

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Application to Purchase
Service Credit Prior to Membership of:

REZA ZAMANIAN,

Respondent.

Case No. 2014-0459

OAH No. 2014060618

PROPOSED DECISION

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 26, and April 17, 2015, in Sacramento, California.

Wesley E. Kennedy, Senior Staff Attorney, represented petitioner Karen DeFrank, Chief, Customer Account Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS), State of California.

Respondent Reza Zamanian was present throughout the hearing and represented by Attorney D. Randall Ensminger, of Ensminger Law Offices, P.C., 424 Lincoln Blvd., Ste. 201, Lincoln, California 95648.

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter deemed submitted for decision on April 17, 2015.

FACTUAL FINDINGS

1. Respondent was employed as an engineer by the California Department of Water Resources for approximately 29 years, ending in April 2013. By virtue of his employment, respondent was an active member of CalPERS until his retirement. Respondent is now a retired annuitant.

2. On March 5, 2013, while employed by the Department of Water Resources, respondent went to the CalPERS Sacramento Regional Office (CalPERS Office) and submitted a Request for Service Credit Cost Information - Service Prior to Membership (SPM) for a period of employment from December 17, 1984, through June 30, 1985.

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3. While at the CalPERS Office, on March 5, 2013, a CalPERS Retirement Program Specialist counseled with respondent regarding his intended request to purchase SPM service credit, with special attention to the fact that respondent was then planning to retire from state service. The Retirement Program Specialist counseled respondent on important points, including:

(a) CalPERS will take approximately 30 days to six months to respond to his Request for Service Credit Cost Information.

(b) CalPERS members intending to purchase SPM service credit must return the Election to Purchase Service Credit within 60 days of the date on the SPM cost package.

(c) CalPERS members who retire while their request to purchase SPM service credit is pending will not have another chance to request SPM credit if they miss the 60 day deadline for filing the Election to Purchase Service Credit.

4. On March 28, 2013, respondent submitted to CalPERS a Service Retirement Election Application, listing a retirement date effective on April 13, 2013.

5. On April 8, 2013, CalPERS mailed an SPM cost package to respondent at his home address in El Dorado Hills, California. The cost package included a form entitled Election to Purchase Service Credit, with instructions including the following admonition:

The Election to Purchase Service Credit form is revocable and will be valid only if returned within 60 days. If the Election to Purchase Service form is not received within 60 days, you must submit a new request for cost information, which may affect your eligibility and the cost to purchase this service credit.

6. If a CalPERS member retires from state service, CalPERS will continue to process the member's request purchase SPM service credit only if the member submitted the Request for Service Credit Cost Information at least one day prior to retirement, and the member submits the Election to Purchase Service Credit within 60 days of the date the SPM cost package was mailed to the member, which in this case was April 8, 2013.

7. Respondent's retirement became effective on April 13, 2013.

8. CalPERS will permit a member to change his retirement date up until his last day of employment.

9. CalPERS did not receive an Election to Purchase Service Credit or any other response from respondent within 60 days of the April 8, 2013, date on which CalPERS mailed the SPM cost package to respondent. CalPERS therefore closed respondent's request for SPM cost information.

10. On June 11, 2013, respondent went to the CalPERS Office to inquire regarding dental benefits, and during the same visit asked about his March 5, 2013, request for SPM cost information. The CalPERS representative informed respondent that his request for SPM cost information had been closed because he had not responded timely to the SPM cost package that CalPERS mailed to respondent at his home address on April 8, 2013. Respondent told the CalPERS representative that he had never seen the SPM cost package, and separately confirmed with his wife and adult son who resided at respondent's home had not seen the package from CalPERS in any of their mail.

11. Respondent testified that on June 11, 2013, he was ready, willing, and able to pay the cost to purchase SPM credit.

12. On June 13, 2013, respondent sent a letter to CalPERS explaining that he had never received the SPM cost package that had been mailed to him April 8, 2013. There is no reason to doubt the credibility of respondent's claim that he in fact did not receive the SPM cost package mailed to him by CalPERS on April 8, 2013.

13. On August 28, 2013, CalPERS sent a letter to respondent informing him that CalPERS had closed his request regarding SPM service credit because he had not replied to the SPM cost package CalPERS had mailed to him on April 8, 2013, and that respondent does not qualify to re-apply for SPM service credit because he retired effective April 13, 2013.

14. On September 25, 2013, respondent sent a letter to CalPERS appealing the denial of his request for reconsideration.

15. On June 12, 2014, the Statement of Issues in this matter was prepared, and the hearing in this matter ensued.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. An applicant for retirement benefits has the burden of proving that he is entitled to it. (*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 Code¹ section 21032 provides that a member of CalPERS may elect any time prior to retirement to receive SPM credit, as follows:

A member may elect at any time prior to retirement, in accordance with regulations of the board, to receive credit for public service, under any of the definitions in this article, in addition to his or her current and prior service credit. An election shall be effective only if accompanied by a lump-sum payment of the contributions and interest required for the credit or by authorization for immediate institution of payroll deduction of installment payment of the contributions and interest. . . .

4. Government Code section 20160 authorizes CalPERS to correct errors or omissions of an active or retired member, subject to certain conditions.

- The party seeking the correction has the burden of presenting documentation or other evidence establishing the right to correction. (§ 20160, subd. (d).)
- The “error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.” (§ 20160, subd. (a)(2).)
- “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.” (§ 20160, subd. (a)(3).)

Discussion

5. CalPERS closed respondent’s request for SPM service credit because he did not reply to CalPERS within 60 days of the date CalPERS mailed the SPM credit cost package to respondent on April 8, 2013, and determined that respondent does not qualify to reapply for SPM service credit because he retired effective April 13, 2013. (Factual Finding 13.)

6. Respondent advanced arguments at hearing, including the following:

- (a) He was reasonably diligent in seeking an update from CalPERS on June 11, 2013, based upon the advice he had received from a CalPERS representative

¹ All statutory references are to the Government Code, unless otherwise specified.

that it would take approximately 30 days to six months to respond to his Request for Service Credit Cost Information.

- (b) The term "election" as used in section 21032 is not defined in any regulation, and the Request for Service Credit Cost Information submitted by respondent to CalPERS on March 5, 2013, constitutes an "election" for purposes of the provision in section 21032 that a member may "elect" to purchase SPM credit at any time prior to retirement.
- (c) Pursuant to California Code of Civil Procedure section 1013, respondent is allowed an additional five days to submit to CalPERS the Election to Purchase Service Credit to account for CalPERS's mailing of the document to respondent. This would move the 60-day due past June 11, 2013, when respondent inquired about his Request for Service Credit Cost Information at the CalPERS Office.

These arguments are addressed in sequential order, below. Other arguments offered by respondent were considered and rejected as unpersuasive.

7. Respondent did not make diligent inquiries with CalPERS regarding the status of his request to purchase SPM service credit consistent with what a reasonable person would do under similar circumstances. Respondent submitted his request to purchase SPM service credit on March 5, 2013. On that day a CalPERS representative counseled him that CalPERS would respond within a time period ranging from 30 days to six months, and that because respondent planned to retire, this would be his only opportunity to purchase SPM service credit. (Factual Finding 3.) Notwithstanding this information, respondent effectuated his retirement date, and failed to inquire with CalPERS regarding the status of his request to purchase SPM service credit until June 11, 2013, incidental to his visit to the CalPERS Office regarding dental benefits. (Factual Findings 4, 7, and 10.)

8. A reasonably prudent person under similar circumstances would either postpone the retirement date until after he or she had properly submitted the Election to Purchase Service Credit, or check with CalPERS at intervals sufficiently frequent to ensure that in no event would 60 days elapse between CalPERS's mailing of the credit cost package and his or her filing of the Election to Purchase Service Credit. Respondent did neither. Instead, he waited more than 90 days, until June 11, 2013, to inquire with CalPERS regarding his request to purchase SPM service credit. Respondent's delay was imprudent.

9. Respondent offered no legal basis for the assertion that respondent's March 5, 2013 submission of the document entitled "Request for Service Credit Cost Information - Service Prior to Membership" constitutes an "Election" for purposes of section 21032. A far more reasonable conclusion, and the conclusion here, is that the document entitled Election to Purchase Service Credit included in the SPM cost package mailed to respondent on April 8, 2013, constitutes an "Election" for purposes of section 21032. (Factual Finding 5.) Respondent

did not return this document prior to retirement, and consequently did not "elect" prior to retirement to receive SPM credit. (Factual Finding 9.)

10. Respondent offered no legal basis for the assertion that California Code of Civil Procedure section 1013 applies in this matter. By its own terms, the Code of Civil Procedure applies to "civil actions" or those for the enforcement or protection of private rights and the redress or prevention of private wrongs. (Cal. Code. Civ. Proc., § 307.) California Code of Civil Procedure section 1013 does not apply to CalPERS's mailing of the SPM cost package to respondent.

11. Based on Factual Findings 3 through 12, and Legal Conclusions 3 through 19, respondent failed to present evidence establishing the right to correction of his error. (§ 20160, subd. (d).)

12. Similarly, respondent failed to prove by a preponderance of evidence that he is entitled to the retirement benefits he seeks, namely the purchase of SPM service credit. (Factual Findings 1 through 12, and Legal Conclusions 1 through 11.)

ORDER

Respondent's appeal regarding his application to purchase credit for Service Prior to Membership of CalPERS is DENIED.

DATED: April 29, 2015



TIMOTHY J. ASPINWALL
Administrative Law Judge
Office of Administrative Hearings