

ATTACHMENT E
THE PROPOSED DECISION

BEFORE THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

RONALD HIGH,

Respondent.

Case No. 2013-0667

OAH No. 2013110877

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on July 3, 2014.

Christopher C. Phillips, Staff Attorney, represented petitioner Karen DeFrank, Chief, Customer Account Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS), State of California.

Ronald High represented himself.

The matter was submitted on July 3, 2014.

ISSUE

Did CalPERS comply with Government Code section 22874 when it denied respondent's request for payment of 50 percent of his post-retirement health premiums?

FACTUAL FINDINGS

Preliminary Matters

1. CalPERS is the agency charged with administering the Public Employees' Medical and Hospital Care Act (PEMHCA). PEMHCA authorizes the Board of Administration of CalPERS to provide health benefits for qualified state employees, dependents and annuitants.

Respondent's Testimony

2. Mr. High served in the United States Army from 1969 to 1971 and was honorably discharged. From 1981 to 2001, he worked part-time as an Instructor for an elevator construction union. From 1993 to 2001, he worked full-time as a Safety Engineer for the State of California. Mr. High retired in March 2001 and was eligible to receive health benefits as a retired annuitant under PEMHCA by virtue of his employment as a Safety Engineer with the State of California.

3. On January 8, 2001, CalPERS sent Mr. High a letter regarding his eligibility to purchase the military service credit.¹ The letter stated in part, "There are scenarios where some members may derive little or no increased benefit from additional service credit. In order to determine when or if the additional service credit would be most beneficial, we encourage you to visit the CalPERS website at www.calpers.ca.gov Service Credit Cost Estimator and the Retirement Planning Calculator." In addition, Mr. High was advised the election to purchase the military service credit was irrevocable.

4. Government Code section 22874 provides for the employer of a state employee to pay a percentage of the cost of the employee's health benefits after the employee retires. The employer makes no contribution unless the employee had at least 10 years of state service before retiring. For an employee who had 10 years of service, the employer contributes 50 percent of the cost of post-retirement health benefits. There is a graduated scale, and for an employee who had 20 years of service, the employer contributes 100 percent of the cost of post-retirement health benefits. On January 22, 2001, Mr. High elected to purchase two years of military service credit. He paid installments of \$224.59 per month for 180 months totaling \$26,887.29. Mr. High testified he purchased the military service credit because he believed he needed an additional two years of qualifying service credit in order to be entitled to receive an employer contribution of 50 percent of the cost of his post-retirement health benefits. He understood that the purchase of the military service credit could also increase his unmodified service retirement allowance, his pension benefits by approximately \$226.59 per month.

5. On March 30, 2001, CalPERS sent Mr. 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." CalPERS later determined this statement was inaccurate.

6. On July 20, 2010, Mr. High enrolled in CalPERS healthcare plan effective August 1, 2010. At the time of his enrollment, Mr. High had accumulated eight years of service credit as a state employee and continued to make payments towards the two years of

¹ Service credit is credit earned each year of work for a CalPERS covered employee. CalPERS retirement benefits are based, in part, on the years of service credit. Military service credit may be purchased depending on the number of years of military service. (Gov. Code, §22750 et. seq.).

military service credit. On August 1, 2010, Mr. High received 50 percent of the state's contribution for the payment of his health insurance premium. In reliance on receiving the CalPERS healthcare plan, he declined the medical plan offered by his previous employer.

7. On October 5, 2010, CalPERS discovered that an error had been made in the calculation of Mr. High's service credit. Shirley Welton, a CalPERS analyst, spoke with Mr. High by telephone and told Mr. High that he was given "incorrect information" in March 2001 when he was advised that he was eligible to receive an employer contribution of 50 percent of the cost of his post-retirement health benefits. Ms. Welton told Mr. High that he had not vested in that benefit and was not entitled to receive it. Mr. High wrote several letters to CalPERS regarding his health benefits. CalPERS wrote numerous responses to Mr. High's inquiry regarding the criteria used to determine vesting of health benefits.

8. On August 22, 2011, Natalie Lua, from CalPERS Enrollment and Eligibility Health Account Service Section, wrote to Mr. High and outlined the criteria used to determine vesting of health benefits. She informed Mr. High that unless he was credited with ten years of state service at the time of retirement, he was not eligible to receive employer contributions toward the payment of health premiums. Mr. High had accumulated only eight years of credited state service (1993 to 2001) when he retired. Although he met the qualifications to enroll in health benefits as an annuitant, he was responsible to pay the full amount of his health insurance premium since he did not have the required ten years of state service when he retired. Ms. Lua referred Mr. High to Government Code section 22874 that established the criteria for vesting of health benefits. Ms. Lua wrote, "This section does not allow for purchased military service credit to be applied towards health vesting."

9. On May 9, 2012, Karen DeFrank, the Chief of CalPERS Consumer Accounts Services Division, wrote to Mr. High and confirmed that his eight years of state service did not qualify for any state contribution towards his health premium, that the definition of state service was clearly outlined under Government Code sections 22874 and 20069, and that his military service credit could not be used to satisfy the ten year requirement to receive the state contribution towards health premiums.

10. On May 21, 2013, Donald R. Martinez, Assistant Chief of CalPERS Health Account Service, wrote to Mr. High and again confirmed that he was not entitled to receive 50 percent of the state's contribution towards the payment of health insurance premiums since he did not have ten years of qualifying service credit.

11. Mr. High testified he relied to his detriment on the representations made by CalPERS in its March 2001 correspondence.

12. On May 28, 2013, Mr. High filed an appeal and sought equitable relief.

Documents Introduced at Hearing

13. CalPERS submitted various letters it sent to Mr. High regarding the criteria used to determine the vesting of entitlement to a contribution from the state towards health benefit premiums. CalPERS acknowledged it erroneously advised Mr. High in March 2001 that he was entitled to receive an employer contribution of 50 percent of the cost of his post-retirement health benefits. However, CalPERS maintained that Mr. High was not financially injured because the military service credit he purchased resulted in an increase in his pension by \$226.59 per month. In addition, Mr. High met the requirements to enroll in health benefits, so he was not without health benefits.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. An applicant for retirement benefits has the burden of proving that he is entitled to them. (*Greator v. Board of Administration* (1979) 91 Cal.App.3d 54).

2. In the absence of a statute to the contrary, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Applicable Statutes

3. Government Code section 22874 provides in part:

(a) Notwithstanding Sections 22870, 22871, and 22873, a state employee . . . who becomes a state member of the system after January 1, 1989, may not receive any portion of the employer contribution payable for annuitants unless the person is credited with 10 years of state service at the time of retirement.

(b) The percentage of the employer contribution payable for postretirement health benefits for an employee subject to this section shall be based on the completed years of credited state service at retirement . . . 10 credited years of service, 50 % of the employer contribution.

[¶] . . . [¶]

(c) This section shall apply only to state employees that retire for service. For purposes of this section “state service” means service rendered as an employee of the state or an appointed or elected officer of the state for compensation. Notwithstanding Section 22826, for purposes of this section, credited state

service includes service to the state which the employee, pursuant to Section 20281.5 did not receive credit.

[¶] . . . [¶]

4. Government Code section 20069 provides that the term, “state service” means service rendered as an employee or officer of the state for compensation and “only” while he or she received compensation from that employer.

5. Government Code section 22848 provides that an employee who is dissatisfied with any action or failure to act by CalPERS in connection with his health benefits coverage has the right to appeal to the board and be accorded an opportunity for a fair hearing.

6. Government Code section 20160 authorizes the board, in its discretion, to correct errors subject to certain conditions. The request to correct the error “will not provide the party seeking correction with a status, right, or obligation not otherwise available. . . . The party seeking correction of an error has the burden of presenting evidence to the board establishing the right to the correction.

7. California Code of Regulations, title 2, section 599.501, subdivision (h), authorizes the board to make determinations of the applicability of health benefit coverage to specific employees or annuitants.

Evaluation

8. The calculation of state vested health benefits is governed by statute. Mr. High is entitled to only the retirement benefits he actually earned. He accumulated eight years of state service credit as a state employee. In January 2001, he purchased two years of military service credit. Under Government Code section 22874, a state employee may not receive any portion of the employer contribution toward health benefit premiums unless the person is credited with at least ten years of state service at the time he or she retires. Under Government Code section 20069, “state service” means service rendered as an employee of the state or an appointed or elected officer of the state for compensation. The two years of military service credit that Mr. High purchased does not apply to satisfy the ten year requirement. For this reason, Mr. High was not eligible to receive an employer contribution of 50 percent of the cost of his post-retirement health benefits, because he had not acquired ten credited years of qualifying state service before 2001, which was when he retired. Mr. High is, however, eligible to enroll in health benefits as an annuitant, but he would be responsible to pay the full amount of his health insurance premium since he did not have the required ten years of state service when he retired.

9. CalPERS accurately advised Mr. High in correspondence dated January 8, 2001, that there were scenarios where some members may derive little or no increased benefit from the purchase of military service credit, and encouraged its members to visit the CalPERS website to determine if the additional service credit would be beneficial to them.

No evidence was presented that Mr. High had checked the CalPERS website. Mr. High bore the responsibility of verifying whether the purchase of the military service credit would have been beneficial in his circumstance.

10. CalPERS erroneously represented to Mr. High in correspondence dated March 30, 2001, that he was entitled to a 50 percent state contribution for health premiums based on his years of credited state service. There was no prior documented evidence that CalPERS ever advised Mr. High of this information before the March 2001 correspondence. Since Mr. High elected to purchase his military service credit in January 2001, before the erroneous representation, he could not have reasonably relied on CalPERS's March 30, 2001 correspondence to his detriment. Mr. High met the qualifications to enroll in health benefits as an annuitant, but he is responsible to pay the full amount of the health insurance premium.

11. Mr. High sought equitable relief. The doctrine of equitable estoppel has been recognized and applied against public entities. In the public pension context, equitable estoppel has been applied to matters involving "long-continuing misrepresentations." (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28.) However, "no court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations." (*Ibid.*)

Equitable Estoppel Against a Governmental Entity

12. In *Lentz v. McMahon*,² the Supreme Court of California analyzed and discussed the doctrine of equitable estoppel and its application to public entities.

[E]quitable estoppel is a descendent of the ancient equity doctrine that "if a representation be made to another who deals upon the faith of it, the former must make the representation good if he knew or was bound to know it to be false." (Bigelow on Estoppel (6th ed. 1913) p. 603; see *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-489 [91 Cal.Rptr. 23, 476 P.2d 423].) We have described the requirements for the application of equitable estoppel as follows: "Generally speaking, four elements must be present . . . : (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Mansell, supra*, 3 Cal.3d 462, 489, quoting *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305 [61 Cal.Rptr. 661, 431 P.2d 245].)

² *Lentz v. McMahon* (1989) 49 Cal.3d 393.

At common law, estoppel was unavailable against the government. (All footnotes are omitted.) We have long held, however, that estoppel may be asserted against the government “where justice and right require it” (*City of Los Angeles v. Cohn* (1894) 101 Cal. 373, 377 [35 P. 1002]), and we have applied the doctrine against government entities in a variety of contexts. At the same time, our cases recognize the correlative principle that estoppel will not be applied against the government if to do so would effectively nullify “a strong rule of policy, adopted for the benefit of the public.” (*County of San Diego v. Cal. Water etc. Co.* (1947) 30 Cal.2d 817, 829-830 [186 P.2d 124, 175 A.L.R. 747].) In *Mansell, supra*, 3 Cal.3d 462, we adopted a balancing approach to accommodate these concerns: “The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.” (*Mansell, supra*, 3 Cal.3d 462, 496-497.) Applying this test in *Mansell*, we approved the application of estoppel to prevent a local government from asserting paramount title to land pursuant to a claimed constitutional right. (*Id.*, at pp. 499-500.) We have also considered application of estoppel to a variety of governmental actions. (See, e.g., *Driscoll v. City of Los Angeles, supra*, 67 Cal.2d 297, 310 [city estopped from asserting statute of limitations regarding pension benefits]; *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 27-29 [157 Cal.Rptr. 706, 598 P.2d 866] [application of estoppel denied to county employee who sought cash compensation for unused overtime credits].)³

As noted above, in *Mansell, supra*, 3 Cal.3d 462, the Supreme Court adopted a balancing approach. The Court held that the government may be bound by an equitable estoppel if the injustice that would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon “*public interest or policy.*” (*Mansell, supra*, 3 Cal.3d 462, 496-497.) (Italics added.)

The public does have an interest in the health of CalPERS’s finances. Retirement benefits are contractual obligations, and if the CalPERS fund were to become insufficient to pay benefits owed to state employees, the state would be obligated to pay pensioners from other sources. (*Westly v. California Public Employees’ Retirement System Bd. of*

³ *Id.* at pp. 398-400.

Administration (2003) 105 Cal.App.4th 1095, 1116.) It is doubtful, however, that the difference in the payments respondent would receive would have much effect on CalPERS's financial health.

That, however, is not the end of the matter. Nine years after *Mansell*, in *Longshore v. County of Ventura*, *supra*, 25 Cal.3d 14, 28, the Court implicitly expanded the “*public interest or policy*” language to add *contravention of statutory or constitutional limitations*. The Court observed, “[N]o court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations.” In that case, Longshore, a retired county employee, claimed the county was estopped to deny that he was entitled to cash compensation for unused overtime credits because, when he had tried to use overtime credits, his supervisors refused to allow him to take time off and told him his “hours would be credited for him for future use.” After the supervisors made those representations but before Longshore retired, there were revisions to the salary laws that provided for forfeiture of unused overtime credits. The Court held that the supervisors’ representations could not be used as a ground to estopp the county from relying on the salary laws. *Longshore, supra*, 25 Cal.3d at pp. 25 – 26.

The *Longshore* Court noted that there had been cases in which the Court held that misrepresentations by a public officer concerning the terms and conditions of civil service employment generally will not estopp a public entity from asserting the true terms and conditions as established by statute. [Citations.] *Longshore, supra*, 25 Cal.3d at p. 28.

To hold CalPERS estopped to deny that Mr. High is entitled to receive an employer contribution of 50 percent of the cost of his post-retirement health benefits would directly contravene the limitation in Government Code section 22874, subdivisions (a) and (c). Subdivision (a) provides that an employee may not receive an employer contribution unless the employee is credited with 10 years of state service at the time of retirement. And subdivision (c) defines “state service” as “service rendered as an employee of the state or an appointed or elected officer of the state for compensation.”

13. Government Code section 20160 authorizes CalPERS to correct errors or omissions it makes, however, a correction cannot give an individual a status, right or obligation not otherwise available. Mr. High is not entitled to the state’s contribution for health benefits because to do so would give him an individual status or right to which he is not entitled.

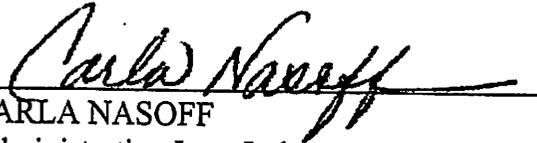
14. CalPERS complied with Government Code section 22874 when it denied respondent’s request for payment of 50 percent of his post-retirement health premiums.

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ORDER

Respondent Ronald High's appeal is denied.

DATED: August 5, 2014


CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings