

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

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

Respondent Mike Perez (Respondent) was employed, at different times, by the Merced County Schools and by the Stanislaus County Schools. Merced County Schools and Stanislaus County Schools contracted with CalPERS to provide retirement benefits to their employees. By virtue of his employment, Respondent was a local miscellaneous member of CalPERS. Respondent service retired in August, 2011. Following his retirement, in 2013, two separate matters or issues arose regarding whether Respondent should be allowed to purchase additional service credit. The first issue was whether Respondent should be allowed to purchase .7 years of Redeposit of Withdrawn Contributions Service Credit. The second issue was whether Respondent should be allowed to purchase approximately four years of Military Service Credit. Staff denied Respondent's request regarding both issues. Respondent appealed Staff's determinations and a hearing was held on November 17, 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 facts in this matter were not in dispute. Both Respondent and a CalPERS staff member testified and copies of CalPERS documents were received into evidence and considered by the Administrative Law Judge (ALJ).

In 2003, Respondent submitted to CalPERS a "Request for Service Credit Cost Information – Redeposit of Withdrawn Contributions" form. This is a CalPERS form whereby a member, who has previously withdrawn his or her CalPERS contributions, can ask for information regarding the cost to redeposit those contributions with CalPERS and thereby reinstate the associated service credit. In 2004 CalPERS staff provided Respondent with a service credit cost packet, in response to his request. The cost packet included an "Election to Purchase Service Credit" form, which was required to be completed and returned to CalPERS within 60 days. At that time, Respondent apparently elected not to purchase any service credit as Respondent did not return the election form.

In December 2007, Respondent submitted another "Request for Service Credit Cost Information – Redeposit of Withdrawn Contributions" form to CalPERS. CalPERS staff responded with another service credit cost packet (2007 Cost Packet). The 2007 Cost Packet included a cost estimate related to Respondent's employment with Stanislaus County Schools but did not include information relating to Respondent's employment with Merced County Schools. The 2007 Cost Packet included an "Election to Purchase Service Credit" form. Respondent completed and returned the election form.

In early 2008, CalPERS staff, in reviewing Respondent's account, discovered that the 2007 Cost Packet had not included information relating to Respondent's employment with Merced County Schools. CalPERS staff created a cost estimate regarding the redeposit of withdrawn contributions related to Respondent's employment with the Merced County Schools (2008 Cost Packet). The 2008 Cost Packet was sent to Respondent in April, 2008. The 2008 Cost Packet was mailed to the same address (a post office box) that Respondent had previously used. The 2008 Cost Packet included the same "Election to Purchase Service Credit" form, which was required to be completed and returned within 60 days. Respondent did not return the Election form.

Respondent testified that he never received the 2008 Cost Packet. He stated that if he had received the 2008 Cost Packet he would have elected to purchase the .7 years of service credit for the then estimated cost of \$1,748.13.

The ALJ found Respondent's testimony credible (that he had not received the 2008 Cost Packet and that he would have purchased the .7 years of service credit had he received the Cost Packet) and therefore found that the failure of Respondent to complete and return the Election form was the result of mistake, inadvertence, surprise, or excusable neglect. Accordingly, the ALJ found that Respondent should be allowed to purchase .7 years of service credit for \$1,748.13.

With respect to Respondent's request to purchase military service credit, the ALJ found that Respondent did not make any effort to purchase military service credit until more than three years after he had service retired. The ALJ noted that Respondent had received multiple Annual Member Statements which included the following statement: "You may be eligible to increase your retirement allowance by purchasing additional service credit, military service credit..." (Emphasis added.)

Additionally, evidence showed that CalPERS staff had provided Respondent with other CalPERS publications, including the CalPERS Guide to Service Credit Options, which included information regarding how to purchase military service credit. Accordingly, the ALJ found:

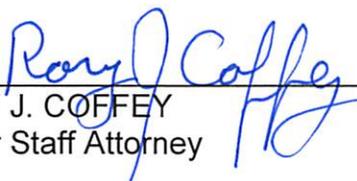
Respondent's failure to seek to purchase military service credit within the time frames set forth in the law cannot be found to have been due to mistake, inadvertence, surprise or excusable neglect, as these terms are used in Code of Civil Procedure section 473 and Government Code section 20160. Respondent was provided with sufficient access to information before he left CalPERS-covered employment to become apprised of his opportunity to timely file a request to purchase military service credit. His failure to read the information made available to him in order to timely request military service credit cannot be attributed to CalPERS or to any mistake, inadvertence, surprise, or excusable neglect that may be corrected under Government

Code section 20160. Consequently, respondent's request to purchase Military service credit must be denied.  
(Factual Finding No. 32.)

The ALJ concluded that Respondent's appeal should be granted, in part, and be denied, in part. 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.

February 18, 2016

  
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RORY J. COFFEY  
Senior Staff Attorney