

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent James Nicholas (Respondent Nicholas) submitted a Service Retirement Election Application on November 15, 2010, and has been receiving retirement allowance since December 31, 2010. By virtue of his employment with the Department of Water Resources (DWR) and Respondent City of Glendale (Respondent City), Respondent Nicholas was a local miscellaneous member of CalPERS. Respondent Nicholas qualified for service retirement based upon his years of service and his age at retirement.

Respondent Nicholas had a long career working for governmental agencies and was a member of CalPERS, the Los Angeles City Employees' Retirement System (LACERS) and the Los Angeles County Employees' Retirement Association (LACERA). This appeal followed a determination made by CalPERS on September 19, 2014, to reduce Respondent Nicholas' service credit by 9.273 years because CalPERS mistakenly permitted Respondent Nicholas to redeposit his withdrawn contributions covering 9.273 years of employment in December 2005. To best illustrate the events leading to CalPERS' determination and this appeal, the following is a chronological employment and service credit transaction history for Respondent Nicholas:

- Respondent Nicholas first became eligible for CalPERS membership while working at DWR, from April 1, 1965, to September 30, 1973;
- Respondent Nicholas withdrew his CalPERS contributions upon the termination of his employment with DWR. CalPERS refunded \$4,0165.59 to him and removed 8.300 years of service credit from his account;
- Respondent Nicholas returned to work for DWR from April 22, 1974, to November 11, 1974. Respondent Nicholas thereafter withdrew his CalPERS contributions. CalPERS refunded \$419.61 to him and removed 0.673 years of service credit from his account;
- Respondent Nicholas worked for Respondent County of Los Angeles (Respondent County) from November 12, 1972, to September 30, 1976. By virtue of this employment, Respondent Nicholas became a member of LACERA;
- In May 1980, Respondent Nicholas began working for the City of Los Angeles and became a member of LACERS;
- In June 1997, Respondent Nicholas purchased a total of 10.83333 years of Governmental Service with LACERS. The service credit purchase included the withdrawn contributions that were attributable to Respondent Nicholas' employment with DWR;
- Respondent Nicholas retired from the City of Los Angeles on July 7, 1999 and has been receiving a retirement allowance from LACERS;
- On September 5, 2000, Respondent Nicholas began working for Respondent City, a CalPERS contracting agency;
- While working for Respondent City in 2005, Respondent Nicholas redeposited with CalPERS the contributions previously withdrawn from CalPERS for the service earned while working for DWR;

- On December 31, 2010, Respondent Nicholas retired from Respondent City.
- CalPERS staff raised concerns that Respondent Nicholas may have received service credit for the DWR employment from both LACERS and CalPERS. Upon receipt of information from LACERS that confirmed the DWR-related service credit was being used by both LACERS and CalPERS to calculate Respondent Nicholas' retirement benefits, CalPERS issued its determination.

Prior to the hearing, CalPERS explained the hearing process to Respondent Nicholas and the need to support his case with witnesses and documents. CalPERS provided Respondent Nicholas with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Nicholas' questions and clarified how to obtain further information on the process.

At the hearing, CalPERS staff presented oral and documentary evidence establishing the employment history and service credit transactions described above. Further, the court was informed of Government Code section 20894(a), which prohibits an individual from receiving credit for the same service in two public retirement systems, and Government Code section 20160(b), which mandates CalPERS correct errors when identified.

Respondent Nicholas testified that he has been injured by CalPERS' negligence and presented evidence of financial damages.

The Administrative Law Judge (ALJ) correctly determined that Respondent Nicholas had been receiving benefits based on the DWR service credit in both retirement systems and that CalPERS had authority to correct the error pursuant to section 20160(b).

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.

April 20, 2016



CHRISTOPHER PHILLIPS
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