

**ATTACHMENT C**  
**RESPONDENT(S) ARGUMENT(S)**

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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

**RESPONDENT PATRICIA MILLER'S  
WRITTEN ARGUMENT AGAINST  
PROPOSED DECISION**

Board Meeting Date: June 15, 2016

TO THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM:

**1. INTRODUCTION**

The question presented in this case is very narrow. There is no disagreement about any factual issue. There is also no disagreement that this case is governed by the provisions of Government Code Section 21003. The only controversy concerns the novel – and patently incorrect – interpretation of Section 21003 set forth in Legal Conclusion Number 6 on page 4 of the Proposed Decision. This interpretation was never briefed or discussed by the parties, nor was it ever mentioned at the administrative hearing which took place on March 30, 2016. The first time that Respondent ever heard of such an argument was in reading the Proposed Decision.

## 2. RESPONDENT'S POSITION

Section 21003 provides as follows (bracketed numbers and emphasis added):

“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 [1] shall be considered as spent in state service for the purpose of **qualification** for retirement and death benefits, [2] 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.”

Ms. Miller's Request for Service Credit Cost Information – Additional Retirement Service Credit (Exhibit 16) does **not** request that the period of her disability be taken into account for the purposes of **calculation** of her retirement benefits. When CalPERS **calculates** the amount and cost of the ARSC that Ms. Miller is entitled to purchase, CalPERS need only consider the time that Ms. Miller actually spent on the job, based upon the second part of Section 21003.

However, Ms. Miller definitely **qualifies** for purchase of ARSC credits, having submitted the Request in timely fashion while on service-related disability leave, because the first part of Section 21003 directs that her disability leave “shall be considered as spent in state service for the purpose of **qualification** for retirement and death benefits....”

Section 21003's distinction between **qualification** (yes) and **calculation** (no) is not arbitrary, but makes perfect sense when considered with reference to everyday public employee situations. Employees seldom if ever know if or when they might become disabled as a result of a work-related injury. Let us take an employee in Ms. Miller's situation as an example. On the last day on which she reported to work and performed services to the City of Goleta, she was clearly entitled to request to purchase ARSC credits. To then immediately disqualify her from requesting a retirement benefit, starting on the first day that she became unable to work, would constitute a manifest injustice.

It is to avoid such an injustice that the Legislature crafted the first part of Section 21003 to extend an employee's opportunity to **qualify** for retirement benefits after her last day performing work functions, so long as she “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.” No similar logic would require CalPERS to use the employee's time on disability for the purpose of **calculating** the amount of ARSC which an employee would be entitled to purchase, so the second part of Section 21003 does not give the employee such an entitlement.

Since Ms. Miller is only seeking application of the **qualification** portion of Section 21003, only the first part of the statute applies to this case, as follows:

“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....”

### 3. ERROR IN PROPOSED DECISION'S READING OF SECTION 21003

The last phrase in Section 21003 contains the following limiting language: "...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."

Legal Conclusion Number 6 of the Proposed Decision takes the incorrect position that the last limiting phrase in the statute applies not only to the second part of the statute concerning **calculation**, but also to the first part of the statute concerning **qualification**. However, this interpretation is not supported by the plain language of Section 21003.

This is how the statute would read if the last limiting phrase were to apply to the first portion concerning **qualification**:

"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..., **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." [Emphasis added.]

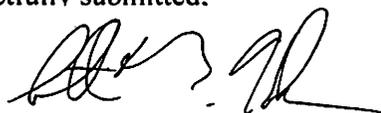
Such a construction of section 21003 makes no sense. If receiving true compensation were an exception to the general rule – that "time during which a member is absent from state service by reason of injury or illness determined within one year after the end of the absence to have arisen out of and in 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" – then the receipt of true compensation for services would **dis**-qualify the employee from benefits.

The last limiting phrase of Section 21003 is clearly intended only to apply to the second part of the statute concerning **calculation**. Where **calculation** is concerned, it makes perfect sense that the mere receipt of workers compensation insurance benefits by an otherwise idle employee should not operate to increase the **calculation** of any retirement benefit – only the receipt of true compensation for services should have that effect. In other words, the last limiting phrase sets forth an exception to the general rule that an employee may not use time under a disability to increase the **calculation** of benefits.

Section 21003 is written as one very long sentence. In an ideal world, the Legislature might have drafted Section 21003 using sub-parts, so as to make its intent easier to discern upon a quick reading. However, Section 21003 is not ambiguous or unclear, if the reader takes the time to read it carefully in such a way that all of its parts make sense. There is no way to read Section 21003, such that all of its parts are given effect and make sense, so as to support the erroneous Legal Conclusion Number 6 of the Proposed Decision

Respectfully submitted.

DATED: June 3, 2016



Stewart M. Holden, attorney for Patricia Miller