ATTACHMENT A

THE PROPOSED DECISION

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BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal to Credit Additional Interest on Retirement Account of: SANDRA L. BARON Respondent and PUBLIC UTILITIES COMMISSION Respondent.	Case No. 2016-0195 OAH No. 2016070406

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on February 14, 2017, in Oakland, California.

Rory J. Coffey, Senior Staff Attorney, represented Carene Carolan, Chief, Member Account Management Division, California Public Employees' Retirement System (CalPERS).

Respondent Sandra L. Baron represented herself.

No appearance was made by or on the behalf of the Public Utilities Commission (PUC).

The record closed on February 14, 2017.

ISSUE

Whether CalPERS may credit Respondent Sandra L. Baron's retirement account with the interest that would have accrued if CalPERS had not delayed in accepting contribution adjustment funds from Respondent.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED Feb 22 2017
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FACTUAL FINDINGS

1. Carene Carolan, Chief, Member Account Management Division, CalPERS, filed the Statement of Issues in her official capacity.

2. Sandra L. Baron (Respondent) is a state miscellaneous member of CalPERS.

Background

3. Respondent was employed by the State Compensation Insurance Fund (SCIF) in 1991 and became a member of CalPERS. She was placed in the second tier retirement plan (Tier Two), under which members do not make contributions. Respondent separated from SCIF in 1998.

4. Respondent returned to state service in 2005 when she began employment with the Public Utilities Commission (PUC). Although the law had changed in 2000 to provide that new employees would be placed in the first tier retirement plan (Tier One) unless they specifically elected to be placed in Tier Two, the PUC enrolled Respondent in Tier Two.

5. On February 1, 2011, Respondent was correctly placed in Tier One, and monthly member contributions began. By letter dated April 16, 2011, CalPERS informed Respondent of the change to Tier One and that she owed $11,673.54 in contributions. The amount included interest calculated through June 30, 2011. This "First Tier Arrears" election was valid for 60 days. Respondent disputed the amount.

6. By letter dated July 14, 2011, CalPERS provided Respondent "a complete breakdown of contributions and interest due to an underpayment of retirement contributions . . . [covering] the period of February 22, 2005 to January 31, 2011." It stated that if the PUC sent a lump sum payment of $2,044.71, Respondent's portion would be $9,628.83.

7. CalPERS acknowledged Respondent's desire to convince the PUC to pay a portion of the amount Respondent owed, and granted Respondent a 60-day extension of time to allow her to negotiate with the PUC. CalPERS did not add additional interest to the amount owed during this period. The extension was itself extended multiple times.

8. In March 2012 an agreement was reached between Respondent and the PUC. Respondent agreed to pay the contributions due and the PUC agreed to pay the interest due on the contributions for the period of February 22, 2005 through June 30, 2011.

9. CalPERS, however, was not able to accept the funds at that time. In September 2011, it launched a new computer system entitled "my/CalPERS." The system presented problems throughout the agency, with each division experiencing functionality limitations. In the Member Account Management Division, which was processing this issue,

required calculations were unable to be completed with accurate information. (Respondent's balance owed as previously stated was computed manually.) In addition, CalPERS was unable to create an accounts receivable account to receive payments of this type. These problems continued for three to four years.

10. Respondent diligently and repeatedly contacted both PUC and CalPERS in attempts to pay the amounts she owed from the time she was advised of the arrearage issue. These attempts continued after she reached an agreement with the PUC in March of 2012. She also requested, however, that CalPERS pay into her account an amount consistent with the interest she would have earned had the arrears portion been in her account from 2011 forward.

11. Finally, by letter dated October 15, 2014, CalPERS provided Respondent with an election form to complete regarding the method she had chosen to pay the contribution adjustment sum. This was followed by a letter dated December 17, 2014, informing Respondent that the previous cost letter of April 16, 2011, was incorrect. It noted that the contribution rate changed to eight percent effective November 2, 2010. CalPERS therefore corrected the calculations, advised that the correct lump sum cost was $12,065, and provided another election form.

12. By letter dated December 29, 2014, Respondent mailed CalPERS a check for $12,065. It included $2,111.33 that the PUC had paid Respondent following the agreement that the PUC should pay the interest due CalPERS on the arrearages.

Respondent also wrote:

> There is still an interest difference of $2,733.26 to fully fund my account which is being disputed due to CalPERS negligence in resolving this matter for the past 3½ years. Documentation will show CalPERS has failed to make right the neglect on their part in resolving the matter much sooner which now seems to be paid at my expense in lost funding. The interest should be retroactive.

13. CalPERS declined to credit Respondent's account with an amount equal to the interest that would have accrued. Respondent timely appealed the decision and this hearing followed.

Additional hearing evidence and argument

14. Respondent reasons that if CalPERS had accepted the payment when she was ready to pay it, interest would have accrued on her account. She therefore lost money and believes she should not be penalized for CalPERS's problems. Respondent presented no legal authority in support of her argument.

15. CalPERS acknowledged that implementation of a new computer system resulted in the delay in bringing Respondent's account current. These problems affected CalPERS throughout its organization. In consideration of this, CalPERS did not add interest to the arrearage amount charged to Respondent; it waived collecting such interest. It contends, however, that it has no authority to transfer funds from elsewhere into Respondent's account to make up for interest that would have accrued to the funds had they been paid earlier. Such funds would need to be transferred from the general fund, which it is legally mandated to maintain for the benefit of all CalPERS members.

LEGAL CONCLUSIONS

1. The burden of proof in this appeal rests with Respondent. The standard of proof is preponderance of the evidence, which was applied in making the Factual Findings.

2. CalPERS provides retirement benefits to public employees in California pursuant to the Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.)

3. It does appear unfair in the general sense that Respondent's retirement account contains less than it would have had the arrearages been paid sooner. And CalPERS is responsible in part for this lack because of its problems with a new computer system. But no authority under the PERL was advanced or could be found that would authorize CalPERS to comply with Respondent's request to add money to her account. CalPERS is required to maintain the funds it administers for the benefit of all of its members. Government Code section 20160 provides for the correction of mistakes or omissions, but Respondent's request does not qualify as such under that provision. Accordingly, Respondent's appeal will be denied.

ORDER

The appeal of Respondent Sandra L. Baron is denied.

DATED: February 22, 2017

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Mary-Margaret Anderson
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MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings