

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Of:

PATRICIA MILLER,

Respondent,

and

CITY OF GOLETA,

Respondent.

Case No. 2014-1289

OAH No. 2015080519

PROPOSED DECISION

This matter came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Santa Barbara, California, on March 30, 2015.

Rory J. Coffey, Senior Staff Attorney, represented Complainant Carene Carolan, Chief, Member Account Management Division, Board of Administration, California Public Employees' Retirement System (CalPERS).

Stewart M. Holden, Attorney at Law, represented Patricia Miller (Respondent).

Kathleen Saiguero Tropa, Deputy City Manager, City of Goleta (Respondent City), was present as an observer.

Respondent sought to purchase Additional Retirement Service Credit (ARSC) at a time in which she was off work while receiving workers' compensation benefits. CalPERS denied the request on the grounds that Respondent was not working in compensated employment at the time of her request. Respondent argues that her disability status does not disqualify her from applying for ARSC. It is concluded that Respondent did not qualify for ARSC because she was not receiving compensation from Respondent City at the time she filed her request for ARSC.

Petitioner and Respondent stipulated to the receipt of documentary evidence and stipulated to pertinent facts, and the matter was submitted for decision on March 30, 2015.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED May 2, 2016

C. Bodley

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in her official capacity.
2. Respondent was employed by Respondent City. By virtue of her employment, Respondent is a local miscellaneous member of CalPERS.
3. Respondent worked for Respondent City from March 24, 2003, until August 31, 2013. On November 28, 2011, she suffered a job-related injury, and did not return to work. Her last day on paid status for Respondent City was June 22, 2012. Respondent thereafter received workers' compensation benefits from York Risk Services Group.
4. On December 26, 2012, Respondent filed a "Request for Service Credit Cost Information –[ARSC]" (Exhibit 4), requesting cost information to purchase two years of ARSC. CalPERS sent Respondent a letter dated August 20, 2013, which contained the following statement: "We found no indication that you were in compensated employment with a CalPERS covered employer on the date your request for ARSC was received. If you were so employed, please submit a copy of your paystub confirming such employment." (Exh. 6, at p. 1.)
5. By letter dated November 19, 2013, Respondent's attorney informed CalPERS that Respondent was on leave without pay due to work-related illness and disability and that she qualified for ARSC pursuant to Government Code¹ section 21003.
6. On December 27, 2013, CalPERS denied Respondent's request to purchase two years of ARSC because she was not in compensated employment at the time she filed the request. On January 17, 2014, Respondent sought reconsideration of the decision. On May 28, 2014, CalPERS again denied Respondent's request to purchase ARSC. On June 25, 2014, Respondent appealed CalPERS's determination.

LEGAL CONCLUSIONS

1. At all times material, section 20909 contained the following provisions:

“(a) A member who has at least five years of credited state service, may elect, by written notice filed with the board, to make contributions pursuant to this section and receive not less than one year, nor more than five years, in one-year increments, of [ARSC] in the retirement system.

“(b) A member may elect to receive this [ARSC] at any time prior to retirement by making the contributions as specified in Sections 21050 and 21052. A member may not elect additional retirement service credit under this section more than once.

¹ Unless otherwise stated, all further references are to the Government Code.

“(c) For purposes of this section, ‘[ARSC]’ means time that does not qualify as public service, military service, leave of absence, or any other time recognized for service credit by the retirement system.

“(d) [ARSC] elected pursuant to this section may not be counted to meet the minimum qualifications for service or disability retirement or for health care benefits, or any other benefits based upon years of service credited to the member.

“(e) This section only applies to the following members:

“(1) A member while he or she is employed in state service at the time of the [ARSC] election.

“(2) A member of the system defined in Section 20324.

“(f) For purposes of this section, ‘state service’ means service as defined in Section 20069.

“(g) This section shall apply only to an application to purchase additional retirement credit that was received by the system prior to January 1, 2013, that is subsequently approved by the system.”

2. Section 20069, subdivision (a), defines “state service” as follows: “(a) ‘State service’ means service rendered as an employee or officer (employed, appointed, or elected) of the state, the California Institute for Regenerative Medicine and the officers and employees of its governing body, the university, a school employer, or a contracting agency, for compensation, and only while he or she is receiving compensation from that employer therefor, except as provided in Article 4 (commencing with Section 20990) of Chapter 11.”

3. The exceptions to the definition of “state service” referred to in section 20069, subdivision (a), and found in Article 4 of Chapter 11, pertain to leaves of absence, and include Government Code section 21003, on which Respondent relies: “Time during which a member is absent from state service by reason of injury or illness determined within one year after the end of the absence to have arisen out of and in the course of his or her employment shall be considered as spent in state service for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits, except as he or she receives compensation as distinguished from disability indemnity under the Labor Code, during the absence, and then only to the extent of compensation received.”

4. Respondent argues that reference to “qualification” for the purpose of receiving retirement benefits means that she can qualify for ARSC even while on leave. CalPERS counters that the reference to “qualification” refers to qualification for retirement benefits and is synonymous with “vesting” but does not include qualification for a benefit like ARSC.

5. Principles of statutory construction are useful in analyzing the language of the provisions at issue. Thus, statutes must be interpreted in such a manner as to ascertain and effectuate the legislative intent. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District* (1997) 14 Cal.4th 627, 632; *People v. Hull* (1991) 1 Cal.4th 266, 271; *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 51-52.) The first step in determining legislative intent is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. (*Hughes v. Board of Architectural Examiners*, supra, 17 Cal.4th 763, 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District*, supra, 14 Cal.4th 627, 633; *Steketee v. Lintz, Williams & Rothberg*, supra, 38 Cal.3d 46, 51.) “Ordinarily, if the statutory language is clear and unambiguous, there is no need for judicial construction.” (*Hughes v. Board of Architectural Examiners*, supra, 17 Cal.4th 763, 775, citing *California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340.)

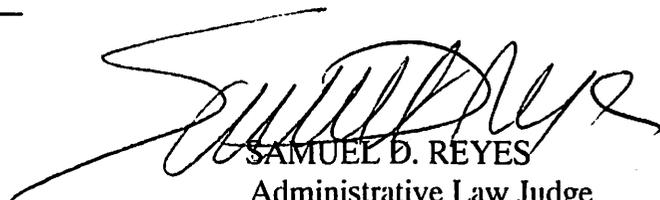
6. The Legislative intent with respect to eligibility for ARSC benefits is clear. As set forth above, ARSC is available to “A member while he or she is employed in state service at the time of the [ARSC] election.” (§20909, subd. (e)(1).) State service is defined as “service rendered . . . for compensation” (§20069, subd. (a)), with some exceptions. The exception contained in section 21003 permits some leave time to be included in the definition of “state service,” so long as the employee receives payment from his or her employer, i.e., compensation, and not insurance benefits under the Labor Code. Thus, the Legislature emphasized employer compensation in qualification for the benefit, regardless of whether the member was working or on leave. Here, Respondent had stopped receiving compensation from her employer in June 2012, well before she filed the request to purchase ARSC. At the time she filed the request to purchase ARSC, Respondent was receiving insurance benefits from York Risk Services Group pursuant to the Labor Code, not compensation from Respondent City. Accordingly, Respondent is not qualified to purchase ARSC because was not employed in state service at the time she filed the request to purchase ARSC.

7. Respondent is not eligible to make an election to purchase ARSC, by reason of factual finding numbers 1 through 6 and legal conclusion numbers 1 through 6.

ORDER

The appeal of Respondent Patricia Miller is denied.

DATED: 4/29/16


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings