

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Joseph Poindexter (Respondent) and his ex-wife were married on May 27, 1983 and were legally separated non November 11, 2000. Both spouses worked for the State of California, and both were CalPERS members. On September 1, 2004, the Sacramento Superior Court approved the parties' division of assets, including CalPERS benefits. Respondent was awarded 50% of his ex-wife's accumulated contributions and service credit during the time of their marriage, which was 8.707 years.

On November 1, 2004, Respondent submitted an application for service retirement and an application for non-member service retirement. On November 4, 2004, CalPERS established that his non-member account had 8.707 years of service, and sent him a letter stating his benefit would be based on his service, plus his portion of his ex-wife's accumulated contributions and service credit.

On December 17, 2004, CalPERS notified Respondent that his non-member benefit would be \$860.16. This amount was incorrect. Respondent's ex-wife had worked at Department of Toxics for two years. Respondent's portion of that time was one year. However, CalPERS had incorrectly credited Respondent's account with 8.707 years of service for his ex-wife's work at the Department of Toxics, rather than one year.

Respondent retired on December 31, 2004. On February 1, 2005 he collected his first retirement warrant, and he has been receiving his service retirement since then.

On June 10, 2015, Respondent's ex-wife requested to convert some of her time from "Tier 2" to "Tier 1." At that time, CalPERS reviewed both Respondent's benefit allowance, and his ex-wife's benefit allowance, and discovered its mistake.

On July 8, 2015, CalPERS wrote Respondent stating his monthly benefit for non-member service would be reduced from \$860.16 to \$403.86, and that Respondent had received an overpayment of \$58,411.42. Of that, seven years of payments would be forgiven, but he still owed \$18,561.48. Respondent appealed.

On September 3, 2015, CalPERS informed Respondent that an overpayment can only be forgiven if: (1) Respondent had no obligation to inquire and did not know he was overpaid; and (2) reimbursement of the overpayment would cause Respondent undue financial hardship. Respondent refused to provide any financial information to show undue hardship. He stated that his appeal was not based on hardship, but on the principle that CalPERS was attempting to make him pay for its mistake.

CalPERS again requested financial information from Respondent, and notified him that without the requested information installments would be deducted from his warrant.

Respondent appealed CalPERS' determination. A hearing was completed on August 16, 2016.

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

The Administrative Law Judge (ALJ) found that CalPERS is entitled to recover the overpayment it paid to Respondent. Even though the overpayment is solely attributable to CalPERS' mistake in the initial calculation of Respondent's non-member retirement account, the law requires that Respondent must repay the overpayment.

The ALJ reasoned that CalPERS owes a fiduciary duty of trustee to a trust fund and its beneficiaries. It cannot ignore a mistake that benefits one person any more than it can refuse to correct one that inures to its benefit. To find an estoppel in this case would be sufficiently adverse to public interest or policy. Here, the Board has a primary obligation to protect the retirement fund for the benefit of *all* its beneficiaries and to minimize the employers' costs of providing benefits. To allow Respondent to keep years' worth of an overpayment in excess of the statutory formula would result in an unfunded liability. Forgiving this benefit would unjustly enrich him and allow CalPERS to act in excess of its statutory authority.

Accordingly, the ALJ concluded that while CalPERS made an error and did not discover its error for several years, CalPERS is nevertheless required under Government Code section 20160 to correct the error, and may require Respondent to repay the overpayments of retirement allowance resulting from the error. Although Respondent was overpaid from the time he began collecting his non-member warrant in 2004 until CalPERS discovered the error in 2015, there is a 3-year statute of limitations that limits the amount CalPERS can recover. (Gov. Code §20164.)

The ALJ concluded that Respondent's appeal should be denied. The ALJ found that CalPERS is authorized to recover the overpayment, less adjustments made for COLAs and the 3-year statute of limitations. The ALJ also found that Respondent should be allowed to repay in installments. 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.

November 16, 2016


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