ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Following Donnie G. Jeffries’ (Respondent) retirement from the City of Oakland on March 10, 2009, Respondent began working for Respondent California Department of Corrections and Rehabilitation (Respondent CDCR) on June 1, 2009. Respondent left Respondent CDCR on July 1, 2009. Respondent enrolled in CalPERS state retiree health coverage effective August 1, 2016. Respondent now seeks monetary reimbursement for the employer share of contributions for the state retiree health care in which Respondent was not enrolled from July 1, 2009 through July 31, 2016.

Respondent became a CalPERS member in 1988 after he began working for Department of Fair Employment and Housing. On October 24, 2005, Respondent began working for the City of Oakland (Oakland), and received CalPERS service credit for his time there. Respondent also received health benefits through Oakland. Respondent permanently separated from Oakland on November 15, 2008, and continued his health benefits through the Consolidated Omnibus Budget Reconciliation Act (COBRA).


Thereafter, Respondent began working for Respondent CDCR on June 1, 2009. On June 24, 2009, Respondent signed and submitted his Application for Reinstatement from Retirement (Reinstatement Application) from service retirement. Respondent left his position with Respondent CDCR effective July 1, 2009, and he began working for the federal government. Respondent did not file a new application for service retirement following his July 1, 2009 departure from Respondent CDCR.

Respondent CDCR informed CalPERS of Respondent’s employment with Respondent CDCR during June 2009. CalPERS was also advised that Respondent left CDCR to work for the federal government on July 6 and 21, 2009. As a result of the information obtained from Respondent CDCR, CalPERS reversed the June 2009 contributions towards Respondent’s retirement, and CalPERS did not process the Reinstatement Application.

Respondent remained enrolled in retiree health benefits through Oakland following his 2009 departure from Respondent CDCR. On January 10, 2011, Respondent contacted CalPERS and elected to cancel his retiree health benefits with Oakland, effective February 1, 2011.

On June 1 and July 6, 2015, Respondent contacted CalPERS to see if he was entitled to retiree health benefits through CalPERS due to his employment with Respondent CDCR in June 2009. CalPERS informed Respondent that his account did not list any retirement information for Respondent CDCR. The following year, on February 29, 2016,
Respondent visited a CalPERS regional office to inquire again about retiree health benefits. Respondent also provided CalPERS with documentation confirming his June 2009 stint with Respondent CDCR.

CalPERS then contacted Respondent CDCR to confirm Respondent’s June 2009 employment. The one month of employment was confirmed by Respondent CDCR. After the June 2009 employment was confirmed, CalPERS adjusted Respondent’s CalPERS account to reflect the employment. Respondent’s service credit was adjusted, as were the contributions from the one month of service. The service credit adjustment also caused an increase in Respondent’s monthly retirement benefit.

On April 28, 2016, Respondent contacted CalPERS and requested retroactive payment of the state’s retiree health benefit contributions from July 1, 2009 through August 1, 2016. The retroactive benefit contributions requested would have been paid by the State, to a retiree health plan, had Respondent retired, and enrolled in retiree health benefits following his July 2009 departure from Respondent CDCR.

CalPERS denied Respondent's request for reimbursement by a letter dated December 17, 2017. The letter explained that there was no statute or regulation, including Government Code section 22870(c), that would allow Respondent to receive a monetary disbursement in lieu of the employer share of contributions towards health premiums for a time that he was not enrolled in a retiree health plan.

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 22, 2019. Neither Respondent, nor Respondent CDCR, appeared at the hearing, so defaults under Government Code section 11520(a) were taken against both parties.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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. On the initial March 4, 2019 hearing date, at which Respondent did not appear, CalPERS’ attorney spoke with Respondent by telephone to confirm his availability for the May 22, 2019 hearing date.

Two CalPERS witness testified in support of CalPERS' determination. A witness from Retirement Benefit Services Division (RBSD) testified about the correction to Respondent’s retirement account. The RBSD witness explained that CalPERS’ mistake statute, Government Code section 20160, requires all errors by the system be corrected once found. Because the Reinstatement Application was not processed by CalPERS in 2009, Government Code section 20160 required CalPERS to process the Reinstatement Application in 2016. The RBSD witness then testified that, following the processing of the Reinstatement Application, CalPERS changed Respondent’s effective retirement date to July 1, 2009. CalPERS then adjusted Respondent’s retirement benefits accordingly.
A witness from Health Account Management Division (HAMD) explained CalPERS’ process for correcting Respondent’s health benefit enrollment errors. That witness testified that Respondent was given the opportunity to enroll in CalPERS’ retiree health benefits retroactive to July 1, 2009. Health enrollment retroactive to 2009 would have required Respondent to pay his own retiree health premiums, while Respondent CDCR would have been responsible for paying the employer contribution directly to the health insurance company. Instead of selecting retroactive enrollment, the CalPERS’ witness testified that Respondent chose to enroll for retiree health coverage prospectively only, effective August 1, 2016.

After considering all of the evidence introduced, as well as argument by CalPERS, the ALJ denied Respondent’s appeal. The ALJ found that Respondent chose to enroll into retiree health benefits on a prospective basis, and without a retroactive effect. In addition, there is no provision of law, in Government Code section 22870(c) or otherwise, that would allow Respondent to receive the employer share contribution towards health premiums while not enrolled in a CalPERS’ sponsored health plan.

In the Proposed Decision, the ALJ denied the appeal and concluded that Respondent is not entitled to reimbursement.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

August 21, 2019

CHARLES H. GLAUBERMAN
Senior Attorney