

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Gregory Oliver (Respondent) was employed by the County of Tuolumne as the County Counsel. By virtue of this employment, Respondent was a miscellaneous member of CalPERS. Respondent applied for service retirement in January 2013. Respondent retired for service effective March 12, 2013, with over 23 years of service. Upon receipt of the retirement application, CalPERS staff reviewed Respondent's payroll to determine his appropriate pension. CalPERS staff discovered at that time that the County of Tuolumne had reported Respondent's pension to CalPERS with a \$450.00 monthly amount as special compensation, which was identified as an auto allowance. CalPERS staff determined that the California Public Employees' Retirement Law (PERL) does not permit auto allowances to be included as final compensation. CalPERS staff notified the County of Tuolumne and Respondent of this determination in June 2013. Respondent filed a timely appeal of this determination.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process. Respondent was County Counsel, and as an attorney, was trained in these matters.

A hearing was held on October 23, 2014, on the issue of the inclusion of the auto allowance in final compensation. Evidence was presented and testimony was taken. Respondent, although in frequent communication with CalPERS staff prior to the hearing, and despite having been properly served with a hearing notice, did not appear at the hearing. The hearing proceeded as a default. The Administrative Law Judge (ALJ) was asked to decide whether or not CalPERS made the appropriate determination in excluding the auto allowance amount in Respondent's payroll in the final compensation.

At the hearing, CalPERS presented the payroll documents which identified Respondent's pay and how it was reported to CalPERS. A CalPERS staff member testified as to his review of the documents of the County of Tuolumne and Respondent. Staff's email correspondence with the County of Tuolumne and Respondent were identified and entered into evidence.

The ALJ issued a Proposed Decision on November 12, 2014, approving the decision of CalPERS staff in denying inclusion of the auto allowance in Respondent's final compensation. The ALJ determined that Respondent's compensation earnable, for purposes of calculating his retirement benefits, cannot include amounts previously paid to him as an auto allowance. Therefore, CalPERS correctly denied inclusion of the \$450.00 per month allowance.

The ALJ concluded that Respondent's appeal should be denied. 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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

February 19, 2015



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