

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Diane Euer (Respondent Euer) service retired effective July 31, 2014. By virtue of her employment as a Senior Tax Compliance Representative for the Employment Development Department (EDD), Respondent Euer was a state miscellaneous member of CalPERS.

In March, 2012, Respondent Euer submitted to CalPERS a request for service credit cost information for the purchase of Service Credit Prior to Membership (SPM) for a period of time that Respondent Euer was employed as a seasonal clerk for EDD. On May 19, 2014, CalPERS mailed Respondent Euer a SPM Cost Packet that provided the cost of purchasing the 1.005 years of service credit (\$1,408.70) and informed Respondent Euer that in order to complete the SPM purchase the election form must be returned to CalPERS within 60 days.

Respondent Euer failed to return the completed SPM purchase election form within 60 days. On September 5, 2014, Respondent Euer contacted CalPERS about her failure to timely purchase the SPM. Unfortunately, Respondent Euer had already retired by this time and she was informed by CalPERS staff that pursuant to Government Code section 21073.7, an election to purchase SPM must be made prior to retirement. Respondent Euer timely appealed.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.

At the hearing, CalPERS staff testified that the delay in responding to Respondent Euer's SPM cost information request was due to the implementation of my|CalPERS and the severe backlog it created. Staff also testified about the deadline requirements for purchasing SPM.

Respondent Euer represented herself and testified on her own behalf. Respondent Euer explained the circumstances that resulted in her failure to timely submit the SPM election form. In early May 2014, while traveling in Colorado, Respondent Euer became ill. She was cleared by her physician to return to California by May 26, 2014. After returning home, Respondent Euer spent several months recovering. She testified that all of her mail was put in a box, except for her monthly bills and other important documents. Respondent Euer testified that it was not until she had more fully recovered, in September 2014, that she began reviewing the box of mail and discovered the SPM information and election form.

The Administrative Law Judge (ALJ) found that Respondent Euer had the burden of proving that she was eligible to purchase SPM service credit after she retired, or that

there was a correctable error or omission in her failure to timely elect to purchase SPM service credit. The ALJ further found that Respondent Euer failed to meet that burden. The evidence established that CalPERS correctly determined that Respondent Euer is no longer eligible to purchase SPM service credit because she service retired on July 31, 2014. Additionally, while it was evident that Respondent Euer suffered from health issues, her illness did not alleviate her obligation to return the SPM election form to CalPERS within 60 days. The ALJ found that Respondent Euer was able to attend to her bills and that she had family to assist her at home while she was ill.

The ALJ concluded that Respondent'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.

February 18, 2016



CHRISTOPHER PHILLIPS
Senior Staff Attorney