

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Consolidated Statements  
of Issues Regarding the Appeals of :

MICHAEL J. JOY,

Case No. 2014-0016  
OAH No. 2014010597

SUSAN M. CANTER,

Case No. 2014-0017  
OAH No. 2014010604

and

J. BARTON PHELPS.

Case No. 2014-0265  
OAH No. 2014030587

Appellants/Respondents.

against

THE JUDGES RETIRMENT SYSTEM

and

THE CALIFORNIA PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM.

Complainants.

**PROPOSED DECISION**

Ann Elizabeth Sarli, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, State of California, heard this matter on July 1, 2014, in Sacramento, California.

Jeffrey R. Rieger, Attorney at Law, appeared by telephone and represented the complainants<sup>1</sup>, the Judges' Retirement System (JRS) and the California Public Employees' Retirement System (CalPERS).

<sup>1</sup> Complainants are at times referred to as "Petitioners" in the record.

PUBLIC EMPLOYEES RETIREMENT SYSTEM  
FILED August 8, 2014  
*Sharon Moore*

Appellants<sup>2</sup> were represented by Paul G. Mast, Attorney at Law, who appeared by telephone.

The matter presented was a legal issue. Accordingly, the parties agreed the matter would be decided on the basis of briefs and oral argument. Jurisdictional documents and briefs were admitted as Exhibits 1 through 9, and oral argument was received. The matter was submitted and the record was closed on July 1, 2014.

## FINDINGS

### *Background*

1. Judge Joseph L. Joy (Judge Joy) was a member of the JRS. On January 4, 1981, he elected a deferred retirement under Government Code section 75033.5. He became eligible to receive and began receiving his retirement allowance, effective November 3, 1981, until his death on May 9, 1989. Thereafter, JRS paid Judge Joy's surviving spouse, Marjorie Joy, a survivor's allowance until her death on January 19, 2007. Appellant Michael J. Joy is the alleged sole child of Judge Joy and Marjorie Joy.

2. Appellant Judge J. Barton Phelps (Judge Phelps) is a member of the JRS and has been receiving a retirement allowance since his retirement, effective April 30, 1985.

3. Judge Earl F. Riley (Judge Riley) was a member of the JRS and received a retirement allowance from his retirement effective October 14, 1987, until his death on February 13, 2000. Upon his death, JRS has been paying his surviving spouse, Appellant Susan M. Canter, a survivor's allowance.

### *Issue and Applicable Statutes*

4. Michael J. Joy, Judge Phelps and Susan M. Canter (Appellants) claim that Judge Joy, Judge Phelps and Judge Riley (the Judges) were entitled to purchase additional years of military service credit for service in the military during the 1940's. Appellants claim that receipt of additional years of military service credit would have increased the retirement benefits paid the Judges and their survivors. Appellants claim that JRS should have advised the Judges of their right to purchase service credit for time served in the Armed Forces.

5. Appellants claim that the Judges were entitled to purchase military service credit under Government Code section 20930.3, which was enacted in 1974 and was later re-codified as section 21024. Government Code section 20930.3 provided that "local members" of CalPERS could purchase service credit for public service with the active Armed Forces or the Merchant Marine of the United States, and during any period of rehabilitation afforded

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<sup>2</sup> Appellants are at times referred to as "Respondents" in the record.

by the United States Government for six months thereafter. Said service would be credited only if it was continuous, and the service credit granted could not exceed four years. Government Code section 21024 was enacted in 1995 and provides in pertinent part:

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.

(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.

(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.

[¶...¶]

(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999–2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

(Underlining added for emphasis)

6. JRS maintains that Government Code section 20930.3, re-codified as section 21024, pertains only to "local members" of CalPERS and that members of the JRS are not local members of CalPERS. Accordingly, JRS maintains that the Judges were not eligible to purchase service credit for military service pursuant to those Government Code sections.

7. Government Code section 20370 defines “local members” as follows:

(a) “Member” means an employee who has qualified for membership in this system and on whose behalf an employer has become obligated to pay contributions.

[¶...¶]

(c) “Local member” includes:

(1) Local miscellaneous members.

(2) Local safety members.

[¶...¶]

8. Government Code section 20383 defines “local miscellaneous member” as follows:

“Local miscellaneous member” includes all employees of a county office of education, school district, or community college district who are included in a risk pool and all employees of a contracting agency who have by contract been included within this system, except local safety members.

9. Government Code section 20420 defines “local safety member” as follows:

“Local safety member” includes all local police officers, local sheriffs, firefighters, safety officers, county peace officers, and school safety members, employed by a contracting agency who have by contract been included within this system.

10. Government Code section 20022 defines “contracting agency” as:

“Contracting agency” means any public agency that has elected to have all or any part of its employees become members of this system and that has contracted with the board for that purpose.

“Contracting agency” also means any county office of education, school district, or community college district that has elected to have all or part of its employees participate in a risk pool and that has contracted with the board for that purpose.

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*Discussion*

11. Appellants' position is without merit. Members of the JRS belong to a Judges Retirement System, which is codified at Government Code sections 75000 through 75613. Members of the JRS are not local members of CalPERS pursuant to Government Code sections 20370, 20383, and 20420. Accordingly, members of the JRS are not entitled to purchase service credit for military service under Government Code section 20930.3, re-codified as section 21024.<sup>3</sup> In addition, members of the JRS are not employed by a "contracting agency" that contracted with CalPERS to make sections 20930.3 and 21024 available to its employees, pursuant to Government Code section 21024, subdivision (f).

12. Appellants' additional argument regarding the "J.D. Smith case"<sup>4</sup> as it relates to Government Code section 21025 is without merit.

13. Appellants' additional arguments regarding, inter alia, collateral estoppel, the duty of CalPERS to make corrections, appropriate interest calculations, and the right of a JRS member to select an alternate retirement option post retirement in order to maximize service credits for military services are moot, as JRS members were not entitled to purchase service credit for military service under Government Code section 20930.3, re-codified as section 21024.

**LEGAL CONCLUSION**

As set forth in the Findings, Appellants' claims that they are entitled to purchase service credit for military service under Government Code section 20930.3, re-codified as section 21024, are not supported by law or fact.

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<sup>3</sup> The right to purchase credit for military service time was not added to the Judges' Retirement Law until January 1, 2005, which was the effective date of the Legislature's enactment of Government Code section 75031.5. At hearing and in their written briefs, Appellants confirmed that they are not making a claim under Government Code section 75031.5.

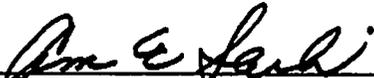
<sup>4</sup> (*Superior Court of the State of California, County of Los Angeles case number BS 061317 Hon. James D. Smith Petitioner vs Board of Administration California Public Employees Retirement System et al, Judgment Granting Peremptory Writ of Mandamus April 18, 2001.* ) At hearing and in their written briefs, Appellants herein confirmed that they are not making a claim under Government Code section 21029, the section at issue in the J.D. Smith matter.

**ORDER**

Appellants' requests to purchase service credit pursuant to Government Code section 20930.3, re-codified as section 21024, are DENIED.

Complainant's denials of Appellants' requests to purchase service credit pursuant to Government Code section 20930.3, re-codified as section 21024, are UPHELD.

DATED: August 5, 2014

  
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ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings