

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Michael J. Shirey (Respondent Shirey) is currently employed by Respondent City of Chula Vista. By virtue of his employment, Respondent Shirey is a local miscellaneous member of CalPERS.

On November 26, 2012, Respondent Shirey requested to purchase three years of Additional Retirement Service Credit (ARSC). On February 5, 2013, CalPERS mailed Respondent Shirey a letter acknowledging his request. On March 25, 2013, CalPERS mailed Respondent Shirey a Confirmation of Intent to Purchase, which was valid for 30 days. On April 16, 2013, CalPERS received Respondent Shirley's completed Confirmation of Intent to Purchase.

On April 18, 2013, CalPERS staff mailed a cost package for the purchase of three years of ARSC to Respondent Shirley at the same address to which they had sent the Confirmation of Intent to Purchase. The cost package was valid for 60 days. No completed cost package was received by CalPERS, and the cost package was not returned by the United States Postal Service as undeliverable.

Respondent Shirey contacted CalPERS on September 19, 2013, and he was told that the cost package that was mailed on April 18, 2013, had expired. Respondent Shirey stated that he never received the cost package dated April 18, 2013, and requested reconsideration of his request to purchase three years of ARSC. CalPERS reviewed the facts in this case and determined that it could not grant Respondent Shirey's request to purchase three years of ARSC at the cost quoted based on his November 26, 2012 request, because he did not submit his completed election package within his 60-day timeframe to respond. Respondent Shirey was notified of CalPERS' determination by letter dated February 26, 2014. CalPERS also advised Respondent Shirey of his right to appeal CalPERS' determination. Respondent Shirey filed a timely appeal by letter dated March 21, 2014, and requested a hearing, which was held on February 9, 2015.

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

This appeal is limited to the issue of whether Respondent Shirey should be allowed to purchase three years of ARSC based on his November 26, 2012 request. Respondent Shirey (an attorney) represented himself at the hearing.

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.

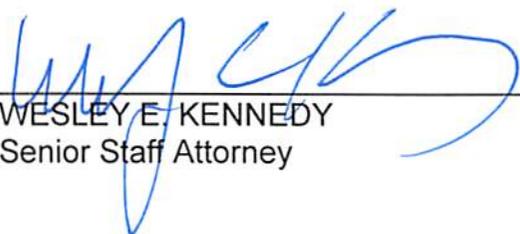
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(3) Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

After considering the testimony and documentary evidence from Respondent Shirey and other witnesses, including a CalPERS witness, the Administrative Law Judge (ALJ) held that Respondent Shirey's 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 Shirey's appeal and recommended that CalPERS allow Respondent Shirey to proceed with the purchase pursuant to his November 26, 2012, request and issue a new costing packet based on current calculations within 60 days of the effective date of the Decision. 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, it is unlikely that the member would file a Writ Petition in Superior Court seeking to overturn the decision of the Board since he has prevailed.

June 17, 2015

  
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Senior Staff Attorney