STAFF’S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Steve W. Mitzner (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated May 25, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

The sole issue in this matter is whether Respondent is entitled to a reimbursement of the interest that he paid in connection with additional retirement service credit (ARSC) he purchased.

Respondent retired from the Los Angeles County Schools - Long Beach Unified School District (District) with an effective retirement date of July 1, 2010. Prior to retiring, Respondent requested information from CalPERS regarding the purchase of ARSC. On December 6, 2010, CalPERS provided Respondent with a package of information regarding his request to purchase ARSC, including an Election to Purchase ARSC Form (ARSC Form). The ARSC Form indicated that if Respondent elected to take the installment payment option, he would make payments on an after-tax basis and that “the payment schedule includes interest through the completion of payments at the rate of 7.5%.” Respondent returned the ARSC Form to CalPERS and elected to pay for the ARSC by making 180 installment payments. Respondent’s account with CalPERS was credited the full amount of the payments he made, including the interest portion of his payments.

On August 24, 2015, Respondent contacted CalPERS to inquire about the remaining balance, whether he could pay it off and what interest rate he was being charged for the ARSC he purchased. When CalPERS received Respondent’s request for a payoff statement, it was placed in a queue to be processed in the order it was received. Respondent again contacted CalPERS on September 1, 2015, October 11, 2015, and November 28, 2015, regarding the remaining balance on the ARSC he purchased. Due to the number of requests CalPERS was processing at that time, Respondent’s request was not assigned to a specific analyst until December 7, 2015.

On December 9, 2015, CalPERS sent Respondent a letter providing him the remaining balance ($51,611.15) and enclosed a Service Credit Balance Due Election Form (Form). CalPERS’ letter informed Respondent that “as of January 31, 2016, your lump sum balance due is $51,611.15” and, “includes 2 expected payments in the amount of $612.44 which will be deducted through your February 1, 2016 dated retirement check.” The Form informed Respondent that if he decided to “pay the entire lump sum balance due prior to the 60-day deadline,” he would “still be responsible for making any remaining assumed payments that were factored into his balance due calculation.” CalPERS provided Respondent approximately 60 days to pay off the remaining balance to allow him time to make whatever financial arrangements he needed to make the lump-sum payment. Additionally, CalPERS needed to stop future deductions before the California State Controller’s Office cut-off date in order to prevent deductions from future retirement warrants.
On December 18, 2015, Respondent submitted to CalPERS the Service Credit Balance Due Election Form and a check for the remaining balance of $51,611.15. As provided in CalPERS’ December 9, 2015 letter and the Form, installment payments were deducted from Respondent’s retirement warrants issued on January 1, 2016, and February 1, 2016.

Respondent requested that CalPERS refund the interest he incurred during the time he waited for CalPERS to provide him with a Service Credit Balance Due Election Form. The interest Respondent wants reimbursed is being used to fund the increase in his retirement warrants. For Respondent, the monthly ARSC installment payment of $612.44 increased his monthly retirement allowance by $745.33. In addition, there are no provisions of the Public Employees’ Retirement Law (PERL) that would allow CalPERS to waive or refund interest in service credit purchases. Consequently, CalPERS made the determination that it could not refund the interest and denied Respondent’s request.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on May 10, 2017. Respondent represented himself at the hearing.

At the hearing, CalPERS presented testimony and evidence that CalPERS received Respondent’s request for his remaining balance; that the request was placed in the queue of members’ inquiries and that once the request was at the front of the queue, CalPERS provided Respondent with the requested information. In addition, CalPERS’ witness testified that when providing a payoff balance for ARSC purchased by monthly installment payments, two additional months of payments are included in the computation to allow the member time to obtain the necessary funds and to make payment. In addition, CalPERS’ witness testified that there is no provision of the PERL that would authorize CalPERS to waive and/or refund the interest component of the payments Respondent made to purchase ARSC.

Respondent testified on his own behalf. Respondent testified that he repeatedly requested payoff statements beginning on August 24, 2015. Respondent argued that it should not have taken CalPERS the amount of time it took, over three months, to provide him with the payoff statement. Respondent argued that he should not have been required to make payments for interest that accrued as a result of the delay in CalPERS providing him with the payoff statement. Respondent testified that the reason he wanted to quickly pay off the remaining balance was to avoid incurring additional interest charged. Respondent also argued that he spent 70 to 80 hours trying to determine the number of payments that he made to CalPERS because information provided to him by CalPERS was incorrect. CalPERS’ letter informing Respondent, along with CalPERS’ determination regarding the reimbursement of interest payments, also provided a spreadsheet with a breakdown of all of the payments received. The letter correctly informed Respondent of the total amount he had paid. However, as a result of a change in accounting systems, the spreadsheet did not list payments he
made prior to October 1, 2011. Respondent argued he should be reimbursed for the time he spent confirming CalPERS' mistake. Respondent argued CalPERS' failure to timely provide him with the payoff statement was in violation of the California Constitution.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that CalPERS processed Respondent's request in approximately 115 days. The ALJ found that CalPERS owes each of its members a duty and that CalPERS fulfilled its duty to its members by responding to inquiries in the order they are received. Furthermore, the ALJ found that CalPERS was correct to determine that the amount of payoff should include two future payments because to do otherwise "would have resulted in a higher unpaid balance of principal to be paid." The ALJ held that the Respondent is not due any refund of interest.

Respondent's Petition is largely based on the fact he does not believe it was fair for him to have to pay interest during the time it took CalPERS to process his request for a payoff statement. In addition, Respondent takes issue with the fact that the ALJ found CalPERS fulfilled its duty to all of its members by responding to inquiries in the order they are received. Contrary to Respondent's assertion, at no time did CalPERS, or the ALJ, indicate that Respondent "cheated other poor co-member/victim" as he indicated in the Petition. In fact, just the opposite is true. Respondent presented no new evidence and/or legal arguments that would justify the Board reconsidering the Decision. In the Proposed Decision, the ALJ concluded that Respondent's appeal requesting that he should be reimbursed interest, and paid damages should be denied. Consequently, staff argues the Petition should be denied.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the August 16, 2017, meeting was well reasoned and based on the credible evidence presented at hearing.

September 20, 2017

JOHN SHIPLEY
Senior Staff Attorney