

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The issue in this case is whether CalPERS erred when it refused to allow Respondent Roxane T. Congi (Respondent Congi) to purchase Additional Retirement Service Credit (ARSC).

Respondent Congi was employed by the Oakland City Housing Authority (Respondent Oakland Housing Authority). Respondent Congi's last date of compensated employment was January 25, 2010.

Prior to January 1, 2013, CalPERS members had the right to purchase ARSC if certain criteria were satisfied. Government Code section 20909. The criteria included that the member had to be "employed in state service at the time of the ARSC election." Government Code section 20909 (e)(1). (The ability to purchase ARSC was repealed by the Legislature by the Public Employees' Pension Reform Act, effective on January 1, 2013.)

On December 7, 2012, CalPERS received Respondent Congi's request to purchase five years of ARSC. At the time, she had been out of compensated employment on a leave for about two years. On January 31, 2013, CalPERS confirmed receipt of Respondent Congi's request.

CalPERS asked Respondent Oakland Housing Authority to confirm Respondent Congi's dates of employment. Respondent Oakland Housing Authority confirmed that Respondent Congi's last day of compensated employment was January 25, 2010.

On July 16, 2013, CalPERS informed Respondent Congi she did not qualify for purchase of ARSC because she was not in compensated employment with a CalPERS covered employer on the date her request for ARSC cost information was received.

Respondent Congi appealed CalPERS' decision to deny her request to purchase ARSC. A hearing was completed on July 15, 2014. Prior to hearing, CalPERS explained the hearing process to Respondent Congi and the need to support her case with witnesses and documents. CalPERS provided Respondent Congi with a copy of the administrative hearing process handbook.

The Administrative Law Judge (ALJ) found that Government Code section 20909 gave CalPERS members the right to purchase ARSC, but that it was clear that ARSC must have been purchased when the member was still employed. The ALJ found it was also clear that Respondent Congi was not entitled to purchase ARSC when she applied, because she was not employed at that time, and had not been employed for the prior two years.

The ALJ then considered Respondent Congi's estoppel argument. Government Code section 20160 (the "Mistake Statute") grants CalPERS the authority to correct errors in certain circumstances if "the error or omission was the result of mistake, inadvertence,

surprise, or excusable neglect.” Government Code section 20160 (a)(3) states that “the correction will not provide the party seeking correction with a status, right or obligation otherwise available.” The ALJ found that Respondent Congi’s failure to apply for ARSC while actively employed does not qualify as a correctible mistake. The ALJ reasoned that Respondent Congi failed to acquaint herself with the requirements of a benefit for which she had applied. The requirements are explained in CalPERS publications available through the website or by request. The ALJ cited the CalPERS Guide “Service Credit Purchase Options” (Pub-12) as an example where it is clearly stated that a member is eligible to apply for ARSC only if he or she is “currently in compensated employment with a CalPERS covered employer.”

The ALJ found that equitable estoppel does not apply to these facts. The ALJ held that Respondent Congi failed to apply for ARSC benefits until she was no longer 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. The ALJ denied her appeal.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board 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.

September 17, 2014



ELIZABETH YELLAND
Senior Staff Attorney