

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Appeal Regarding
Cancellation of Tier Conversion Election of:

LISA A. HILDER,

Respondent.

Case No. 2015-0975

OAH No. 2016010410

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 26, 2016, in San Bernardino, California.

Rory J. Coffey, Senior Staff Attorney, represented Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS), State of California.

Lisa A. Hilder, respondent, represented herself.

The record was left open for the parties to submit closing briefs. The matter was submitted on November 23, 2016.

ISSUE

Whether Ms. Hilder made a mistake when she elected to convert her second tier service to first tier service in order to enhance her retirement benefits, and if so, whether she is entitled to a refund of the \$15,574.73 she paid to CalPERS in order to effectuate the tier conversion?

SUMMARY

The documentary evidence established that Ms. Hilder was advised, prior to completing her tier conversion election application, that: A tier conversion election might not lead to increased retirement benefits; any election made would be irrevocable; and

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED Dec. 22, 2016
C. Bodily

disability retirement benefits were capped at 33 percent of a person's final compensation regardless of whether the service years were under the first or second tier. Ms. Hilder did not seek independent financial advice regarding whether she should elect a tier conversion; did not seek advice to find out whether her disability retirement benefits were already at the 33 percent cap prior to electing the tier conversion; and did not prove that anyone from CalPERS breached any duty to her regarding informing or failing to inform her regarding her election to pursue a tier conversion. Ultimately, the tier conversion did not change Ms. Hilder's retirement benefits. Consequently, Ms. Hilder did not prove that a mistake was made under applicable law, so CalPERS lacks authority to refund the \$15,574.73 to her.

FACTUAL FINDINGS

Background

1. Ms. Hilder was employed as a social worker with the Department of State Hospitals – Patton, at the time she filed her disability retirement election application on January 2, 2014. By virtue of her employment, Ms. Hilder was a state safety member of CalPERS.
2. Ms. Hilder began calling CalPERS in August 2013, regarding the possibility of pursuing a disability retirement. At the time she began conversing with CalPERS, the notes in CalPERS's computer system showed that Ms. Hilder had not yet made up her mind if she was going to file for a disability retirement.
3. Extensive notations by CalPERS employees in their computer system showed that Ms. Hilder was advised about the disability retirement application process, health vesting, and availability of a tier election conversion, given that Ms. Hilder had first and second tier service credit.¹
4. On September 10, 2013, CalPERS sent a tier conversion packet to Ms. Hilder explaining the tier conversion process. The document stated on page one that a conversion of second tier service to first tier service would provide a "higher level of benefits" than the current second tier retirement formula of 1.25 percent at age 65.² Page one of that document

¹ A tier election conversion is a process by which a member may convert second tier service to first tier service in order to have the more lucrative first tier formula applied towards calculating their retirement benefits. At the time Ms. Hilder began conversing with CalPERS, she had approximately 3.797 years of second tier service, and approximately 10 years of first tier state-safety service.

² Ms. Hilder pointed to this sentence as evidence that she was misled into thinking she would receive a higher level of compensation. However, it is noted that this sentence refers only to a higher level of benefits in the *retirement formula* applied, and not a higher level of

also explicitly stated, in bold font, that any tier election conversion made was irrevocable. However, the document also explained on page nine that a person filing for a disability retirement was subject to a cap of 33 percent³ of their final compensation regardless of whether they were under a first tier or second tier retirement formula and that, because of the cap, a tier conversion might not result in an overall increase in the total retirement benefit payment.

5. On September 20, 2013, CalPERS sent Ms. Hilder the disability retirement estimate she had requested. The document laid out all three of Ms. Hilder's state employers, the exact amount of service credit attributed to each employer, whether the service years were under the first or second tier formula, and the overall percentages to be applied for each employer towards calculating her final compensation. On page two this document also stated that "a limit has been applied to your percent of final compensation." The percentages attributable to each employer equaled 33 percent, the same amount of the cap explained in the tier conversion election packet as applying to a person filing for a disability retirement.

6. There is no evidence Ms. Hilder ever inquired as to the limit being applied to her percent of final compensation, as noted in the disability retirement estimate document, or that she inquired about the applicability of the 33 percent cap to the final compensation of persons filing for disability retirement, as noted in the tier election conversion packet.

7. Extensive notes in the CalPERS computer system also showed that CalPERS employees advised Ms. Hilder as to the *process* for filing a tier conversion election application, such as what documents needed to be filed, when they needed to be filed, and how much she would need to ultimately pay if she wanted to elect a tier conversion. There was no evidence that any CalPERS employees advised Ms. Hilder whether she should or should not pursue a tier election conversion.

8. There was also no documentation, and Ms. Hilder did not provide any evidence, that Ms. Hilder requested a revised disability retirement estimate to ascertain what her overall retirement benefit payment would be in the event she elected a tier conversion.

9. On November 1, 2013, Ms. Hilder filed a tier conversion election application to convert her second tier service to first tier service. The cost of the conversion was \$15,574.73. Ms. Hilder paid that amount in full and the tier conversion was satisfied on November 21, 2013. This document specifically stated in bold font and capital letters that a tier election conversion is irrevocable.

overall compensation to be paid as a result of the more lucrative retirement formula achieved by the tier conversion.

³ The cap is actually 33.333 percent, but for ease of reference, it will be referred to throughout the decision as simply 33 percent.

10. On January 2, 2014, Ms. Hilder filed an application for a disability retirement, which was approved in February 2014.

11. On February 20, 2014, CalPERS sent Ms. Hilder a disability retirement estimate, similar to the one previously provided on September 20, 2013, but with more updated information. Again, this estimate broke down among all three of Ms. Hilder's state employers, the exact amount of service credit attributed to each employer, whether the service years were under the first or second tier formulas, and the overall percentages to be applied in calculating her final compensation. Although the distribution of percentages changed as to the calculation of her final compensation attributable to each employer because she worked at her last employer between September 2013 and January 2014, the percentages again equaled 33 percent. Thus, despite the fact that the tier conversion enhanced the retirement *formula* for her second tier employer from 1.25 percent at age 65 to 2 percent at age 55, the enhanced retirement formula did not increase her overall *retirement benefit payment*, because her retirement benefits were still capped at 33 percent of her final compensation.

12. Ms. Hilder sought to revoke her tier conversion election and requested a refund of the \$15,574.73 she paid to complete the tier conversion, because it did not result in an overall increase in her retirement benefits and because of financial hardship.

13. On September 22, 2014, CalPERS sent Ms. Hilder a letter informing her that CalPERS was unable to approve Ms. Hilder's request for a refund because the tier conversion election was irrevocable and there were "no provisions in the law that would allow a member who elected Tier Conversion and subsequently retired on a Disability Retirement the ability to cancel their election when it is deemed not beneficial."

14. Ms. Hilder timely appealed, alleging that she pursued the tier conversion upon the "recommendation" of CalPERS employees, and that in doing so, "CalPERS should be accountable for the error and demonstrate requisite integrity by reversing my conversion."

15. This appeal, as set forth in Ms. Hilder's appeal letter and in the Statement of Issues, correctly limits the issue as to whether Ms. Hilder made a mistake when electing to pursue her tier conversion.⁴

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⁴ In later documents and in her closing brief, Ms. Hilder also raised the issue of breach of fiduciary duty. Breach of fiduciary duty, however, is a civil matter outside the scope of this appeal. To the extent Ms. Hilder alleged that she made a mistake in electing a tier conversion because she relied on erroneous advice or a lack of advice from CalPERS employees, that argument was considered, *ante*, and rejected.

Evidence Presented by Ms. Hilder

MS. HILDER'S TESTIMONY

16. Ms. Hilder testified that she went to CalPERS in September 2013 to pursue a disability retirement. She said she was "encouraged" to explore a tier conversion. Ms. Hilder said that she "spoke to someone over the phone" and the CalPERS employee she spoke to advised her that a tier conversion would result in a net increase in her retirement benefits of approximately \$1,000. Ms. Hilder submitted a letter further explaining the alleged conversation between herself and the CalPERS employee. In the letter, Ms. Hilder admitted that the calculation was "informal." Ms. Hilder testified that she did not think anyone at CalPERS was trying to "steer her wrong." Ms. Hilder would like a refund of the \$15,574.73 she paid to complete the tier conversion because she never would have explored a tier conversion if she had known it would make no difference in her retirement benefits payment. Part of the money she used to pay for the tier conversion came from her parents, and she would like to pay them back.

17. Ms. Hilder also wrote in the letter she submitted as an exhibit, the following:

[During] the 32 CalPERS contacts prior to my disability retirement, it is my belief that these claims specialists who are charged with advising disabled and therefore vulnerable state employees should have made the 33.333% cap and resulting futility of my Tier Conversion clearly known to me. During this time, I was suffering from a career ending physical illness and I believe that I was entitled to a reasonable reliance on the skills and competence of these disability specialists.

I do not believe that CalPERS through its employees fulfilled their fiduciary responsibility to me. I was repeatedly advised to perform an expensive Tier Conversion which never had the potential to benefit me in my disability retirement. I do not believe that there was deliberate [malfeasance] – rather over a dozen honest mistakes by disability specialists working in a system which rarely had me speaking to the same person twice. Nevertheless, this represents a breach of fiduciary responsibility on the part of CalPERS. Throughout the process I was not adequately put on notice as to the negative financial consequences of a Tier Conversion done immediately prior to a disability retirement. I would offer that my position is supported by the record which demonstrates that multiple CalPERS personnel were clearly not aware of the applicability of this cap in my case despite being involved in the process – otherwise they would have advised me to halt the Tier Conversion. I believe this demonstrates that the 33.333% cap

was not only unclear to me, but also unclear to other reasonable people – CalPERS’s own employees. CalPERS has previously conceded that it owed its plan members a fiduciary duty I contend that CalPERS fiduciary duty to me, as described in Civil Code 2235, was not fulfilled.

I had no reason to believe that CalPERS was not giving me accurate information or competent advice. I talked with numerous CalPERS Disability Specialists who all guided me towards a Tier Conversion prior to disability retirement. I walked in the office pursuing a disability retirement and all phone conversations were to inquire about a disability retirement as well. The documentation supports that I was speaking of disability retirement each time that I called. I believe that my request to reverse my Tier Conversion and refund my money should be honored.

TESTIMONY OF GARY HILDER

18. Gary Hilder, Ms. Hilder’s father, testified at the hearing. According to Mr. Hilder, he arranged a meeting with an independent financial advisor in late September 2013 in order to discuss the wisdom of contributing \$10,000 to his daughter so she could pursue a tier conversion. He does not recall if he provided the tier conversion packet or any other documentation from CalPERS to the advisor. After being advised that it would be a good idea, Mr. Hilder gave his daughter approximately \$10,000 to effectuate the tier conversion. Mr. Hilder also wrote a letter stating the same thing as he did in his testimony.

THE MARZEC CASE DOES NOT APPLY

19. Ms. Hilder provided a copy of *Marzec et al. v. California Public Employees Retirement System* (2015) 236 Cal.App 4th, 939, in support of her case.

In *Marzec*, several retired employees had purchased “air time,” or additional service credit years that could be applied towards enhancing their retirement benefits. When the employees ultimately retired on disability many years subsequent to their purchase of air time, they learned their retirement benefits were capped at 50 percent of their final compensation. Thus, the additional service years they had purchased had no effect on their final retirement benefits payment. The retired employees sued, alleging four causes for action, seeking a return of their payments made to purchase air time. CalPERS demurred to each cause of action. The trial court sustained CalPERS’s demurrer as to four causes of action; the retired employees appealed.

The appellate court concluded that the trial court properly sustained CalPERS’s demurrer as to the employees’ claims for breach of statutory duty and breach of contract. The court pointed out that, like in Ms. Hilder’s case, the election documents filled out when

the employees purchased air time specifically noted that the projected retirement benefits were estimates only, and not promises of what each employee would receive upon retirement. (*Marzec, supra*, at p. 912.) In other words, the document informed each CalPERS member of the existence of the ability to purchase air time and the purpose of air time; it was not a promise that a purchase of air time would, in fact, enhance one's final benefits payment. Indeed, like this case, the document specifically stated that the purchase of air time might not result in an increase to their retirement benefits.

As to the employees' claims for rescission and breach of fiduciary duty, the court found that the trial court should not have sustained the demurrer. Specifically, the retired employees claimed that CalPERS had a duty to "fully inform" members of retirement options, and by not fully explaining the impact of a disability retirement to them when they purchased air time, that fiduciary duty was breached resulting in the ability to rescind their purchase of air time. (*Marzec, supra*, at p. 913.) CalPERS conceded in its demurrer that it did have a fiduciary duty to members. However, CalPERS pointed out that the election documents specifically stated that members "might not benefit from their service credit purchases." (*Ibid.*) The appellate court concluded that, *based on the pleadings*, the plaintiffs had stated a claim for rescission and breach of fiduciary duty such that the matter could go forward to the trial for a jury to decide based on the facts of the case. The appellate court did not conclude that the retired employees had, in fact, proven their case.

Accordingly, *Marzec* does not support Ms. Hilder's position, for three reasons. First, *Marzec* dealt with a very different statutory aspect of retirement law (the purchase of air time). Second, *Marzec* resulted in reversals of two causes of action based on procedural errors of the trial court in sustaining demurrers, not due to substantive errors of law. Finally, and perhaps most important, *Marzec* did not have anything to do with, and did not render any findings relating to the concept of mistake, under Government Code section 21060 and California Code of Civil Procedure section 473, which is the only issue in this case.

Evidence Presented by CalPERS

20. Along with documents supporting the above-referenced background, CalPERS called Antoin Eason, a Retirement program specialist II with CalPERS, to testify.

Mr. Eason testified at length about the tier conversion election process and difference between the tier one and tier two retirement formulas. He also explained that there is a difference between a service retirement and a disability retirement, and a tier conversion for a service retiree often resulted in increased retirement benefits. However, disability retirement benefits are different because they are capped at 33 percent. Thus, if a person already reached the cap, a tier election conversion would not increase their overall retirement benefit.

Mr. Eason investigated Ms. Hilder's complaint regarding being ill-advised by CalPERS employees to pursue a tier election conversion. While he did see evidence that CalPERS employees provided advice about the process to pursue a tier conversion, he did

not see any evidence that any CalPERS employees advocated a tier election conversion to Ms. Hilder. Mr. Eason explained that CalPERS employees may provide *guidance* about the retirement process, but cannot make *recommendations* regarding what a member should or should not do.

Mr. Eason reviewed all of the computer entries regarding employee contact with Ms. Hilder, and did not see anything unusual or inconsistent with CalPERS obligations to its members.

CalPERS Customer Touch Point Entries

21. CalPERS provided all computer entries made in the Customer Touch Point system (CTP system). The CTP system is a log where CalPERS employees document all contact with a CalPERS member. The CTP system notes for Ms. Hilder showed the following:

On August 1, 2013, Ms. Hilder made an appointment with CalPERS. It shows that Ms. Hilder was provided with "PUB-35," or the disability retirement election application, and each section of the publication was reviewed with Ms. Hilder in detail. This note was entered by D. La Bahn.

On September 10, 2013, another CalPERS employee made a note indicating that the disability retirement process, health vesting, and payment plan for tier conversion were explained. The note indicated that Ms. Hilder was not sure about applying for a disability retirement but said she would schedule another appointment when she was ready to do so. This note was entered by E. Lopez.

On September 10, 2013, a second note was entered by S. Lam. S. Lam noted that a tier conversion packet was sent to Ms. Hilder, along with a calculation of what it would cost should Ms. Hilder elect to convert her second tier service to first tier service.

Several notes between September 10, 2013, and November 21, 2013, show that Ms. Hilder was advised regarding disability retirement and questions relating to how to make payment for the tier conversion, as well as applicable time frames, and what forms needed to be filled out in order to rollover retirement funds to pay for the tier conversion. These notes were entered by seven different CalPERS employees.

The notes between November 21, 2013, and February 26, 2014, show generally items relating to Ms. Hilder's disability retirement.

On February 26, 2014, Ms. Hilder made the first inquiry regarding her tier conversion since it had been completed in November 2013. This note was entered by C. DeCastro.

Between February 27, 2014, and April 16, 2015, the notes entered related to Ms. Hilder's attempt to seek a refund of the money she paid to elect a tier conversion. These notes were entered by 13 different CalPERS employees.

22. None of the CTP system notes show that Ms. Hilder, prior to electing to pursue the tier conversion in November 2013, requested a revised disability estimate in order to see how the tier conversion would enhance her retirement benefits in the event she filed for disability.

23. None of the CTP system notes show that any employee advised Ms. Hilder that pursuing a tier conversion would result in a net \$1,000 increase to her overall retirement benefits.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. When an applicant seeks to use Government Code section 20160 to correct an error or omission, the applicant has the burden of presenting documentation or other evidence establishing the right to correction under that section. (Gov. Code, § 21060, subd. (d).) The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Applicable Statutes

2. Government Code section 20160 provides in part:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active . . . member . . . [if] all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an “error or omission” correctable under this section.

[¶] . . . [¶]

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

3. Code of Civil Procedure section 473, subdivision (b), provides that a court may, “upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” The section does not define what constitutes mistake, but the term has been well-defined in case law.

The Supreme Court, in interpreting Code of Civil Procedure section 473, has held that the “naïveté’ of lay litigants in ‘rely[ing] on themselves to protect their substantial legal interests’ does not afford a ground for relief from adverse results.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 979.) The appellate courts’ discussion of when a mistake provides

grounds for relief is also instructive. A person's alleged ignorance of legal issues does not constitute "mistake, inadvertence, surprise or excusable neglect" warranting relief. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1413.) When a party "accepts the risks" of proceeding without counsel or advice in making a particular decision, he or she is "stuck with the outcome." (*Ibid.*) An honest mistake may provide grounds for relief where a problem is complex and the mistake is reasonable, but relief based on a claim of mistake may be denied where the record shows only "ignorance of the law coupled with negligence in ascertaining it." (*Hopkins, supra*, at pp. 1412-13, citing *A & S Air Conditioning v. John J. Moore Co.* (1960) 184 Cal.App.2d 617, 620, 7 Cal.Rptr. 592.) In considering whether a mistake furnishes grounds for relief, the determining factor is whether the mistake was reasonable. (*Hopkins supra*, at p. 413.)

Evaluation

4. Ms. Hilder had the burden of proving by a preponderance of the evidence that she made a mistake, as that term has been construed by the courts, when she elected to convert 3.797 years of second tier service to first tier service. For the foregoing reasons, Ms. Hilder's choice to elect a tier conversion, which ultimately did not enhance her retirement benefits, did not constitute a mistake as a matter of law.

Ms. Hilder requested a disability retirement estimate in September 2013. CalPERS provided that disability retirement estimate. The estimate showed that her percentage of final compensation was limited at 33 percent. Specifically, the document stated "a limit has been applied to your percent of final compensation." Ms. Hilder did not inquire what that limit meant.

Ms. Hilder also requested a tier conversion packet in September 2013, which explained various choices available to her should she elect to convert her second tier service to first tier service. The tier conversion packet advised on page one in bold font that any election to effect a conversion was irrevocable. The tier conversion packet advised on page nine that any election to convert second tier service to first tier service "may not increase the total retirement benefit payment" if the applicant retired on disability. On page nine, under "disability retirement," the tier conversion packet also specifically stated that, whether a person's service credits were under first tier or second tier, the amount of retirement benefits paid were capped at 33 percent of the retiree's final compensation. Ms. Hilder again, did not inquire as to whether that cap applied to her.

Ms. Hilder did not seek independent financial advice, nor did she provide any of the CalPERS documents relating to a disability retirement or tier conversion election, to a financial advisor, prior to electing to complete the tier conversion. Although Ms. Hilder's father did seek independent financial advice, Mr. Hilder was unsure if he provided the documents to the independent financial advisor. At any rate, Mr. Hilder's inquiry appeared to be related to the wisdom of his decision to contribute a large sum of money to Ms. Hilder, and not to the wisdom of Ms. Hilder's specific situation and whether pursuing a tier election conversion was a good option.

Ms. Hilder filed a tier election conversion document and paid \$15,574.73 to CalPERS in November 2013 to convert her second tier service to first tier service. That document, like the tier conversion packet, explicitly stated in bold that any tier election was irrevocable.

Ms. Hilder filed her application for disability retirement in January 2014. As it turned out, her retirement benefits did not change with the tier conversion because she filed for a disability retirement, as opposed to a service retirement, and her overall benefits were capped at 33 percent of her final compensation. Ms. Hilder sought to revoke her tier conversion in February 2014, and requested a refund.

Ms. Hilder's election to pursue a tier conversion was not a mistake within the meaning of Section 473. She began exploring a tier conversion in September 2013, paid for it two months later, and filed her disability retirement application in January 2014. The documents were clear and specifically advised that 1) the election might not change retirement benefits, 2) any election made would be irrevocable, and 3) disability retirement benefits are capped at 33 percent regardless of whether the service years are under the first or second tier.

There was no evidence that Ms. Hilder inquired as to the effect of the cap on her decision to convert second tier service to first tier service. There was also no evidence that CalPERS incorrectly advised Ms. Hilder regarding the propriety of a tier conversion. CalPERS is responsive; it provides documents and service to help a member accomplish their purpose. CalPERS is not an independent legal advisor and does not provide advice as to what a member should or should not do. The extensive notes made by countless CalPERS employees in the CTP system show that they were indeed responsive to Ms. Hilder's inquiries; they did not provide legal or financial advice as to what options she should choose. Thus, Ms. Hilder's contention that CalPERS employees recommended she pursue a tier conversion is not supported by the evidence.

On this record, and in consideration of applicable statutory and case law, the evidence does not support a finding of a mistake within the meaning of Section 473 to warrant a refund. Rather, Ms. Hilder's election was the result of negligence in reading or understanding the tier conversion packet, the failure to seek a revised disability retirement estimate should she elect a tier conversion, the failure to consult with an independent financial advisor to ascertain the effect of the 33 percent cap on retirement benefits for a person who files for a disability retirement, and ignoring the multiple warnings that any tier election conversion was irrevocable.

Finally, to the extent Ms. Hilder felt that CalPERS employees breached a fiduciary duty because they should have advised her about the 33 percent cap and that the tier election conversion would not benefit her, that argument is rejected. As Mr. Eason explained, CalPERS employees provide guidance through the retirement process and provide documents and information responsive to members' inquiries. CalPERS employees are not there to provide independent financial advice as to particular financial choices each CalPERS member should make when pursuing a disability retirement or converting second tier service

to first tier service. Indeed, CalPERS's policy of providing guidance as to the process is designed specifically to avoid issues like the one that has arisen in this case. Regardless, the issue in this case is limited to whether Ms. Hilder made a mistake under Government Code section 21060 and California Code of Civil Procedure section 473; not whether CalPERS breached a fiduciary duty.

As CalPERS correctly pointed out in its closing brief, CalPERS exists within the statutory and constitutional scheme under which it was created. CalPERS is without jurisdiction to provide a "refund" of Ms. Hilder's money unless there is some statutory basis to do so. The only statutory basis that would allow CalPERS to return the money would be if she proved mistake under Government Code section 21060. Ms. Hilder did not prove that she made a mistake, on her own or as a result of any wrongful advice from CalPERS employees, when she elected a tier conversion that later proved not beneficial. Accordingly, CalPERS is not authorized by law to cancel the tier conversion and refund the \$15,574.73 it properly accepted in order to effectuate the tier conversion.

ORDER

Lisa A. Hilder's appeal regarding the cancellation of her tier conversion election is dismissed.

DATED: December 20, 2016

DocuSigned by:
Kimberly Belvedere
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KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings