

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Charles Bergson (Respondent) was employed by the City of Williams (City) beginning 2009. By virtue of his employment, Respondent is a miscellaneous member of CalPERS. Respondent separated from employment with the City on January 1, 2014 and retired on February 27, 2014. On January 2, 2014, Respondent submitted a Request for Service Credit Cost Information – Military Service to CalPERS, to purchase four years of military service credit (MSC).

On May 28, 2014, CalPERS generated and mailed Respondent a MSC cost estimate package, providing Respondent a one-time opportunity to purchase four years of service credit. Government Code section 21050 provides that an election “. . . shall be effective only if accompanied by a lump-sum payment or an authorization for payments, other than a lump sum payment, in accordance with regulations of the board.” Therefore, the instructions in the package notified Respondent of his choices to elect the 1) lump-sum payment option, with the entire payment enclosed with the election form; 2) the installment plan option; or 3) the initial payment with installment option. Respondent was informed numerous times that he had 60 days to submit the completed election form or his election would not be valid and he would be unable to reapply because he would by then be retired.

Despite being notified of these requirements, on July 24, 2014, Respondent submitted an election form, choosing the lump-sum payment option but failing to submit a lump sum payment with the election. Rather than submitting a payment, as required, Respondent submitted a request for an extension of the 60-day deadline so he could secure a loan for \$107,355.80.

On August 8, 2014, CalPERS informed Respondent that his election to purchase MSC was invalid because he failed to enclose a lump sum payment. Respondent's request for an extension of the 60 day timeframe was denied. On September 8, 2014, Respondent appealed CalPERS' determination.

A hearing on the matter was held on February 22, 2016.

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

Respondent testified at the hearing, stating he did not have access to \$100,000 in 60 days and needed additional time to secure the funds. He testified that the installment plan option would have required him to pay interest of 7.50%, which he believed was unreasonably high. Respondent did agree, however, that his extension of time would create an unfunded liability for his employer.

The Administrative Law Judge (ALJ) concluded that Respondent's appeal should be denied because Government Code section 21050 requires members to pay for service credit purchases in a lump-sum or elect an installment option provided to them by CalPERS. 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.

May 18, 2016



PREET KAUR  
Senior Staff Attorney