

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT IN RESPONSE TO REQUEST FOR RECONSIDERATION

The hearing on this case was completed February 13, 2013. Following the hearing, a Proposed Decision was issued on March 13, 2013. The Decision was in favor of CalPERS (denial of Respondent's request to prohibit CalPERS from adjusting his service credit to remove 13.244 years of service credit redeposit). The Board voted to adopt the Proposed Decision dated March 13, 2013, at its meeting on May 15, 2013. James Gates (Respondent) submitted this Petition for Reconsideration dated May 24, 2013.

Respondent James D. Gates (Mr. Gates), is employed by respondent Eastern Municipal Water District and is a miscellaneous member of CalPERS. Respondent Kathleen J. Gates (Mrs. Gates), Respondent's former spouse, is employed by the Hemet Unified School District, and is a miscellaneous member of CalPERS.

On March 18, 2009, Mrs. Gates was awarded 13.244 years of Mr. Gates' accumulated service credit as part of the property settlement in their dissolution of marriage. Upon implementation of this order, the 13.244 years of service were transferred into a nonmember account for the benefit of Mrs. Gates. Mr. Gates was advised by staff that:

"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..."

Effective August 1, 2009, Mrs. Gates service retired, using the service credits in her "nonmember" account with CalPERS. On or around January 27, 2010, CalPERS received a Request for Service Credit Cost Information - Redeposit of Withdrawn Contributions (RED-CP) from Mr. Gates. In this request, Mr. Gates checked the box indicating that his nonmember spouse had withdrawn her retirement funds. On May 12, 2010, CalPERS mistakenly provided Mr. Gates with an estimate of the cost for a redeposit of the 13.244 years of service credit at a lump sum cost of \$95,300.66. On June 15, 2010, CalPERS received Mr. Gates' signed election to redeposit and his payment.

On or about November 14, 2011, while completing a retirement estimate requested for Mr. Gates, CalPERS staff discovered that Mrs. Gates had in fact not withdrawn and refunded the 13.244 years of service credit. CalPERS staff informed Mr. Gates that 13.244 years of service credit would again be removed from his account and the amount paid would be refunded to him. He was also advised of his right to appeal. Mr. Gates refused to provide information requested for transfer of his redeposit amount. Mr. Gates filed a timely appeal. The appeal was limited to the issue of whether Mr. Gates was eligible to redeposit and acquire the 13.244 years of service credit that was awarded to his nonmember spouse.

A hearing was held on February 13, 2013, before an Administrative Law Judge (ALJ). Mr. Gates was present, and was represented by a personal representative. Mrs. Gates was present but only in the capacity of a witness. Eastern Municipal Water District did not appear. Evidence, both oral and documentary, was presented by Mr. Gates and CalPERS. Following the receipt of testimony, including that of Mr. Gates, his financial advisor, Mrs. Gates, and a CalPERS staff representative, the ALJ issued a Proposed Decision on March 13, 2013. The ALJ found, inter alia, that CalPERS had mistakenly permitted Mr. Gates to proceed with a redeposit. The ALJ also found that Mr. Gates had erroneously informed CalPERS that Mrs. Gates had refunded and withdrawn her contributions in the nonmember account, when in fact she had used the service credit to service retire.

The ALJ concluded that CalPERS was entitled to correct the error and to reverse the redeposit, returning the amount paid to Mr. Gates. The ALJ also concluded that should Mr. Gates wish, he could request that CalPERS distribute to him any interest on his account attributable to the monies returned, or he could leave the interest earned in his retirement account. The Proposed Decision was approved and adopted by the Board on May 15, 2013.

Respondent's grounds for reconsideration are based on disagreement with the ALJ's findings and legal analysis. CalPERS' staff addresses the arguments below:

Respondent was properly served with the Statement of Issues and Notice of Hearing, attended the hearing with a personal representative, his financial consultant. At hearing, evidence was taken on the underlying facts and was received into evidence. The ALJ analyzed the proper California Public Employees' Retirement Law sections relevant to redeposit and estoppel. The ALJ simply found against Respondent. Respondent has not raised any new evidence or change in circumstances which would warrant reconsideration. Respondent also asserts that he was not sent a copy of the hearing transcripts by the court reporter. There is no indication that he ordered a copy of the transcript. At the conclusion of each hearing before an ALJ, each party is provided a document which identifies the court reporter and an estimated number of pages, should they wish to order a copy of the transcript.

For all of the reasons stated above, staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a Writ Petition in Superior Court.

June 19, 2013



WESLEY E. KENNEDY
Senior Staff Attorney