

ATTACHMENT C
RESPONDENT'S ARGUMENT

January 28, 2016

Cheree Swedensky, Assistant to the Board

CalPERS Executive Office

P.O. 942701

Sacramento, CA 94229-2701

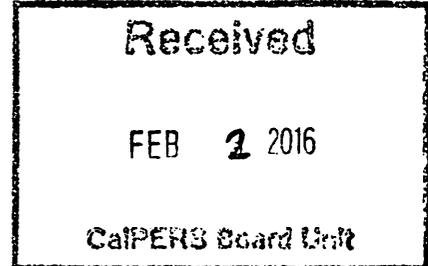
Fax: (916) 795-3972

WRITTEN ARGUMENT

RE: Case No. 2015-0121

OAH No. 2015050721

Dear Cheree Sendensky,



Please accept the following written argument and it is my sincere hope that the Board will consider its contents.

My journey on this matter of service credit purchase began on 03/28/12 when I went (in person) to the downtown CalPERS office to look into two items (1) Request or Service Credit Cost Information-Redeposit of Withdrawn Contributions and (2) Request for Service Credit Cost Information-Service Prior to Membership, CETA & Fellowship. That same day I completed forms PERS-MSO-368 (12/08) and PERS-MSO-370 (8/07) respectively then handed these to the associate at the window where it was explained that it may take up to a year to receive any information from CalPERS.

Approximately 10-months later I received (in the mail) my CalPERS 0889 package for Redeposit of Withdrawn Contributions of 4.646 years of Service Credits but I did not receive a package for the Service Prior to Membership and no explanation was provided either. I completed the Redeposit package, mailed it back, then monthly payroll deductions began in April 2013. I would like to explain why I elected to withdraw my retirement contributions around 1983. After giving birth to my second child in 1981 my husband and I discussed my desire to stay at home fulltime to raise our children; when my maternity leave ended I separated on good terms from State Service. In 1983 and expecting our third child I decided to withdraw my retirement contributions and remain a fulltime stay-at-home mom and had absolutely no intention of returning to State Service. Unfortunately about three years later my husband separated from our family leaving us financially destitute but fortunately I was blessed to be awarded by the court full physical custody and full legal custody of all three children. I returned to State Service in 1987 but could not financially afford to purchase the 4.646 years of State Service that is until my children were grown and (financially) on their own about 2012. My ex-husband passed away a few years ago still owing me about \$120,000 in back child support. Child support collections on behalf of my children's account with the government overwhelmingly failed to fully pursue their father for the almost 25 years it was in their charge.

Fast forward to 2014, my last physical day on the job with the State was 03/19/14 then the next day I began the process of exhausting my leave credits which would carry me through 07/30/14 making my first official day of retirement 07/31/14. On 04/30/14, I went (in person) to the downtown CalPERS office and officially filed paperwork for retirement which was within the 90 day limit prior to my retirement date of 07/31/14. This same day I explained to the CalPERS associate that I have been exhausting all my leave credits since 03/20/14 which would carry me through 07/30/14; this associate was notified that I was no longer at work. I retired at this time of my life (earlier than planned) to help care for my 86 year old mother who has early stages of dementia.

On 05/05/14, I began what would have been almost a three month vacation to visit children, grandchildren and relatives out of State. I stayed with my daughter and her family in Salt Lake City, UT for a while, then my oldest son and his family picked me up and drove me back to their home in Montrose, CO where I would spend the next few weeks. About a week into my Colorado vacation my son (a doctor himself) rushed me to emergency where I was diagnosed with severe liver, gallbladder and pancreas illnesses. After many tests and scans the surgeons decided to remove my gallbladder but my other organ illnesses continued. The surgeon eventually cleared me to be well enough to fly back home which unfortunately cut off the final phase of my vacation which was to go to New Mexico to assist my extremely ill cousin in packing up about 25 years of her life, tour some of the states with her, visit her relatives then drive to her parent's home in San Rafael, Marin County where she would live out her life. Due to the much depleted state of my health at that time I was forced to cancel the trip to New Mexico to assist my very sick cousin with moving back home.

Upon returning home to CA my health began to decline yet again and continued declining until I was completely bedridden; this lasted several months. I did not have the ability to handle my affairs during this time and was reliant on family and friends to help out. My children would hand a bill to me here and there to take care of but everything else had to be put on hold and all other mail was placed in a box in my bedroom where it piled up over months. The doctor's kept running tests (approximately 28 lab tests, ultra sounds and scans over a period of months) and eventually in July one test proved that I had an "acute infection" (which was poisoning my system and brain), I still had pancreatic issues and a growth on my liver. Around August my health began the very slow process of recovery which was also impeded by a chronic condition that I have had for over 20 years, Systemic Lupus along with fibromyalgia and rheumatoid arthritis. When my mind was only partially "foggy" from illness I began the slow process of trying to return to some part of my normal life which included digging my way through a very large box full of mail; during this time I also had many relapses of illness. On 09/05/14 and at almost the bottom of the box I found a CalPERS package of Service Prior to Membership for 1.005 years dated 05/19/14. I was beyond excited and contacted CalPERS immediately that same day and spoke with an associate who explained that because I was now officially retired as of 07/31/14 this purchase package could no longer be considered. I explained that I was disabled for several months and just now had health enough to begin handling some of my affairs and going through my box of mail. The CalPERS associate politely declined my offer to accept a completed package. I asked to file an appeal, it was then explained to me that there was no official appeal process in place, however, if I chose I could send a letter of explanation to CalPERS which I did that same day (fax) along with some copies of medical tests from Kaiser proving I just how ill I was. This associate never once

asked me to complete the Service Prior to Membership package and fax it along with my letter of explanation (appeal) and considering he denied me to fax it to his attention earlier in our conversation, I did not push the matter.

I received correspondence from CalPERS dated 09/18/14 denying my request for reconsideration (appeal) for submitting the Service Prior to Membership purchase package. That same day I emailed Governor Jerry Brown's office for assistance with this matter. A week or so later I did receive a phone call from CalPERS letting me know they had received communication from the Governor's office and that CalPERS will be looking into this matter and would respond accordingly. I received a letter dated 10/14/14 from CalPERS essentially conveying the same message that since I am retired this service credit package could not be put into effect, however, this letter also explained that I did have the right to an appeal and hearing and needed to respond within 30 days if I so wanted to pursue this route. I did respond to CalPERS in writing dated 11/09/14 "formally requesting an appeal as set forth."

The hearing took place on 10/19/15 with Marcie Larson, Administrative Law Judge and also in attendance was Christopher Phillips (CalPERS Attorney), Nova Horton (CalPERS representative), Jan Weisberg (court reporter) and me.

During the hearing, both sides of this matter were able to discuss points concerning the Service Credit Purchase, its denial and intervening factors. At the hearing my approach was to explain the disability that inhibited me from handling all of my affairs in a timely manner and that had I not become so ill my vacation would have continued into August 2014 where I would have (anyway) missed receiving this package dated 05/19/14 and missed completing it timely by the due date 07/19/14. I was also going to inquire about why it took CalPERS over two years to respond to my request dated 03/28/12 for Service Prior to Membership purchase. Under oath and during our cross examinations with Mrs. Horton, Attorney Phillips and I asked various questions. Mrs. Horton stated CalPERS had several databases they utilized and at the time of my service credit purchase submission in 2012 her staff were working with yet another new database and they had big backlogs, had limited staff and could not handle all aspects of these requests. I sat there and thought to myself Mrs. Horton's statements just helped to make my case because I also claimed that CalPERS did not use Due Diligence in getting this package to me in any reasonable timely manner. Or so I thought; I received a letter from CalPERS dated 11/24/15 stating in part "ORDER - The appeal of respondent Diane D Euer is DENIED." Along with the denial letter is a certified letter from Summer Hazlett with CalPERS Legal Office which also stated information concerning CalPERS Board "Your appeal has been calendared for consideration by the Board at its regular meeting on 02/18/16." Which causes me to send this written argument and have it received by CalPERS either on or prior to 02/05/16.

WRITTEN ARGUMENT

I am respectfully requesting the Board to designate the decision as precedent, in whole or in part, if it is adopted.

- I am not in disagreement regarding the laws that govern CalPERS to deny service credit submissions on or after a retirement date. I am, however, hoping yet to bring to light one more time that there were extenuating and intervening factors such as life threatening medical issues that disabled and kept me from handling my affairs and this all transpired prior to my retirement date 07/31/14 and especially prior to these laws needing to be in effect. My disability and the effects thereof must also be considered. And the fact that CalPERS ignored my non-member service credit search for over two years causing all this damage; had this been managed timely by CalPERS I would not be sitting here today preparing this letter and would have not wasted all this time where I have spent hours, days and months trying to work through a system that appears to refuse to accept any responsibility for some of their unprofessional practices. Had this been managed in any sense of a timely manner my out of state vacations and my disabilities would never have been brought to light, been a factor or played a role with any of these laws being imposed.
- CalPERS did not use due diligence with getting the non-member service credit package to me in any reasonable and timely manner. Even with CalPERS backlogs and being understaffed, over two years late is inexcusable, unacceptable and completely unprofessional; the stress, sleepless nights and lost time this has caused me not to mention the loss of any increases to my retirement funds. I have worked for the State over 30 years and witnessed new databases rolling out; it's not pretty and to say it is difficult is a gross understatement, but never once did I shrink from my responsibilities to the Department and especially to my customers and only do half the work; customers depend on the expertise and timeliness of their representatives. Employees (such as with CalPERS) have to manage through these extremely difficult times the best way they can and make concessions as needed to their customers for any problems these new databases may have caused along the way and to be professional and provide the best customer service possible. With consideration to my Service Credit Prior to Membership package dated 05/19/14, its search and mailing was never close to being anything professional and in any reasonable timeframe from CalPERS and I only got their excuses and laws instead. Since 2012 while CalPERS had it in their charge to search for both my member service credits as well as non-member service credits they only provided my member service credits package within 10 months but failed completely to provide anything else to me until the 11th hour on 05/19/14 when I was not even in the State to receive it. It is my contention that had CalPERS completed this work in 2012, or 2013 and not ignored my non-member service credit search that I would have had this package signed and payroll deductions in place while I was still employed with the State. It appears that CalPERS is more than (conveniently) willing to hang their hats on these laws and excuses and not accept any responsibility at all for the role they played with some of their unprofessional work practices and ethics. To provide an analogy regarding CalPERS' approach towards my non-member service credit search it's like going to a dentist for a filling and he stops right in the middle of the procedure citing he is overwhelmed, overworked, understaffed, too many patients and does not have time to complete what is professionally required then ignores it for over two years. The filling was never properly cared for and the patient eventually lost the tooth.
- There appears to be a double standard going on as well. While (it appears) I was expected (during the hearing and now) to understand and accept CalPERS' position with their new and difficult databases, backlogs and being understaffed, in turn CalPERS did not show me any consideration whatsoever towards the fact that I was out of town when the service credit package dated 05/19/14 was mailed to my home and that I was not expected to return until July or August 2014. Also there was no consideration from CalPERS regarding my disabling illnesses that precluded me from managing my daily affairs in a timely manner. And especially there was no consideration from CalPERS for all this mess they created on my behalf. CalPERS knew my last day on the job was 03/19/14 which basically equates to they had no idea where I am spending each day. At home? On vacation? Out of the country? If CalPERS truly had their customer's best interests at heart or simply did as they are required to do in their jobs, they would not have ignored one of my requests for over two years. Not knowing my whereabouts CalPERS should have made one short, simple, responsible but oh so important courtesy call alerting me that this seriously overdue service package was on its way. None of this happened and CalPERS failed in every way possible to provide me with any customer service for my non-member service credit search; they did not use Due Diligence.
- It appears CalPERS did not search for these 1,005 non-member service credits until I filed for retirement on 04/30/14 because only 19-days later the service credit package dated 05/19/14 was mailed to my home. It makes me wonder just how long CalPERS was willing to ignore this way overdue work which they had the power to complete; obviously it only took a very short time to locate these service credits. I am hard pressed to believe CalPERS was working on my non-member service credits any time prior to 04/30/14.

In conclusion, after all these years my father's voice is still in my head telling me not to back down or away from what I believe is right. I am a faith-driven, non-confrontational person and extremely protective of my privacy and that of my families but it does not mean (by any sense of the imagination) that I am not strong enough or too afraid to stand-up for myself and take on a challenge. If all this mess and upheaval results in much needed changes with some of their practices at CalPERS then this fight was not in vain but this still does not necessarily mean that I am or will be complacent with CalPERS' unfair and untimely practices. I am, however, still hopeful that CalPERS will finally accept full responsibility for the very big lead role they played in the completely inexcusable and untimely search of my non-member service credits which caused an over two year delay and put this entire matter on a collision course with failure. I am extremely upset at the loss of any increase to my retirement funds especially when considering the staggering 85% increase with my CalPERS Long Term Care rates; this extra \$126.66 would have helped to offset this increase and make a huge difference with my finances each month. My vacations and disabilities were definitely secondary issues which truly never needed to be a factor if at all, the root cause for all of this was and still is CalPERS' inability to fully and completely do their job. I truly appreciate the time taken to review this written argument and will continue to pray for honesty and justice. I hopefully will have the opportunity to meet you at the CalPERS Board meeting on 02/18/16 to properly thank you for your time and concern with this matter.

On 02/18/16, I respectfully request the CalPERS Board to rightfully overrule the Administrative Law Judge's decision dated 11/24/15 then with justice and authority on their side present my non-member service credit purchase package of 1.005 years to be processed accordingly; the retroactive date will be 07/19/14 when this package was originally due.

If you need to contact me, please do so at your convenience.

Sincerely,

Diane D Euer, Respondent

Attachments:

- Exhibit #1 Completed CalPERS Form PERS-MSO-370 (8/07) dated 03/28/12
- Completed CalPERS Form PERS-MSO-368 (12/08) dated 03/28/12
- myCalPERS 0889 Service Prior to Membership Purchase Package dated 05/19/14
- Exhibit #2 Kaiser Permanente Laboratory Results on 07/27/14
- Exhibit #3 Kaiser Permanente Email from Dr. Zajac dated 08/04/14
- Montrose Hospital Patient Discharge Instructions dated 05/21/14

Exhibit #1



P.O. Box 62715 Sacramento, CA 95832-0715
1000 CALPERS (ca) 916-225-7377 Fax (916) 620-6545
www.calpers.ca.gov

California Public Employees' Retirement System

May 13 2014

Exhibit #1

DIANE L. EUER
4325 THIRD STREET
REYNOLDS, CA 95977

CalPERS C:

PARTICIPANT INFORMATION

DATE:	May 13, 2014
EMPLOYER:	State of California
Medical Plan:	N/A
Special Compensation Averaging:	N/A
Total Monthly Pay Rate:	N/A
SERVICE INFORMATION	
Service Credit Type:	Service Prior to Membership
Leap Sum Credit:	\$1,488.70
ESTIMATED MONTHLY PENSION AMOUNT:	\$1,262.64 (age: 68.7) based on an estimated final compensation amount of \$9,648.00

Dear Diane L. Euer:

Thank you for your inquiry regarding the purchase of your former Member's portion of the California Public Employees' Retirement System (CalPERS).

Attached are the following forms for your review and response:

- Election of System Options
- Election to Purchase Service Credit
- Installment Payment Guide (see GovCalPERS 3802)
- Choose Your Installment Payment (see GovCalPERS 3803)
- Rollover/Transfer Information and Affidavit of Funds (see GovCalPERS 3948, 4371, 4382)

If needed, this service can be provided to your retirement account as shown below:

EMPLOYER NAME	RETIREMENT FORMULA	CATEGORY	YEAR(S) OF SERVICE CREDIT
State of California	2% of 55 State, Social Security and Social	State Unfunded	1.005
Total Service			1.015

GOV CALPERS 11009

Request for Service Credit Cost Information — Service Prior to Membership, CETA & Fellowship

DIANE L. EUER

Section 1: About You

How do you wish to be contacted? By Mail By Phone By Email

How do you wish to be contacted regarding this request? By Mail By Phone By Email

What is your preferred method of communication? By Mail By Phone By Email

DIANE L. EUER *EDD*

Section 2: Prior Employment Information

What is the name of the employer? *EDD*

What is the address of the employer? *800 Capitol Mall*

What is the city and state of the employer? *SACRAMENTO, CA*

What is the date you were employed by the employer? *1977-1978*

What is the date you were last employed by the employer? *1978*

What is the position you held with the employer? *PERSONAL CLERK*

What is the pay rate you received from the employer? *176.0 PER MONTH*

What is the reason you are leaving the employer? *RETIRED*

Section 3: Member Certification

I hereby certify that the information provided is true and correct.

DIANE L. EUER

MAY 28 2014

Request for Service Credit Cost Information — Redeposit of Withdrawn Contributions

DIANE L. EUER

Section 1: About You

How do you wish to be contacted? By Mail By Phone By Email

How do you wish to be contacted regarding this request? By Mail By Phone By Email

What is your preferred method of communication? By Mail By Phone By Email

DIANE L. EUER *EDD*

Section 2: Employment Information

What is the name of the employer? *EDD*

What is the address of the employer? *800 Capitol Mall*

What is the city and state of the employer? *SACRAMENTO, CA*

What is the date you were employed by the employer? *1977-1978*

What is the date you were last employed by the employer? *1978*

What is the position you held with the employer? *PERSONAL CLERK*

What is the pay rate you received from the employer? *176.0 PER MONTH*

What is the reason you are leaving the employer? *RETIRED*

Section 3: Member Certification

I hereby certify that the information provided is true and correct.

DIANE L. EUER

MAY 28 2014

KAISER PERMANENTE

Date printed: 11/9/2014
 Member name: Diane D Euer
 Date of birth: [REDACTED]
 Primary care physician: [REDACTED]
 Primary Facility: Ros-Hospital

ALKALINE PHOSPHATASE

For general information about a test procedure, click the "About this test" link above.

To see more information about a test result, select the "Details" tab. To compare test results over time, click "Past results" or "Graph of past results."

Minor differences in test results from the usual range are not uncommon and likely represent acceptable individual or lab variation. Test results outside the usual range are subject to interpretation by your doctor.

Component Results

Component	Standard Range	Your Value
ALKALINE PHOSPHATASE	37 - 117 U/L	235

General Information

Collected: 07/26/2014 3:05 PM
 Resulted: 07/27/2014 3:09 AM
 Ordered By: [REDACTED] MD
 This test result has been released by an automatic process.

If you have any questions about this test result, please contact your doctor's office. See our facility directory for departments and phone numbers.

Exhibit #2

Test result details - Kaiser Permanente

Page 1 of 1

KAISER PERMANENTE

Date printed: 11/9/2014
 Member name: Diane D Euer
 Date of birth: [REDACTED]
 Primary care physician: [REDACTED]
 Primary Facility: Ros-Hospital

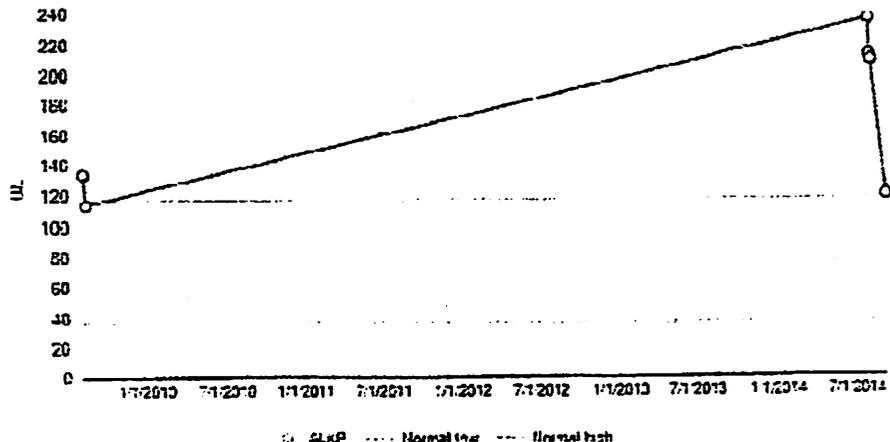
ALKALINE PHOSPHATASE - Past Results

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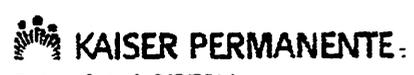
Exhibit #2



9/5/2014

Inbox - Kaiser Permanente

Case # 2015-0121
OAH # 201505721
Diane D. CUEZ
Respondent



Date printed: 9/5/2014
Member name: Diane D E...
Date of birth:
Primary care physician: ~~AMERICAN MEDICAL ASSOCIATION~~
Primary Facility: Ros-Hospital

Exhibit # 3

test

To: Diane D E...
From: ~~WALTER D~~ ZAJAC MD
Received: 8/4/2014 10:44 AM PDT

Hi the blood protein test was normal; the test for the CMV (virus) antibody was the top of the "equivocal" so it suggests an acute infection that is going away. w zajac md



Exhibit # 3

Case # 2015-0121
OAH # 201505721
Diane D. CUEZ
Respondent

PATIENT DISCHARGE INSTRUCTIONS

DIAGNOSIS / SURGERY

cholecystitis / gallstone pancreatitis

MEDICATIONS		
NAME	INDICATE DOSE, FREQUENCY, AND REASON FOR MEDICATION	Time Last Taken
resume all	home meds	
Nasac 9/325	1-2 tabs po Q 6: PRN	

SPECIAL INSTRUCTIONS AND WHAT TO WATCH FOR:

fever > 101°F
redness/drainage from incisions

HOME SERVICES:

RTREQ 1) Pulm Dx: _____ 2) Orders: _____
3) Pt Mentation, Ability _____ 4) Current Tx: _____
5) Other Resp Needs: _____

Home Health Agency _____ Phone # _____
 Oxygen Requirements _____ Resol _____ Act _____ Sleep _____ Supplier _____ Phone # _____
 Other _____

PATIENT:
R.N.M.D. DATE: 5/21/14