

ATTACHMENT C
RESPONDENT'S ARGUMENT



**Independent
Financial Advisors**

April 5, 2013

Anne Stausball, CEO
California Public Employees Retirement System
P. O. Box 942101
Sacramento, CA 94229-2101

Re: Respondent's Argument in the Matter of the Denial of the Redeposit of Withdrawn Contributions for James D. Gates Respondent; Kathleen J. Gates, Respondent; and the Eastern Municipal Water District, Respondent.

Issue: Is CalPERS allowed to correct the error it made when it mistakenly allowed respondent James D. Gates to redeposit his contributions, plus interest, and to restore service credit to his retirement account.

Dear Ms. Stausball,

Mr. Gates has forwarded a respondent's argument to CalPERS and has asked that a copy of the package be sent to you for your review and comment.

Sincerely,

Teri Parker CFP®

Received

APR 12 2013

CalPERS Board Unit

April 5, 2013

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701

Re: Respondent's Argument in the Matter of the Denial of the Redeposit of Withdrawn Contributions for James D. Gates Respondent; Kathleen J. Gates, Respondent; and the Eastern Municipal Water District, Respondent.

Dear Ms. Swadensky,

As the Gates family financial advisor I have been asked by my client Mr. James Gates to submit a written argument against the proposed decision made by Administrative Law Judge, Mary Agnes Matyszewski denying Mr. James D. Gates the ability to redeposit of his withdrawn contribution due his divorce from Kathleen Gates on July 13, 2006.

On April 21, 2009 CalPERS notified Mr. Gates of the separation of his retirement account in accordance with the stipulation agreement for division of retirement benefits due to his divorce from Kathleen Gates. Ms. Gates was credited with 13.244 of Mr. Gates service credit hours. This letter states that if the nonmembers receives a lump sum distribution by either a refund (or rollover) that the member will have the right to redeposit those contribution, plus interest, and restore the credit hours to their account. The letter does not address the fact that if the non-member retires, the member may not re-purchase the service credit hours. (Attachment #1)

On August 1, 2009 Ms. Gates retired with the years of service credit awarded to her and her non-member account. CalPERS never notified Mr. Gates, nor did they explain that since Ms. Gates retired using her awarded service credit hours that he did not have the option to re-purchase the service credit hours that were transferred to Ms. Gates in the divorce settlement.

On January 26, 2010 Mr. Gates with the assistance of his Human Resources Representative Elvia Benitez completed the form Request for Service Credit Cost Information –Redeposit of Withdrawn Contributions for submission to CalPERS. Under Section 2, the empty boxed was checked after Ms. Benitez asked Mr. Gates if the “funds transferred due to a community property settlement agreement, and these funds have since been withdrawn by my former spouse or domestic partner.” Mr. Gates had not spoken to Ms. Gates since his service credit hours were separated, but understand that she was entitled to 13.244 of his service credit hours due to their divorce. Do to his lack of understanding of the statement; he did not realize that the word “withdrawn” applied only to a lump sum distribution. This is not clearly explained on the Redeposit of Withdrawn Contributions form; in fact no explanation is given. (Attachment #2)

Mr. Gates is a certified welder by trade, employed by Eastern Municipal Water District for over 38 years. He has relied heavily on other professionals to assist him with providing financial advice and direction, especially when completing his CalPERS forms. Please note that on the attached CalPERS forms the hand writing is not his.

Since the box was checked under Section 2 on the Request for Service Credit Cost Information – Redeposit of Withdrawn Contributions on the referenced form, the rep at CalPERS assumed that Ms. Gates had taken a lump sum distribution for the service credit hours awarded to her in the divorce from Mr. Gates. On May 12, 2010 CalPERS advised Mr. Gates that he could repurchase his 13.244 years of service credit at a lump sum cost of \$95,300.66. He signed and submitted the Election to Purchase Service Credit on June 10, 2010 to CalPERS, again completed by his HR Rep Elvia Benitez. (Attachment #3)

On June 22, 2010 CalPERS notified Mr. Gates that his funds were accepted for the redeposit of withdrawn contributions.

On November 30, 2011 Mr. Gates was notified by CalPERS that he was not allowed to re-purchase the service credit hours due to the fact that Ms. Gates retired on the service credit awarded to her in the divorce.

The act of CalPERS allowing Mr. Gates to repurchase his contributions awarded to Ms. Gates was erroneous due to the fact that Ms. Gates did retire using her awarded service credit hours. But considering Ms. Gates and Mr. Gates had contact with CalPERS on many occasions over the course of two years, was the series of events an "error" or was the CalPERS process and/or system deficient? (Attachment #4)

Please consider allowing Mr. Gates to re-purchase 13.244 years' service credit hours due to the series of mishaps that occurred between the periods of April 21, 2009 (separation of the account) through November 30, 2011 when Mr. Gates was notified by CalPERS that the community property split was offered in error.

Sincerely,



Teri Parker CFP®



James D. Gates

cc: Anne Stausball, CalPERS CEO



Member Services Division
P.O. Box 2056
Sacramento, CA 95812-2056
Telecommunications Device for the Deaf - (916) 795-3240
(916) 795-3551, FAX (916) 795-3389

Reply to: Section 714
Refer to: xxx-xx-

April 21, 2009

James Gates

Dear Mr. Gates:

This letter is to advise you that we have completed the separation of your account in accordance with the stipulated agreement for division of retirement benefits for the period of March 03, 1978 through August 25, 2004.

Kathleen Gates' nonmember account has been credited with 13.244 years of service credit and \$84,820.39 in contributions (as of August 25, 2004) and interest as of June 30, 2008. The balance that remains in your member account is 18.806 years of service credit and \$105,926.75 in contributions and interest as of June 30, 2008.

If the nonmember receives a lump sum distribution by either a refund (or rollover) of the contributions and interest credited to the nonmember account, you will have the right to redeposit those contributions, plus interest, and restore the service credit to your account. You will be sent written notification should Kathleen Gates elect to receive a refund (or rollover) from their nonmember account with instructions how to purchase the service credit that was transferred to this nonmember account. **However, the law is very specific that both the nonmember refund (or rollover) and your request to purchase the contributions and service must be completed prior to your effective date of retirement.**

Please contact our office at the address or telephone number in the letterhead if you have any questions regarding these computations.

Sincerely,

Tana Camargo
Community Property Unit

cc: Jacqueline Knackert, Attorney at Law

Attachment #1

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Request for Service Credit Cost Information — Redeposit of Withdrawn Contributions

Call CalPERS (or 888-225-7377) - TTY For Speech & Hearing Impaired (916) 795-3240

DDC Gates, James D.
Name of Member (Last Name First Name Middle Initial)

Social Security Number

Section 1

About You

Please include your full first and last name, followed by your middle initial

Have you requested this cost information before? No Yes

Have you submitted a retirement application? No Yes

Requested Date (mm/dd/yyyy)

Retirement Date (mm/dd/yyyy)

Former Name (if applicable)

Eastern Municipal Water Dist
Current Employer

Home Address

City

State

ZIP Code

Daytime Phone

Section 2

Employment Information

Please include the month, day, and year for all dates as mm/dd/yyyy. Do not abbreviate your employer's name

List all periods of employment for which you withdrew contributions

Eastern Municipal Wtr FY 2008/2009 (-12.244 years)
Employer From (mm/dd/yyyy) To (mm/dd/yyyy)

Funds transferred due to a community property settlement agreement, and these funds have since been withdrawn by my former spouse or domestic partner

Section 3

Certification

If you are currently a CalPERS member, sign the form, make a copy for your records, and mail the original to the address shown on the back of this form

I hereby certify that the above information is true and correct

Signature James D. Gates

Date 1/18/2010
Date (mm/dd/yyyy)

DOCUMENT
MISSING PAGES

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9
10
11
12
13

Attachment-#2



Election to Purchase Service Credit

Reply to Section: 835
Refer to No..

Member Name: James Gates

Employer Name: Eastern Municipal Water District

We informed you on May 12, 2010 of your right to elect to contribute and receive service credit for Redeposit of Withdrawn Contributions CP from CalPERS. The Election to Purchase Service Credit must be returned to CalPERS within 60 days to be valid. If not received within this time frame you must submit a new request for cost information, which may affect your eligibility and the cost to purchase this service credit.

CHECK THE OPTION(S) DESIRED

Lump Sum Payment Option: I hereby elect to purchase and receive additional service credit under the provisions of law and I enclose \$95,352.66. (Payment must be included when the election is filed with CalPERS.)

For Plan-To-Plan Transfer or Rollovers:

I have included the appropriate plan-to-plan/rollover certification documents with this election.

Active Member Installment Payment Option: I hereby elect to purchase additional service credit as provided by law and I authorize the deductions from my salary of \$367.13 for 390 payments or I authorize deduction from my salary of \$ for payments (see Choose Your Installment Payment, Attachment 3). **Check One:** I elect to have these deductions taken on an after-tax basis or a pre-tax (tax-deferred) basis. I understand that this payment amount will be deducted in addition to my normal contributions. This payment schedule includes interest through the completion of payments at the rate of 6%.

Active Member Partial Payment with Installment Payment Option: I hereby elect to receive service credit as provided by law and enclose \$753/6⁴¹ as partial payment. I authorize the amount allowed by the retirement law or I authorize deductions from my salary of \$36.25 (By law a payment schedule may be a maximum of 15 years with a minimum monthly payment of \$15.00). **Check One:** I elect to have these deductions taken on an after-tax basis or a pre-tax (tax-deferred) basis. I understand that this payment amount will be deducted in addition to my normal contributions. This payment schedule includes interest through the completion of payments at the rate of 6%.

you are retiring within the next 90 days, please indicate your planned retirement date: _____

I declare, under penalty of perjury, that I have not received credit for this service in any other system supported wholly or in part by public funds. I also understand this election is irrevocable. Once elected, any future changes in the actuarial assumptions or interest rate will not affect the cost of service credit already purchased or an existing payment schedule.

I UNDERSTAND THIS ELECTION IS IRREVOCABLE

Signature: James Gates Date: 6/10/2010
Address: _____ Telephone # (daytime): _____

FOR DEPARTMENTAL USE ONLY

Deposit Date:	Amount:	By & Date:

MEM-8 (10/96)

James D. Gates - CalPERS Separation of Account

7/13/2006 Judgment of Dissolution
3/18/2009 Superior Court awarded Kathleen Gates 13.244 years of service credit

4/21/2009 Mr. Gates CalPERS retirement was split into two accounts.

4/21/2009 Letter sent from CalPERS to James Gates stating that he would be sent written notification should Kathleen Gates elect to receive a refund (or rollover) from their nonmember account with instructions how to purchase the service credit that was transferred to the nonmember account.

8/1/2009 Kathleen Gates retired using her service credit awarded to her and her "nonmember" account. Retired at age 52, James was 51

1/18/2010 Request for Service Credit Cost Information submitted to CalPERS

3/18/2010 Mr. Gates called CalPERS to confirm receipt of signed application to purchase service credit hours

4/27/2010 Mr. Gates mailed Election to Purchase ARSC form to CalPERS electing the lump sum option of \$79,926.80. Form dated 4/9/2010.

5/5/2010 CalPERS in receipt of two checks totaling \$79,326.80, purchasing five years of credit service.

5/12/2010 Letter from CalPERS acknowledging confirmation of two checks in the amounts of \$66,000 and \$13,326.80 totaling \$79,326.80

5/12/2010 Letter from CalPERS confirming an inquiry to purchase the withdrawn contributions of 13.244 Service Credit Hours

6/10/2010 Letter from CalPERS confirming receipt of a lump sum payment of \$79,926.80. Account paid in full.

6/22/2010 Letter from CalPERS acknowledging three checks in the amount of \$893.18, \$57,044.58 and \$37,378.65, totaling \$95,316.41 Stating that the amounts will be credited as payments towards the Redeposit of Withdrawn Contributions from CalPERS.

6/28/2010 Letter from CalPERS acknowledging the signed election to repay Community Property Redeposit service credit by payroll deductions.

6/30/2010 Annual Member Statement stating 25.806 Service Credit Hours

12/3/2010 Letter from CalPERS estimating service credit with an retirement date of 9/17/2012 41.286 Service Credit Hours

6/30/2011 Annual Member Statement reporting service credit hours of 40.050 years

11/14/2011 CalPERS staff discovered that Kathleen Gates had in fact not withdrawn and refunded the 13.244 years of service credit but had elected to retire. This was discovered when James called CalPERS to inquire on service credits.

11/30/2011 Letter from CalPERS state that the 13.244 years of service credit from the community property split was offered in error. Referencing letter dated 5/12/2010

1/31/2012 Letter from CalPERS discovery letter acknowledging that Kathleen Gates is receiving a monthly benefit. Therefore James is ineligible to purchase additional service credit.

3/27/2012 Letter from Cal Pers notifying Jim of the error in the offer to purchase Redeposit of Withdrawn Contributions

3/30/2012 CalPERS requested information from Gate to process the refund, as of date James Gates has not provided the requested information

Attachment #4