

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

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Lynn Harmston (Respondent Harmston) was first employed by the County of Napa (County) beginning in October 1974. Respondent Harmston then accepted a position with the California Department of Health Care Services (DHCS) in October 2000, which rendered him subject to the health vesting requirements for state employees and annuitants. By virtue of his employment with the County of Napa and DHCS, Respondent Harmston was a state miscellaneous member of CalPERS.

On August 26, 2011, Respondent Harmston submitted a service retirement application and retired for service effective November 16, 2011. At the time of retirement, Respondent Harmston was 60 years old and had earned 11.163 years of state service credit.

Due to a flaw in the newly launched my|CalPERS computer system, for purposes of health vesting, my|CalPERS used Respondent Harmston's membership date (October 1974) rather than the accumulated state service credit he had earned (11.163 years). Because of the flaw, from January 1, 2012, through December 31, 2013, Respondent Harmston received 100 percent employer contributions toward his health premiums rather than the 55 percent to which he was actually vested. As a result, staff determined that Respondent Harmston was responsible for paying retroactive health premiums in the amount of \$12,187.80.

Staff first became aware of the error in October 2013, and notified Respondent Harmston of his responsibility to pay the retroactive premiums and an increased health premium on a prospective basis via telephone in December 2013, and via letter in January 2014. While Respondent Harmston agreed to pay the increased premium share prospectively, he appealed having to pay the retroactive premiums because the error was made by CalPERS.

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

At the hearing, staff competently testified to how the error on Respondent Harmston's account was discovered, the amount of premiums paid and the amount of premiums that should have been paid.

Respondent Harmston represented himself and testified that he relied upon the health care cost estimates provided by CalPERS and that he would have either delayed his retirement or not chosen such an expensive health plan had he known the true cost of his health coverage. The Administrative Law Judge (ALJ) found that Respondent Harmston credibly testified that he believed the health care premium he was charged

from January 2012, through December 2013, was accurately calculated as it comported with the prior representations by CalPERS.

The ALJ further found that Respondent Harmston was ignorant of the true state of the facts and that he reasonably relied to his detriment upon the presumption that CalPERS had estimated his health premium contribution accurately and thereafter deducted the correct amount from his warrant.

The ALJ determined that CalPERS is equitably estopped from collecting the retroactive premiums because a substantial burden and financial hardship would be imposed on Respondent Harmston if he were required to pay them in addition to the increased prospective health contributions of more than \$600 per month.

The ALJ concluded that Respondent Harmston's appeal should be granted. 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.

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