

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Respondent Ronald High (Respondent High) was employed by the State of California, Department of Industrial Relations from 1993 to 2001. By virtue of his employment, Respondent High became a miscellaneous member of CalPERS. Prior to his state employment, Respondent High served in the United States Army from 1969 to 1971 and was honorably discharged.

Prior to his retirement in March 2001, Respondent High received information from CalPERS regarding his eligibility to purchase military service credit. On January 22, 2001, Respondent High elected to purchase approximately two years of military service credit for \$26,887.29 and opted to pay in installments of \$224.59 for 180 months totaling \$40,426.20. Respondent High believed that the two years of military service credit in addition to the eight years of service credit earned as an employee of the state would make him entitled to a 50% employer contribution towards health insurance premiums during retirement.

On March 30, 2001, CalPERS staff sent Respondent High a letter that stated in part, "based on your years of credited state service, you are entitled to 50 percent of the state's contribution toward your health insurance." The information provided by CalPERS staff to Respondent High in 2001 was incorrect. Pursuant to Government Code section 22847, only completed years of credited state service at retirement can be applied towards vesting for health contributions. The purchased military service credit cannot be counted towards health insurance vesting as the staff indicated.

Respondent High enrolled in a CalPERS healthcare plan effective August 1, 2010. On October 5, 2010, CalPERS staff discovered an error had been made in the calculation of Respondent High's service credit. CalPERS staff contacted Respondent High informing him that he was provided with incorrect information in March 2001, and that he is not eligible to receive an employer contribution of 50 percent of the cost of his post-retirement health benefits.

On May 28, 2013, Respondent High filed an appeal and sought equitable relief. Prior to the hearing, CalPERS explained the hearing process to Respondent High and the need to support his case with witnesses and documents. CalPERS provided Respondent High with a copy of the administrative hearing process handbook and answered Respondent High's questions.

A hearing was held on July 3, 2014. At the hearing, Respondent High did not offer any witnesses to testify. Rather, Respondent High testified on his own behalf and offered documentary evidence into the record.

The Administrative Law Judge (ALJ) determined that the governing statutes are clear, that Respondent High is entitled only to the retirement benefits he actually earned and based upon Government Code section 20160, CalPERS had the authority to correct the error. The ALJ discussed further whether an application of equitable estoppel was appropriate or

permissible under these circumstances and determined that no court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations.

The ALJ concluded that Respondent High's appeal should be denied. On September 17, 2014, the Board adopted, as its own, the Proposed Decision denying Respondent High's appeal (Decision). Respondent High submitted a letter to the CalPERS Board Unit on September 26, 2014, requesting that the Decision be reconsidered.

Respondent High did not submit any additional evidence with the Petition for Reconsideration. Since no new evidence was proffered by Respondent High and the legal authorities supporting the Proposed Decision and the Decision still control, 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. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 19, 2014



CHRISTOPHER PHILLIPS
Staff Attorney