

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Melinda Tackitt (Respondent) was employed by County of Butte (County). By virtue of her employment, she is a member of CalPERS. Her last day of payroll with the County was March 9, 2010, and she was retired for service August 31, 2010. Respondent submitted a Request for Service Credit Cost Information – Additional Retirement Service Credit (Request) to CalPERS on August 18, 2010.

CalPERS staff reviewed the Request and their records regarding Respondent and determined that when she submitted the Request, she was no longer in compensated employment with a CalPERS covered employer and, therefore, not eligible to purchase Additional Retirement Service Credit (ARSC). She appealed and a hearing was held on January 24, 2013.

Respondent was present at the hearing and represented herself. She testified that she had planned to work longer, but decided to retire because of a medical condition. Respondent and her husband met with an employee at CalPERS and discussed submitting her Request and her service retirement application. She was told that her Request had to be submitted prior to retiring. Respondent and her husband testified that the employee did not say that the Request would be approved, since the employee is not the one who makes that decision.

CalPERS introduced evidence showing that the California Public Employees' Retirement Law, Section 20909, requires that one of the prerequisites to the purchase of ARSC is that the member must be "in compensated employment" which means being paid with funds controlled by the member's employer. CalPERS provides information and materials to its members that specify this requirement.

In the Proposed Decision, the Administrative Law Judge (ALJ) concludes that Respondent did not meet her burden of proving that she was eligible to purchase ARSC. Furthermore, there was no evidence to estop CalPERS from denying her Request.

The ALJ's Proposed Decision is consistent with the law and the facts. For the reasons stated above, staff argues that the Board should 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.

March 20, 2013



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