ATTACHMENT A

THE PROPOSED DECISION

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BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Request to Purchase Additional Retirement Service Credit of: ROXANE T. CONGI Respondent and OAKLAND HOUSING AUTHORITY[1] Respondent.	Agency Case No. 2014-0025 OAH No. 2014020431

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on July 15, 2014, in Oakland, California.

Elizabeth Yelland, Senior Staff Attorney, represented Petitioner Karen DeFrank, Chief, Customer Account Services Division, California Public Employees' Retirement System (CalPERS).

Respondent Roxane Congi (Respondent) represented herself.

No appearance was made by or on the behalf of Respondent Oakland Housing Authority.

The record closed on July 15, 2014.

ISSUE

Whether CalPERS erred when it refused to allow Respondent Congi to purchase additional retirement service credit (ARSC).

[1] CalPERS documents incorrectly refer to the Oakland Housing Authority as the Oakland City Housing Authority.

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED July 29 2014

FACTUAL FINDINGS

1. Petitioner Karen DeFrank, Chief, Customer Account Services Division, CalPERS, filed the Statement of Issues in her official capacity.

2. Respondent Roxane T. Congi was a member of CalPERS by virtue of her employment by Respondent Oakland Housing Authority. She retired from her position effective November 13, 2013.

3. Government Code section 20909 granted CalPERS members the right to purchase ARSC if certain criteria were satisfied. The criteria included that the member be "employed in state service at the time of the additional retirement service credit election." (Gov. Code, § 20909, subd. (e)(1)). The Legislature repealed section 20909 effective January 1, 2013.

4. CalPERS keeps records of telephone calls made and received. The record is called the Customer Touch Point Report, and it contains the name of the staff member who handled the call, the date, the type of call, and a brief summary of the subject matter discussed. The Report shows that numerous calls were received from and made to Respondent concerning her interest in purchasing ARSC.

5. Respondent made her first call concerning an ARSC purchase on May 11, 2011. She was advised to take the first step, which was to complete an online cost estimate. On May 12, 2011, Respondent called for assistance in completing the estimate. The next completed call concerning ARSC was on December 6, 2012. The note states the staff member "went through SC cost estimate with mbr."

6. On December 7, 2012, CalPERS received via faxsimile Respondent's request to purchase five years of ARSC.

7. CalPERS sent Respondent a letter dated January 31, 2013, confirming it had received her request to purchase ARSC. It informed Respondent that, due to the high volume of requests resulting from the elimination of ARSC effective January 1, 2013, the processing of requests would be somewhat delayed. Patience was requested.

8. By letter dated July 16, 2013, CalPERS informed Respondent that she did not qualify for the purchase of ARSC because "We found no indication that you were in compensated employment with a CalPERS covered employer on the date your request for ARSC cost information was received." If this was not the case and she was so employed she was invited to submit another ARSC request and "a copy of your pay stub confirming such employment."

9. Respondent Oakland Housing Authority confirmed by letter dated June 26, 2014, that Respondent "separated from [the agency] effective November 14, 2013, however her last day of compensated employment was January 25, 2010."

10. Respondent wrote letters to CalPERS complaining of the service she received concerning her ARSC request. She felt that she was treated rudely and was given incorrect and misleading information. Although found ineligible to purchase ARSC, Respondent was eligible to purchase other types of service credit based on leaves of absence taken at various times during her employment. By letter August 6, 2013, CalPERS advised Respondent of these other options, but also confirmed that she was not eligible to purchase ARSC because she:

> must have been in active employment where compensation was being reported to CalPERS. Since you are on SDI, you were considered in a "Leave" status and no compensation was being reported to CalPERS.

Respondent informed CalPERS that she wished to appeal the decision to deny her request to purchase ARSC, and this hearing followed.

11. At hearing, Respondent complained that she was treated very poorly by CalPERS staff. She was always asked if she was employed, and she said that she was; staff never used the term "compensated employment." Respondent believed that she was employed because she was on a leave of absence and "still on the books." The first time she heard the term "compensated employment" was when she was denied the ability to purchase ARSC. She was never provided any regulations or specific code sections. If she had known that she had to have been a compensated employee at the time she applied, she would have acted differently; she would have applied earlier. Respondent also feels she was treated in a rude manner by CalPERS staff, and that they are not the experts that they should be regarding CalPERS benefits.

LEGAL CONCLUSIONS

1. The burden of proof in this appeal from the denial by CalPERS of Respondent's request to purchase ARSC rests with Respondent.

2. CalPERS provides retirement benefits to public employees in California pursuant to the Public Employees' Retirement Law (Gov. Code, § 20000 et seq.). Former section 20909 gave CalPERS members the right to purchase additional years of service credit to enhance their retirement benefits when they retired. The law is clear that ARSC must be purchased when a member is still employed. It is also clear that Respondent was not entitled to purchase ARSC when she applied because she was not employed at the time she applied.

3. Government Code section 20160 grants CalPERS the authority to correct errors or omissions of active or retired members in certain circumstances if all the listed facts exist. Subdivision (a)(2) provides that "the error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of

the Code of Civil Procedure." Subdivision (a)(3) requires that "the correction will not provide the party seeking correction with a status right, or obligation otherwise available under this part." In addition, "failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an 'error or omission' correctable under this section."

Respondent's failure to apply for ARSC while actively employed does not qualify as a correctable mistake under section 20160. It is unfortunate, if true, that CalPERS staff treated Respondent rudely. But this does not excuse her failure to acquaint herself with the requirements of a benefit that she was applying for. The requirements can be complex, but they are explained in CalPERS publications available through the website or by request. An example is the CalPERS guide "Service Credit Purchase Options." In that publication, it is clearly stated that a member is eligible to apply for ARSC if he or she is "currently in compensated employment with a CalPERS-covered employer."

4. The doctrine of equitable estoppel likewise does not apply to these facts. It applies to public agencies in very limited circumstances where the aggrieved party demonstrates that harm resulted because she relied on a representation to her detriment. Such was not proven here.

5. Respondent failed to apply for ARSC benefits until she was not entitled to do so. Her failure was not caused by CalPERS, and she did not rely on any representation of CalPERS to her detriment such as would require CalPERS to allow her to apply. Accordingly, her appeal will be denied.

ORDER

The appeal of Respondent Roxane Congi is denied.

DATED: July 25, 2014

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings