

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Audra Dempsey-Nicholson (Respondent) was employed by Contra Costa County Community College District (County) from July 23, 1974 to September 24, 1976. Respondent made contributions to her CalPERS retirement account during this timeframe. Respondent separated from employment with the County on September 24, 1976.

On January 29, 2013, Respondent inquired concerning the status of her retirement. She was informed by CalPERS that her contributions, in the amount of \$1,107.70, had been refunded to her and mailed to her in September 1976.

Respondent notified CalPERS that she had not received a refund and requested refund of her retirement contributions. CalPERS denied Respondent's request and provided appeal rights. Respondent appealed CalPERS' determination. A hearing on the matter was held on November 15, 2016.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.

At the hearing, Respondent testified that in September 1976, she separated from employment with the County, left her address of record but did not provide her employer with a forwarding address. She testified that if a refund was issued, she did not receive it because she had not updated her address with the County or CalPERS.

CalPERS staff, Janet Perry, testified that in 1976, the standard procedure was for CalPERS to automatically refund the member's contributions if the member separated with less than five years of service. The refund would have been sent to the member's address of record. Ms. Perry testified that based on CalPERS' records, a refund was issued in September 1976.

The ALJ concluded that Respondent's appeal should be denied. The ALJ held that Respondent failed to update her address when she left employment with the County in 1976. The ALJ found the testimony of Ms. Perry to be persuasive, and held a refund was issued to Respondent in 1976. Therefore, Respondent was not entitled to a second refund.

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.

February 15, 2017

A handwritten signature in blue ink, appearing to read 'Preet Kaur', written in a cursive style.

PREET KAUR
Senior Staff Attorney