

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Harvey Casillas (Respondent Casillas) is currently employed by California Department of Corrections and Rehabilitation as a Senior Special Agent. By virtue of his employment, Respondent Casillas is a member of CalPERS.

On December 24, 2012, Respondent Casillas requested to purchase three years of Additional Retirement Service Credit (ARSC). On May 14, 2013, CalPERS sent Respondent Casillas a Confirmation of Intent, which was valid for 30 days. Respondent Casillas visited the Sacramento Regional Office to submit his Confirmation of Intent on May 28, 2013.

On May 31, 2013, CalPERS staff mailed a cost package to Respondent Casillas at the same address to which they had sent the Confirmation of Intent. The cost package was valid for 60 days. No completed cost package was received by CalPERS. Respondent Casillas visited the Sacramento Regional Office again on August 27, 2013, when he was told the cost package had been mailed on May 31, 2013, and had expired. Respondent Casillas claimed that he never received the cost package dated May 31, 2013, and requested reconsideration of his request to purchase three years of ARSC.

CalPERS reviewed the facts in this case and determined that it cannot grant Respondent Casillas' request to purchase three years of ARSC at the cost quoted in the December 24, 2012 package because he did not submit his completed election package within his 60-day timeframe to respond. Respondent Casillas was notified of CalPERS' determination by letter dated December 19, 2013. Respondent Casillas filed a timely appeal and a hearing was held on March 25, 2015.

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.

The appeal was limited to the issue of whether Respondent Casillas should be allowed to purchase three years of ARSC based on his December 24, 2012 request.

Government Code section 20160 provides, in pertinent part:

- (a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an

active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

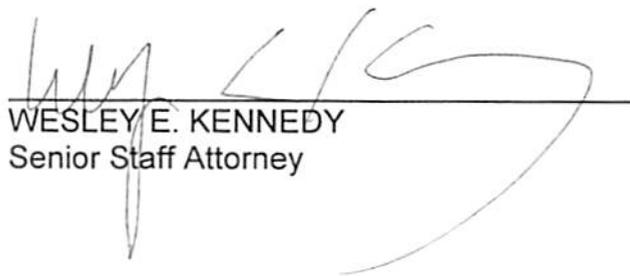
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(3) Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

After considering the testimony and documentary evidence from Respondent Casillas and a CalPERS witness, the Administrative Law Judge (ALJ) held that Respondent Casillas' failure to complete his purchase within the 60-day period allowed by the costing packet was a result of an excusable mistake and consistent with the conduct of a reasonable person under similar circumstances. Accordingly, the ALJ granted Respondent Casillas' appeal and ordered CalPERS to allow Respondent Casillas to purchase ARSC. 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. If the Proposed Decision is adopted by the Board, it is unlikely the member will file a Writ Petition in Superior Court seeking to overturn the decision of the Board, since he has prevailed.

June 17, 2015

  
WESLEY E. KENNEDY  
Senior Staff Attorney