

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Reza G. Zamanian (Respondent Zamanian) was employed by the State of California, Department of Water Resources, and was last employed as a Senior Engineer. By virtue of his employment, Respondent Zamanian is a member of CalPERS. On or about March 5, 2013, Respondent Zamanian submitted a Request for Service Credit Cost Information for the purchase of Service Prior to Membership (SPM) for a period of employment from November 1984 through December 1985. On April 8, 2013, an SPM State Service Credit Cost Package was mailed from CalPERS to Respondent Zamanian. CalPERS did not receive a response from Respondent Zamanian within 60 days of the date of the cost package, and the request to purchase SPM was closed.

On March 28, 2013, Respondent Zamanian submitted to CalPERS a Service Retirement Election Application, listing a retirement date effective on April 13, 2013. On June 13, 2013, Respondent Zamanian contacted CalPERS and explained that he had not received the costing packet and requested the opportunity to proceed with the SPM purchase. By letter dated August 28, 2013, CalPERS informed Respondent Zamanian that his request to purchase had been closed for failure to respond within 60 days, and, due to his retirement, he was no longer qualified to purchase SPM. On September 25, 2013, Respondent Zamanian requested an administrative hearing. Respondent Zamanian was represented by legal counsel during the hearing. The matter was heard by the Office of Administrative Hearings on March 26 and April 17, 2015.

The appeal was limited to the issue of whether CalPERS correctly determined that Respondent Zamanian is ineligible to reapply to receive SPM because he is no longer employed by a CalPERS-covered employer.

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.

...

(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 Zamanian and other witnesses, including the CalPERS witness, the Administrative Law Judge (ALJ) held that Respondent Zamanian was ineligible to purchase SPM and that a reasonable person under similar circumstances would have either postponed his or her retirement date to permit the completion of the SPM purchase or checked on the status of the purchase request more frequently. Accordingly, the ALJ concluded that the lack of follow-up could not qualify as a "correctable mistake" because he had failed "to make the inquiry that would be made by a reasonable person in like circumstances" per section 20160 (a)(3).

The ALJ concluded that Respondent Zamaian'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 Writ Petition in Superior Court seeking to overturn the decision of the Board.

June 17, 2015



WESLEY E. KENNEDY
Senior Staff Attorney