

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

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Steve Rubalcava (Respondent Rubalcava) was employed by the County of Riverside (County) as a Deputy Sheriff. By virtue of this employment, Respondent Rubalcava was a local safety member of CalPERS. Respondent Rubalcava was called to active duty military service beginning on January 27, 2002. He was honorably discharged January 4, 2005. Respondent Rubalcava did not return to work at the County, and when required to report to duty in March 2005, he instead separated from employment. At that time, Respondent Rubalcava was 47 years old, less than the age required for retirement. On November 24, 2010, Respondent Rubalcava applied for a service retirement through CalPERS, which was effective November 1, 2010. Respondent Rubalcava requested and was initially denied, then granted, the right to purchase additional service credit for his military leave time. Respondent Rubalcava agreed to a payment plan for that service credit, and he began receiving pension including that credit. CalPERS then determined that Respondent Rubalcava, by statute, was not entitled to purchase military leave credit. Respondent Rubalcava then requested that he be granted the military leave credit at no cost. CalPERS denied this request. Through CalPERS' error, no deductions were ever made from his allowance to pay for the service credit. Respondent Rubalcava filed an appeal of the three relevant CalPERS determinations that he:

- 1) was not entitled to receive free military leave credit;
- 2) was not allowed to purchase military leave credit at all; and
- 3) is required to repay the increased allowance attributable to the military leave credit erroneously added to his account.

Prior to the hearing, CalPERS explained the hearing process to Respondent Rubalcava and the need to support his case with witnesses and documents. CalPERS provided Respondent Rubalcava with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Rubalcava's questions, and clarified how to obtain further information on the process. Respondent Rubalcava was represented by an attorney.

A hearing was held on February 26, 2015, on all three issues. The Administrative Law Judge (ALJ) was asked to determine what, if any, military leave credit Respondent Rubalcava was entitled to acquire and whether CalPERS could collect funds erroneously paid to Respondent. Witnesses were heard and documentary evidence was presented. The ALJ issued a Proposed Decision on May 1, 2015, denying all three of Respondent Rubalcava's appeals.

Respondent Rubalcava testified that he believed his resignation to be a "retirement," entitling him to military leave credit pursuant to the California Government Code. CalPERS staff testified that the relevant sections of the California Government Code did not permit Respondent Rubalcava to purchase or receive at no cost any military leave credit, as he did not retire from his CalPERS service, and did not return to CalPERS

service after his military leave, as required by the statutes. Additionally, CalPERS staff explained that CalPERS had paid the additional pension amounts in error.

The ALJ found that the statutory requirements to purchase, or be awarded at no cost, a military leave credit were not fulfilled in Respondent Rubalcava's case, and that Respondent Rubalcava is therefore not entitled to military leave credit. The Proposed Decision also concluded that CalPERS' mistake overpaying Respondent Rubalcava due to an earlier mistaken determination of his eligibility for credit is correctable under Government Code section 20160 and that CalPERS can collect the overpayments it made.

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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

June 17, 2015



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