

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

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

Respondent Mark M. Mixson (Respondent Mixson) was employed by the Sacramento Metropolitan Fire District (Metro Fire) at the time of his retirement. Metro Fire contracts with CalPERS to provide retirement benefits to Metro Fire's employees. By virtue of his employment, Respondent Mixson was a local safety member of CalPERS.

Prior to being employed by Metro Fire, Respondent Mixson was employed as a seasonal firefighter with the California Department of Forestry and Fire Protection (CAL FIRE). Respondent Mixson worked three seasons with CAL FIRE, and on two separate occasions withdrew his member retirement contributions. The withdrawn member retirement contributions equaled 1.010 years of retirement service credit.

On September 16, 2011, Respondent Mixson submitted to CalPERS a Request for Service Credit Cost Information - Service Prior to Membership (SPM Request) seeking cost information for the purchase of service credit while he was employed with CAL FIRE. Respondent Mixson retired from Metro Fire with an effective retirement date of November 12, 2011.

CalPERS staff reviewed Respondent Mixson's SPM Request and determined that he submitted the incorrect form. Respondent Mixson was not seeking to purchase service prior to membership credits; he was seeking to purchase service credits for the member contributions he withdrew from his time of employment with CAL FIRE. On February 7, 2013, CalPERS mailed to Respondent Mixson a letter providing him with the cost and effect of the redeposit of withdrawn retirement contributions.

The documentation provided to Respondent Mixson included an Election of Payments Options form, Election to Purchase Service Credit form (Election Form), Installment Payment Guidelines, and rollover/transfer information forms. The letter provided to Respondent Mixson states that he needed to return the form to CalPERS within sixty (60) days. In addition, the Election Form states that it "must be returned to CalPERS within 60 days to be valid."

CalPERS did not receive Respondent Mixson's Election Form until June 10, 2013; 123 days after CalPERS provided him with the Election Form.

On June 10, 2013, CalPERS informed Respondent Mixson that it could not accept the Election Form because it was not received within 60 days. In addition, CalPERS informed Respondent Mixson that since he retired he is no longer eligible to submit a new request to repurchase withdrawn contributions.

Respondent appealed CalPERS' determination, exercising his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. The ALJ presided over a one-day hearing in Sacramento, California on July 8, 2016. Counsel

appeared on behalf of CalPERS. Respondent Mixson represented himself at the hearing. Respondents Metro Fire and CAL FIRE did not appear at the hearing.

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

The issue at the hearing was whether Respondent Mixson should be allowed to purchase 1.010 years of Redeposit of Withdrawn Contributions Service Credit.

The facts in this matter were not in dispute. Both Respondent Mixson and Sarah Malm-Annan, a Staff Service Manager I for the Service Credit Purchase and Elections Unit at CalPERS, testified at the hearing and copies of CalPERS' documents were received into evidence and considered by the ALJ.

Ms. Malm-Annan testified that a member must submit an Election Form to CalPERS within 60 days because the actuarial factors upon which the cost is based can change over time. In addition, Ms. Malm-Annan testified that if a member does not return the Election Form within 60 days, but is still employed by an entity that contracts with CalPERS for retirement benefits, he or she can submit a new request with CalPERS. In this matter, Ms. Malm-Annan testified that CalPERS did not receive Respondent Mixson's Election Form within 60 days, and by virtue of his service retirement on November 12, 2011, he is not eligible to submit a new request.

Respondent Mixson did not dispute any of the facts presented by CalPERS. Respondent Mixson argued that CalPERS should accept his Election Form for the following reasons: (1) The method of delivery (regular U.S. mail and not certified mail) did not alert him to the importance of the letter and Election Form; (2) The letter and Election Form do not make explicit and obvious the sixty (60) day deadline; (3) The letter does not make clear that a member who retires is not eligible to re-submit a request to purchase withdrawn member contributions; (4) He was extremely busy caring for a close friend who was battling cancer when he received the letter and Election form, and for this reason did not give his full attention to the letter and Election Form when they were received; (5) It took CalPERS a significant amount of time, over 16 months, to process his request, and he believed that if it took CalPERS this long to process the request he would be given more than 60 days to respond.

The ALJ considered all of the evidence and found that Respondent Mixson did not present evidence to establish he was eligible to redeposit withdrawn contributions. The ALJ found that Respondent Mixson's personal challenges and busy schedule did not relieve him of his obligation to return the Election Form to CalPERS within sixty (60) days. The ALJ also found that Respondent Mixson's argument that the pertinent information was not sufficiently explicit and obvious was not persuasive.

The ALJ concluded that Respondent Mixson has the burden to establish that he was eligible to redeposit withdrawn retirement contributions, or that there was a correctable error or omission in his failure to timely submit the Election Form to CalPERS due to mistake, inadvertence, surprise, or excusable neglect. The ALJ found that Respondent Mixson failed to meet his burden, and denied his appeal.

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.

September 21, 2016



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