

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Gail A. Overhouse (Respondent) is an employee of the State of California, Employment Development Department (EDD), as Deputy Director of the Information Technology Branch. By virtue of her employment, Respondent is a state miscellaneous member of CalPERS.

Respondent submitted a Request for Service Credit Cost Information—Redeposit of Withdrawn Contributions to CalPERS on or about May 10, 2014. By submitting the request, Respondent sought to restore 10.4 years of service credit to her CalPERS account by redepositing accumulated contributions, paid into CalPERS by Respondent and her employer during the period of her marriage to Rodney Overhouse, from 1985 to 2012. Respondent forfeited this service credit through marital dissolution proceedings. CalPERS denied the request on grounds that Respondent did not qualify to redeposit the service credit and accumulated contributions pursuant to the terms and conditions of the California Public Employees' Retirement Law (PERL). (Gov. Code §§ 20000 et seq.)

Respondent appealed CalPERS' determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 22, 2019. Respondent was represented by counsel at the hearing.

CalPERS administers a defined retirement benefit system, with benefits paid to members and their beneficiaries based on a formula comprised of three parts: (1) a formula, typically represented as a percentage, multiplied by (1) a member's "final compensation," and relevant to this proceeding, (3) multiplied by a member's years of service in public employment, known as "service credit." Generally, members accrue one-year of service credit for each year in public employment.

The service credit that a member accrues during marriage is considered community property under the laws of the State of California. Through the PERL, the Legislature recognized that members may be required to transfer service credit to a former spouse as part of marital dissolution or separation proceedings. (Gov. Code §§ 21290-92.) When this occurs, CalPERS establishes a nonmember account for the former spouse, and pursuant to the terms of the community property court order, credits the nonmember's account with the service credit and accumulated contributions payable to the nonmember pursuant to the court order.

A nonmember has the same rights in CalPERS as a member. They can (1) retire, (2) rollover the accumulated contributions to a non-CalPERS retirement account, or (3) elect to receive a refund, in cash, of the accumulated contributions. (Gov. Code §§ 21290-92.) Where a nonmember elects to receive a refund, thereby extinguishing all rights in CalPERS and any liabilities owed by the System to the nonmember, the member may request the right to redeposit, into his or her account, the present value of the accumulated contributions withdrawn by the nonmember pursuant to the refund request. (Gov. Code §§ 20750-51.)

At the hearing, the written evidence and testimony offered established that Respondent was married to Mr. Overhouse from 1985 to 2012. The parties divorced, and the court presiding over the marital dissolution proceedings awarded Mr. Overhouse 50 percent of Respondent's CalPERS benefits during the marriage, totaling 10.5 years of service credit, and reflecting \$75,936.99 in contributions plus interest. Effective September 5, 2012, CalPERS established Mr. Overhouse's nonmember account, with the service credit and accumulated contributions referenced above.

On October 3, 2012, Mr. Overhouse died. Prior to his death, Mr. Overhouse did not retire, request a rollover, or apply to receive a refund from his nonmember account. His brother and children by marriage to Respondent all applied for survivor death benefits on Mr. Overhouse's account. As explained by a witness at hearing, nonmembers have the same death benefits as members. If a nonmember retires from his or her nonmember account, they can elect beneficiaries to receive retirement benefits after their death. Where a nonmember does not retire, elect to rollover the funds or take a refund, the nonmember account is payable to either identified or statutory beneficiaries in a sum totaling (1) the accumulated contributions; plus (2) actual interest earned on the nonmember account in the event the retirement fund's earnings exceeded the statutory interest rate during the years of service credited to the account.

In this case, Mr. Overhouse had not retired from his nonmember account or elected any beneficiaries. For these reasons, CalPERS paid the accumulated contributions plus what it considers to be "bonus interest" to Mr. Overhouse's two children, who qualified as statutory beneficiaries under the PERL. On or about July 15, 2013, CalPERS paid \$39,506.27 to Derek Overhouse (son) and \$39,506.27 to Darby Overhouse (daughter).

Nearly one year later, on May 20, 2014, CalPERS received a request from Respondent that she be allowed to redeposit to her member account the 10.5 years of service credit that were transferred to Mr. Overhouse's nonmember account, at a cost of \$75,939.99, reflecting the accumulated contributions transferred to Mr. Overhouse in 2012, and interest thereon since the transfer. CalPERS denied the request, pursuant to section 20751 of the PERL, because Mr. Overhouse never took a refund of his nonmember account.

At the hearing, CalPERS presented the above facts as evidence that Respondent was not eligible to redeposit the lost service credit to her account because Mr. Overhouse never took a refund. Respondent argued at the hearing that (1) payment of death benefits to Respondent and Mr. Overhouse's children was the equivalent of a refund, and (2) Mr. Overhouse's death forfeits all rights in CalPERS, similar to a refund.

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 created a nonmember account for Mr. Overhouse following his divorce from Respondent, and that Mr. Overhouse died without having applied for a refund of his nonmember account pursuant to section 21292 of the PERL.

The ALJ rejected Respondent's contentions that the death benefit payments and Mr. Overhouse's passing were equivalent to his election to refund the nonmember account. The ALJ held that a "payout is different than a refund," distinguishing the death benefits paid to the children from the refund Mr. Overhouse could have taken but did not. The ALJ also held that only a refund by Mr. Overhouse constitutes a waiver of his rights in CalPERS. Finally, the ALJ held that the plain language of section 21292:

...requires a withdrawal of accumulated contributions...before a member can redeposit contributions into the retirement fund. In other words, a refund of a nonmember is a condition precedent to the redeposit of community property taken from a member's account. Whether similarities exist between payment of survivor's benefits and the payment of a refund is immaterial. The law is simple and clear and, must be followed.

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

November 20, 2019

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