

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Leticia Lozano (Respondent) filed a request to purchase Additional Retirement Service Credit (ARSC) on May 24, 2011. At the time she filed her request, she was employed by the Employment Development Department as a Senior Tax Compliance Representative. By virtue of her employment, she is a miscellaneous member of CalPERS.

On May 23, 2011, Respondent signed a "Request for Service Credit Cost Information – Additional Retirement Service Credit" (ARSC Request), which CalPERS received on May 24, 2011. Respondent requested cost information for purchasing 1 to 5 years of service credit.

On August 3, 2011, CalPERS mailed an ARSC cost estimate to Respondent by regular mail to her correct address. The cost to purchase 5 years of service was \$74,430.75. The ARSC cost estimate also contained the following language "[I]f you are interested in pursuing the service credit purchase, complete, sign and return the attached Confirmation of Intent to Purchase Service Credit form within 30 days from the mailing date of this letter. . ." Respondent should have responded by September 2, 2011.

Respondent never received the ARSC cost estimate, so she was unable to respond by the deadline. CTP Notes confirm that Respondent made several inquiries over the phone and in person about the status of her request to purchase ARSC, but received incorrect information from CalPERS staff.

After numerous inquiries, CalPERS ultimately agreed to process Respondent's request to purchase ARSC, but based its actuarial cost calculations on September 8, 2011, the first date Respondent inquired about the status of her request. Respondent argues that the cost to purchase the ARSC should be based on the date of her original application, as she should not be punished for the failure of the US Postal Service to deliver her mail. Use of the earlier date would result in a cost savings of \$4,023.25 to Respondent. CalPERS denied her request. Respondent appealed.

Hearing was completed on January 26, 2017. 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.

Respondent's qualification for the ARSC benefit is undisputed. The ALJ found that since Respondent submitted her request for ARSC cost information on May 24, 2011, the cost should have been calculated on that date. The only reason she did not respond to the ARSC Request in time, is because she never received it. Her diligent efforts from September 2011 through November 2012, clearly indicated to the ALJ that she intended to follow through with her request to purchase ARSC.

The ALJ found that Respondent is entitled to relief pursuant to Government Code section 20160. Her failure to return the ARSC Request forms in time is excused by the fact that she never received the ARSC Request documents in the first place. She made diligent inquiries into the status of her Request, and was provided with incorrect information. Soon after she learned that CalPERS had actually mailed her second packet, she requested the opportunity to correct her omission. She is not seeking a benefit to which she is not entitled.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." In order to avoid ambiguity, staff recommends that the spelling of the word 'Conformation' be corrected to "Confirmation" on page 3, paragraphs 15(a) and 15(b) of the Proposed Decision.

The ALJ concluded that Respondent's appeal should be granted. 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.

April 19, 2017


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