

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

January 30, 2017

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2707



RE: Respondent's Argument
OAH Case No. 2016040639
Agency Case No. 2015-0595

Dear Ms. Swedensky

This letter is in response to the Proposed Decision rendered by Judge Heather Rowan pursuant to the hearing on November 15, 2016.

I am appealing to the board for reconsideration of the Judge Rowan's denial of my request for the refund of the contributions made to CalPERS retirement account while employed with Contra Costa Community College.

This entire process became more about principal and my concerns to find out what happened to a retirement refund I knew nothing about or received. This went from requesting a token refund to defending my curiosity and integrity to an appeal process which will cost CalPERS far more than the refund itself which goes far beyond the pale of my imagination.

I am respectfully disputing Judge Rowan's findings point by point:

- I was employed with Contra Costa Community College from July 23, 1974 to August 31, 1976. The September 24, 1976 date is the date CalPERS asserts the date they processed my legal separation from Contra Costa Community College.
- My initial letter to CalPERS was sent on January 29, 2013 with no response, I sent a second letter on September 18, 2013 with no response. I sent a copy of my September 18, 2013 letter on November 4, 2014. I finally received a response from Gwen Horn Unit Supervisor dated December 9, 2014 who advised me a refund was sent to me on **September 24, 1976**. (*This is my first knowledge that I was entitled to \$1107.70 refund*).
- I later sent a letter to Anne Stausboll, CEO on March 17, 2015 requesting her assistance in helping me resolve this issue of a refund check mailed to me but never received. I received a letter from Diane Alsur Interim Chief on April 1, 2015 advising me the check in question was mailed to me on **September 27, 1976** to the address of record on my separation documents.

I immediately responded to Ms. Alsur letter by requesting a copy of the canceled check, the address of record or a copy of a separation letter they alleged I signed.

- Point in fact I was never presented or signed a separation letter during my exit process from Contra Costa Community College. My exit interview was informal; they advised me they were issuing me a final paycheck and well wishes from co-workers and management. At that time I was never advised of additional monies forth coming. (*My proof* of burden is in contrast with the failure of Contra Costa Community College to provide me with the proper exit interview and inform me I was to receive additional money or confirm how and when this payment would be made. It was very clear to management I was leaving my current residence to attend the University of California Santa Barbara). Therefore, I did not leave a forwarding address since I had not established residency in Santa Barbara, Ca.

Please note the dates CalPERS uses as confirmation of their processing of the refund and my cashing the alleged refund sent to me.

- As recent as 04/15/16 correspondence from CalPERS was delivered to 3134 Pine St, Martinez, CA. As stated in *my testimony on November 15, 2016, I have not lived in Martinez, CA for the last 40 years and I have never lived at 3134 Pine St.*
- In reviewing the Statement of Issues from CalPERS legal department, I noticed several conflicting statements throughout the document.
 1. The Statement of Facts, page 2, paragraph III states the refund was processed on or about **September 24, 1976.**
 2. The Statement of Facts, page 2, paragraph IV states the funds were issued on or about **September 27, 1976** to the address provided by me in the signed separation documents.
 3. The Statement of Facts, page 5, paragraph IX states they confirmed that the warrant issued has been cashed on **September 17, 1976.**

During my testimony I outlined all of the conflicting discrepancies in the Statement of Facts to the attention of the courts. It became apparent that CalPERS legal department was unaware of the contradictions in their own documents. At this time the attorney representing CalPERS filed a motion to change the dates outlined in the Statement of Facts. I vehemently objected. This again demonstrates how they provide alternative facts and their inability to state accurate facts they cannot support or speak about documentation they do not have.

- The testimony of Janet Perry of CalPERS only provided expertise based on the system she launched in 2011, 35 years after the date of my separation from Contra Costa Community College. Ms. Perry stated under oath that the process in question was based on an assumption since they did not have tangible evidence to support this process. It was confusing how her testimony brought any clarity to the timeframe in question or the relevancy of it.
- The information maintained on the microfiche did not provide any useful information as stated by Ms. Perry it only provided name, date, and other codes, not to mention it was illegible.

My Burden of Proof relies on the fact Cal PERS failure to provide any documentation or their ability to demonstrate the clarity and correct procedure during my separation that would have ensured I received all

monies due me at the time of separation. The fact there was no exit interview, the fact they claim I signed separation documents but failed to show proof. Contra Costa College was aware I was relocating to attend college; therefore the obligation to inform me of when and how they would process any additional monies was not met.

Judge Rowan conclusion #1 (Gov. Code, 20340 subd (a).) only speaks to a person ceasing to be a member of CalPERS if she is refunded her contributions and its mailed to her last known mailing address. This Code had been amended and adapted as stated years later. I must object to this conclusion based on its relevancy and how it relates to me not receiving my retirement refund. Please note correspondence from CalPERS was repeatedly sent to an address I've never resided at during the time period in question as stated above.

Please note I am not challenging my membership with CalPERS, I'm just challenging the fact I never received any refund.

Judge Rowan conclusion #2 & 3 states monies returned would have been re-deposited in the retirement fund held for the member without further accumulation of interest stating I would have 4 years to reclaim the check, "again no one informed me during my separation I was due additional monies"

Judge Rowan conclusion #4 even reflects the fact I had no knowledge or documentation that I was due a right to a refund in which I had been stating all along.

Based on my testimony, I clearly stated that when I left Contra Costa Community College I had not established residency in Santa Barbara, CA and that was the reason I terminated my employment August 31, 1976 so that I could find residency prior to attending school. I used my mother's address for emergency contact if needed. I didn't find permanent residency in Santa Barbara until January 1977.

- As testified, upon my retirement I contacted CalPERS inquiring about any retirement benefits I may be entitled to. I had no knowledge I was entitled to a refund. It wasn't until my first correspondence from CalPERS that I became aware a refund had been issued to me on September 24, 1976 which I never received. I think its callus to assume a young person on the way to college would have considered questioning matters regarding retirement refunds.
- The Judges Rowan's proposed decision stated if the check was returned, the States Controllers office would have been placed that check into a non-interest bearing account for unclaimed funds. Which is correct, however I suggest if the check had been cashed, CalPERS would have received the canceled check, but unfortunately, they cannot provide evidence of the canceled check therefore it appears this check is still an outstanding check unaccounted for.

A part of my *burden of proof* was to expose the fact that CalPERS could not provide any supporting documentation to support their processes, the issuance of a check and or evidence it was cashed:

1. Copy of the canceled check
2. Copy of the separation letter
3. Confirmation of the address where the check was sent
4. Copy of the report they referred to showing when the check was processed and/or mailed.
5. Correspondence consistently going to the wrong address where I never lived at.

6. Documents provided by the CalPERS legal department with inconsistent and contradictory information.
7. Expert testimony only provided information for the processes used years after the date in question, she also testified under oath the processes described during that time was an assumption since there is no tangible evidence to confirm her testimony.

Fortunately, I was able to submit a copy of my student loan Promissory Note that was accepted as evidence confirming my location at the time the check was reportedly issued and/or mailed.

In conclusion, the facts do not justify the current Legal Conclusions reached by Judge Rowan. CalPERS did not demonstrate any knowledge of how the separation processes occurred in 1976 they cannot provide any documentation to support any theory that I received any monies due me.

Ms. Perry had no knowledge of how they processed final payments during this time period nor was she employed by this organization during this period. CalPERS was unable to provide any documentation signed by me nor were they able to show proof the check was cashed as confirmed in the Statement of Facts or that the funds were returned to the retirement Fund. The conclusions reached based on (Gov. Code, 20340 subd (a).) was not relevant in pursuant to me receiving a refund.

Lastly, the fact on several occasion's correspondence from CalPERS was delivered to the wrong address.

Should you need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Audra Nicholson". The signature is written in black ink and is positioned above the printed name.

Audra Nicholson