

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

## **STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION**

Respondent Diane Euer (Respondent Euer) service retired effective July 31, 2014. 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). On May 19, 2014, CalPERS mailed Respondent Euer a SPM Cost Packet that provided the cost of purchasing 1.005 years of service credit 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 21032, an election to purchase SPM must be made prior to retirement. Respondent Euer appealed and a hearing was conducted. A Proposed Decision was issued denying Respondent Euer's appeal on October 30, 2015. The Board adopted the Proposed Decision, as its own, on February 18, 2016. Respondent Euer submitted a Petition for Reconsideration on March 23, 2016.

Respondent Euer's Petition for Reconsideration argues that CalPERS is at fault and that this is a "travesty of justice." Respondent Euer repeatedly accuses CalPERS of failing "to do the timely job required." Respondent Euer also discusses the process undertaken by the Board during the February 18, 2016, Board meeting when the list of Proposed Decisions on the agenda were "systematically dismissed."

Respondent Euer's arguments and assertions have no basis in fact. While it did take just over two years for CalPERS staff to provide the SPM Cost Packet to Respondent Euer, the reason for the delay was discussed at length during the hearing. Respondent Euer's SPM cost request came just months after the launch of my|CalPERS and a severe backlog resulted due to the transition. The delay in providing Respondent Euer with the SPM Cost Packet and election form did not change the requirement that she make a timely election, nor did the delay have any bearing on whether Government Code section 21032 is controlling. Pursuant to section 21032, an election to purchase SPM must be made prior to retirement.

Respondent Euer put on evidence that she failed to timely submit the SPM election form because of illness. However, Respondent Euer was able to tend to her regular monthly bills and had family assist her at her home while she was ill. The Administrative Law Judge (ALJ) correctly found that Respondent Euer failed to meet her 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.

Respondent Euer's attack of the Board process is without factual basis. This is an unfortunate situation, but the statute is clear: retirees are not permitted to purchase SPM. The ALJ issued a correct Proposed Decision and the Board correctly adopted it.

For all the reasons stated above, staff argues that the Board deny Respondent Euer's Petition for Reconsideration.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent Euer may file a writ petition in superior court seeking to overturn the decision of the Board.

April 20, 2016



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