of consideration.

(1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires. (2) A charitable subscription or a marriage settlement is binding under Subsection (1) without proof that the promise induced action or forbearance.

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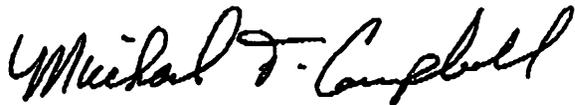
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In general the elements of promissory estoppel are:

1. a promise reasonably expected by the promisor to induce action or forbearance,
2. action or forbearance by the promisee in justifiable reliance on the promise (i.e. "detrimental reliance"), and
3. injustice can be avoided only through enforcement of the promise.

While researching CalPERS past practices in administering retirement funds and calculating accrued member services I have found some interesting, but disturbing facts. The local Antelope Valley East Kern Water Agency elected not to utilize CalPERS retirement system. When I questioned them, their comment was "We feel CalPERS is a property investor and not a people investor." Based on the millions of dollars lost in the stock market and property investments over the past fifteen years, I would have to say they made a wise decision. For CalPERS staff to arbitrarily make binding decisions outside of their own "strong public policies" seems to be a violation of the Board's own fiduciary duty of trust. Since the Board has elected not to reverse the decision or at least discuss equitable resolution I have taken the recommendation of the Administration Judge and forwarded a letter to Senator Steve Knights office (see attachment).

Respectfully,



Michael T. Campbell

Michael Campbell

January 7, 2013

**Cathy Rough
State Senator Steve Knight's Office
747 West Lancaster Boulevard
Lancaster, California 93534**

Dear Ms. Rough:

Thank you for taking my phone calls and responding to my request for assistance in reaching an amicable resolution to my unfair treatment by CalPERS.

During my administrative hearing CalPERS readily admitted to making several omissions and errors in the calculation of my credit service time. These errors resulted in an approximately \$750 reduction in my monthly retirement stipend. I retired based on the figures provided to my by CalPERS and signed a contract with my employer at the time to willingly resign my position. Had CalPERS not made an error in calculations, I would have worked another three years and my wife and I would not be facing the financial hardship we are living with at this time.

It is my strong feeling and belief CalPERS will continue to devastate member's lives and their future retirements by telling them one thing then pulling the rug out from under them. There is evidence this has been going on for over twenty years with no end in site. Whatever policy or case law CalPERS is standing behind cannot have any moral or ethical basis. I am seeking a change in state law or government policy that would allow affected CalPERS members to be compensated according to the facts and figures CalPERS employees supply to the members.

I am not asking for additional service credit time, which I did not earn, to be added; but to be compensated by CalPERS liability insurance for the loss of earnings I will accrue during the span of my retirement. Until CalPERS has to face the financial consequences and burden of their mistakes they will never change their practice. The citizens of this state (city, county) should not have to bear the financial burden caused by CalPERS errors.

CalPERS attorneys gleefully admit if CalPERS finds an error in calculation of retiree's benefits they will go back and make the deduction from the members accounts ten years plus and require repayment. I am asking that at least a ten-year timeframe for retirees/members to have the same ability to be reimbursed for errors made by CalPERS.

In the mid 1990's CalPERS adopted and enforced a policy where employees had the ability to make financial corrections if it were determined that CalPERS staff made an error in calculations on members accounts. I am only asking for the same policy to be followed in my (and all other members facing this problem) case.

Respectfully,



Michael Campbell

FAX

JANUARY 12, 2013

**TO: PETER M. MIXON
GENERAL COUNCIL**

FAX #: 916-795-3659

FROM: MICHAEL CAMPBELL

