

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Respondent Charles Bergson (Respondent) petitions the Board to reconsider its adoption of the Proposed Decision (PD) of the Administrative Law Judge (ALJ) dated March 10, 2016. Staff argues that the Petition for Reconsideration should be denied.

Respondent was employed by the City of Williams (City) beginning 2009. 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).

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.” 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. 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.

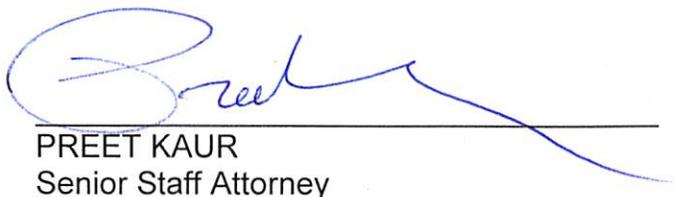
Despite being notified of these requirements, on July 24, 2014, Respondent submitted an election form, choosing the lump-sum payment option but failing to submit a lump sum payment with the election. Rather than submitting a payment, as required, Respondent submitted a request for an extension of the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

Respondent fails to provide a reason why the Board should grant his Petition for Reconsideration. Respondent disagrees with the ALJ's legal determination, but it is clear from Government Code section 21050 that members are required to pay for service credit purchases in a lump-sum or elect an installment option provided to them by CalPERS. The Proposed Decision accurately applies the law, and based on the plain language of the statute, the ALJ could not have ruled otherwise.

Staff argues the Board deny the Petition for Reconsideration and uphold its decision.

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

June 15, 2016



PREET KAUR
Senior Staff Attorney