

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Mei E. Kwee (Respondent Kwee) was employed by CalPERS as an Accounting Administrator I (Specialist). She is currently employed by the California State Teachers' Retirement System (CalSTRS). By virtue of her employment history, Respondent Kwee is a state miscellaneous member of CalPERS.

On May 2, 2012, Respondent Kwee submitted a request to CalPERS to purchase five years of Additional Retirement Service Credit (ARSC). On September 6, 2012, CalPERS processed and sent Respondent Kwee an ARSC cost packet, and an Election to Purchase Service Credit form, which was valid for 60 days. No completed election form was received by CalPERS, nor was the ARSC cost packet returned to CalPERS by the USPS as undeliverable.

Effective January 1, 2013, the Public Employees Retirement Law was amended to eliminate ARSC as a service credit purchase option.

In March 2013, Respondent Kwee inquired with the CalPERS Sacramento Regional Office about the status of her ARSC request. She was informed that the packet had been mailed in September 2012, and had expired in November 2012. Thereafter Respondent Kwee requested that CalPERS permit her to accept the September 2012 offer or to reprocess her request. CalPERS staff reviewed the facts and determined that Respondent Kwee's request could not be granted. Respondent Kwee timely appealed.

At the hearing, CalPERS staff testified about the ARSC program and the processes followed in mailing out cost information and election packets. Staff also testified about the multiple ways a CalPERS member can get updated information about the status of a pending service credit purchase and that there was no record of Respondent Kwee contacting CalPERS prior to the discontinuance of the ARSC program or prior to March 2013.

Respondent Kwee was represented by counsel and testified at the hearing. Respondent Kwee testified that she began working for the state in 2007 and had always intended on purchasing five years of ARSC as soon as she became eligible. She became eligible on May 2, 2012. Respondent Kwee also testified that at the time she submitted the request to purchase ARSC, she was told that it would be a "long waiting period" for the cost packet to be processed and mailed because of the launch of myCalPERS. Respondent Kwee testified that she never anticipated receiving the ARSC cost packet sooner than nine months from May 2012. She further testified that on the same day that she discovered a friend of hers that had submitted a similar request had already received her cost packet, Respondent Kwee went to the CalPERS Sacramento Regional Office to inquire.

The Administrative Law Judge (ALJ) found that Respondent Kwee credibly testified to never receiving the ARSC cost packet and that neither CalPERS nor Respondent Kwee

were at fault. The ALJ further found that Respondent Kwee's failure to timely submit the election form was an error or omission that was the result of mistake, inadvertence, surprise, or excusable neglect correctable pursuant to Government Code section 20160. The ALJ also found that Respondent Kwee did not act unreasonably in waiting until March 2013, to make an inquiry on the status of her request because she was told in May 2012, she could expect to wait nine to twelve months for the cost and election packet.

The ALJ concluded that Respondent's appeal should be granted. 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. Since the member prevailed it is not likely that she will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 18, 2016



CHRISTOPHER PHILLIPS
Senior Staff Attorney