

ATTACHMENT A

THE PROPOSED DECISION

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

In the Matter of the Forfeiture of Benefits of:

SHELDON K. SCARBER, Respondent

And

CALIFORNIA HIGHWAY PATROL, Respondent

Case No. 2018-0538

OAH No. 2019020109

CORRECTED PROPOSED DECISION

Danette C. Brown, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 23, 2019, in Sacramento, California.

Elizabeth Yelland, Senior Attorney for the California Public Employees' Retirement System (CalPERS), appeared on behalf of CalPERS.

Sheldon K. Scarber (respondent), was present and represented himself.

There was no appearance by or on behalf of respondent California Highway Patrol (CHP), even though proper service of the Accusation and Notice of Hearing was

PUBLIC EMPLOYEES RETIREMENT SYSTEM

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made. The matter therefore proceeded as a default against respondent CHP, pursuant to Government Code section 11520.

Oral and documentary evidence was received. The record was held open to allow the parties to submit written closing arguments. Respondent submitted two requests for reconsideration of evidence prior to submitting his closing argument. On August 1, 2019, OAH received respondent's "Request for Reconsideration of Evidence (Exhibit L), on Behalf of Respondent Sheldon Kyle Scarber," marked as Exhibit O. On August 7, 2019, OAH received CalPERS's "Opposition to Request for Reconsideration of Evidence," marked as Exhibit 16. On August 20, 2019, OAH received respondent's "Request for Reconsideration of Evidence (Exhibit I), Certified Transcript – Superior Court of CA Judge Hamlin, on behalf of Respondent Sheldon Kyle Scarber," marked as Exhibit P. Respondent's evidentiary requests are substantively addressed below.

At hearing, CalPERS requested Official Notice be taken of the Proposed Decision in *The Matter of Felony Forfeiture of Benefits of Elaine Estrada* (OAH No. 2019010355, CalPERS No. 2018-0962), dated June 24, 2019. At the close of the hearing, the ALJ ordered both parties to submit closing briefs by August 22, 2019. The ALJ further ordered CalPERS to submit the disposition of the *Elaine Estrada* case following a scheduled Board meeting on August 21, 2019. On August 22, 2019, CalPERS filed its Closing Brief and Notice of Adoption for the *Elaine Estrada* matter.

On August 22, 2019, OAH received respondent's closing argument, marked as Exhibit Q. The record was closed and the matter was submitted for decision on August 22, 2019. The Proposed Decision in this matter was issued on September 23, 2019. The Proposed Decision stated that "CalPERS did not submit a closing argument."

On October 3, 2019, OAH received a Request to Correct the Proposed Decision. The Request to Correct includes a proof of service indicating that on August 22, 2019, CalPERS timely filed its Closing Brief and Notice of Board's Adoption of *Elaine Estrada*. CalPERS's closing briefs were inadvertently not filed within the *Scarber* matter at OAH, nor provided to the undersigned ALJ.

On October 9, 2019, OAH issued an Order Reopening the Record for the purpose of marking CalPERS's Closing Brief and taking official notice of the Notice of Board's Adoption of *Elaine Estrada*. CalPERS's Closing Brief is marked as Exhibit 18, and the Notice of the Board's Adoption of *Elaine Estrada* is marked as Exhibit 19.

ISSUES

This appeal is limited to the following issues: (1) whether CalPERS correctly reduced respondent's service credit for the period of December 11, 2012, through August 29, 2013, resulting in an equivalent of 0.668 years of service forfeited; (2) whether CalPERS correctly reduced respondent's retirement benefit attributable to the reduction in service credit for the period of December 11, 2012, through August 29, 2013; (3) whether CalPERS correctly removed respondent from the industrial disability retirement roll and placed him on service retirement; and (4) whether respondent must reimburse CalPERS for the total amount of overpayment in the amount of \$21,884.12 (as of July 18, 2019).

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent became a CalPERS member upon his employment with the CHP. By virtue of his employment as a peace officer, respondent was a state safety member of CalPERS.

2. On February 27, 2013, respondent signed and submitted an application to CalPERS for industrial disability retirement. CalPERS cancelled respondent's application pursuant to *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*) and its progeny, which hold a former employee is ineligible to apply for a disability pension, so long as termination is neither the ultimate result of a disability nor preemptive of a valid claim for disability retirement. Respondent appealed the cancellation of his application. A hearing was held, and respondent was granted the right to apply for industrial disability retirement pursuant to the CalPERS's Board of Administration's (Board) Final Decision dated March 15, 2017. On April 5, 2018, CalPERS approved respondent's industrial disability application.

3. On June 4, 2018, CalPERS learned that respondent pled nolo contendere to the crime of conspiracy to commit a crime, in violation of Penal Code section 182, subdivision (a)(1), a felony. The underlying crime occurred on or about December 11, 2012, when respondent conspired with his wife and daughter to help his son flee to Mexico to avoid appearance in court on charges of rape, sexual penetration, burglary, and robbery.

4. Pursuant to Government Code section 7522.72,¹ CalPERS determined: (1) in determining respondent's benefits, it could not consider services performed after December 10, 2012 because of respondent's June 4, 2018 felony conviction; (2) respondent was not substantially incapacitated from performing his job duties from December 11, 2012, through August 29, 2013 (his last day on the CHP payroll), because he was employed full time with the CHP during that period; (3) because there was no medical substantiation demonstrating respondent was substantially incapacitated beginning on December 10, 2012, CalPERS canceled respondent's industrial disability retirement and he was returned to service retirement; (4) the portion of respondent's service credit accrued from December 11, 2012, through August 29, 2013, an equivalent of 0.668 years of service credit was to be forfeited, reducing his service credit from 25.123 years to 24.455 years, reducing his final compensation from \$14,553.62 to \$13,951.72, and resulting in an overpayment of retirement monies paid; (5) respondent's monthly allowance was reduced by \$702.65; (6) the amount of overpayment from December 11, 2012, to August 29, 2013, was \$41,488.30; and (7) from December 11, 2012, through August 29, 2013, respondent made member contributions of \$11,187.18, which was applied to his overpayment, reducing the amount due to \$30,301.12. CalPERS began deducting repayments at

¹ If a public employee is convicted of a felony by a state or federal trial court for conduct arising from his official job duties, he shall forfeit all accrued rights and benefits in the public retirement system of which he is a member, from the earliest date of the commission of any felony, to the forfeiture date. (Gov. Code, § 7522.72, subds. (b)(1), (c).)

\$841.70 per month beginning on November 1, 2018. Respondent has made 10 payments. The overpayment amount as of July 18, 2019 was \$21,884.12.

5. Respondent appealed CalPERS's determination. On January 15, 2019, CalPERS filed the instant Statement of Issues. Respondent filed a Notice of Defense. All jurisdictional requirements were met. An administrative hearing was held before an administrative law judge of the Office of Administrative Hearings pursuant to Government Code section 11500 et seq.

Official Notice

6. Pursuant to CalPERS's request, official notice is taken of the Board's adoption of the Proposed Decision in *The Matter of Felony Forfeiture of Benefits of Elaine Estrada* (OAH No. 2019010355, CalPERS No. 2018-0962). The Final Decision in *Elaine Estrada* became effective immediately upon the Board's adoption on August 21, 2019.

CalPERS's Evidence

7. On April 5, 2018, CalPERS notified respondent that his application for industrial disability retirement was approved. CalPERS found that respondent was substantially incapacitated from the performance of his usual duties as an Assistant Chief with the CHP, based upon his orthopedic (back) condition. As a result, CalPERS adjusted respondent's retirement status and benefits from service retirement to industrial disability retirement retroactive to his effective retirement date of October 31, 2013.

8. On June 4, 2018, in Fresno County Superior Court Case No. F13902430, respondent pled nolo contendere to, and was convicted of, violating Penal Code

section 182, subdivision (a)(1), (conspiracy to commit a crime of unlawfully conspiring together, with [respondent's son], to commit the crime of willfully failing to appear in court, in violation of Penal Code section 1320.5), a felony. Respondent was sentenced to 365 days in Fresno County Jail, with 363 days suspended, and placed on six months of conditional probation, on the following terms: (1) obey all laws; (2) complete 500 community service hours through Hands On/Project Survival Cat Haven, a nonprofit organization, by June 7, 2019; (3) pay \$10,794 in restitution to Fresno County; and (4) pay court fees and fines.

9. The circumstances of respondent's conviction are that, from December 11, 2012 through February 16, 2013, respondent and his wife, daughter, and son unlawfully conspired to assist respondent's son to flee to Mexico to avoid appearing in court on felony charges of rape, sexual penetration, burglary and robbery, in violation of Penal Code section 1320.5.

In order to carry out the objectives and purpose of the conspiracy, one or more of the conspirators reported to law enforcement that respondent's son was missing. On December 12, 2012, one or more conspirators staged or assisted in staging a crime scene to make it look like respondent's son had been abducted. On December 12, 2012, respondent's wife, daughter and son drove to Mexico at 3:24 a.m. On December 12, 2012, at 4:44 a.m., respondent's wife and daughter returned to California from Mexico using the San Ysidro pedestrian border crossing.

On December 19, 2012, one or more conspirators ran computer searches for information on Mexico and crossing the border. On February 15, 2013, respondent's wife purchased two prepaid international telephones at Target. Between December 11, 2012, and February 15, 2013, one or more conspirators possessed fraudulent birth certificates bearing the name Brandon Smith, the name used by respondent's son in

Mexico. Respondent used his connections as a CHP Officer to facilitate actions taken to unlawfully move his son to Mexico, and used his work equipment to move documents offsite.

10. By letter dated August 30, 2018, CalPERS notified respondent that his industrial disability retirement was subject to forfeiture as a result of his felony conviction, pursuant to Government Code section 7522.72, and that it could not consider services performed after December 10, 2012, in determining his CalPERS rights and benefits. Respondent committed his crime on December 11, 2012. He was employed full-time by the CHP during the period December 10, 2012 to August 29, 2013. CalPERS found no medical evidence that respondent had been substantially incapacitated from the performance of his usual job duties beginning December 10, 2012, and cancelled his industrial disability retirement.

11. Truc Nguyen is an Associate Governmental Program Analyst in CalPERS's Retirement Benefit Services Division, Felony Forfeiture Unit; he performed the overpayment calculations in respondent's case. Mr. Nguyen prepared a spreadsheet showing respondent's industrial disability retirement calculation, his service retirement calculation with 0.668 years removed, and the total overpayment from December 10, 2012, to August 29, 2013, that respondent owed to CalPERS.

Mr. Nguyen calculated respondent's monthly industrial disability retirement as \$10,510.99. He arrived at this amount by taking respondent's 25.123 years of service credit, multiplying it by a benefit factor of 3 percent, resulting in a percentage of final compensation of 73.365 percent. He next multiplied 73.365 percent by respondent's final compensation of \$14,553.62, resulting in an unmodified allowance of \$10,968.92. The allowance was then modified because respondent chose "Option 4-2w&1," resulting in a monthly industrial disability retirement benefit of \$10,510.99.

Mr. Nguyen then performed a service retirement calculation with 0.668 years removed. He did not perform a similar calculation for industrial disability retirement. He multiplied 24.455 years of service credit by the benefit factor of 3 percent, resulting in a percentage of final compensation of 73.365 percent. He next multiplied 73.365 percent by a final compensation amount of \$13,951.72, resulting in an unmodified allowance of \$10,235.68. The allowance was then modified because respondent chose "Option 4-2w&1," resulting in a monthly service retirement benefit of \$9,808.34.

Mr. Nguyen calculated the total overpayment from December 10, 2012 through June 4, 2018 (date of conviction) to be \$41,488.32. This amount represents the difference between respondent's monthly disability retirement payment of \$10,510.99 (what he was paid) and respondent's monthly service retirement calculation removing 0.668 years, or \$9,808.34 (what he should be paid as a result of forfeiture), minus the difference in cost of living adjustments (COLA's) from 2015 through 2018. The difference in COLA's was calculated based upon the COLA he received based on his monthly disability retirement payment, minus the COLA he should have received as a result of forfeiture. The amount of respondent's member contributions made during the forfeiture period, without interest, was \$11,187.18, which CalPERS applied to the overpayment. CalPERS also applied the deductions from respondent's service retirement check which began on November 1, 2018, shown as \$841.70 for ten months, or \$8,417. As of July 18, 2019, the overpayment balance was \$21,884.12.

Respondent's Evidence

12. Respondent chose not to testify at hearing, but submitted three documents in evidence: (1) Fresno Superior Court's Minute Order showing that on July 19, 2019, respondent's June 4, 2018 felony conviction was reduced to a misdemeanor

pursuant to Penal Code section 17, subdivision (b);² (2) the Board's Final Decision dated March 15, 2017, granting respondent the right to apply for industrial disability retirement; and (3) Benefit Warrant Statements from November 2018 through August 2019, showing respondent's return to service retirement, and CalPERS's monthly deductions of \$841.70 for the asserted overpayment.

13. In its March 15, 2017 Final Decision, the Board granted respondent's application for industrial disability retirement. In reaching its decision, the Board determined that respondent's physician had removed him from duty due to industrial injuries as of December 20, 2012. The Board further explained, "[respondent] subsequently filed a worker's compensation claim for cumulative injuries due to hypertension and cardiovascular health matters. He filed a worker's compensation claim for cumulative injuries to his back and a skull lesion on July 24, 2013. His physician never released him to return to duty." Thus, respondent last worked on December 20, 2012, when his physician removed him from duty.

While awaiting approval of his Industrial Disability Retirement application, respondent submitted a Service Election Retirement application dated August 26,

² Penal Code section 17, subdivision (b), provides in pertinent part: "When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail . . . or by a fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: (1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail . . . (3) When the court grants probation to a defendant and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor."

2013. Respondent resigned from the CHP, effective August 29, 2013. CalPERS approved respondent for service retirement effective October 31, 2013. On April 5, 2018, CalPERS approved respondent's industrial disability application, and his status and benefits were adjusted from service retirement to industrial disability retirement, effective October 31, 2013.

14. In his hearing brief, respondent contended that he was not convicted of a felony, that a superior court judge had found that respondent's criminal conduct did not arise from the performance of his official duties, and that CalPERS was attempting to supersede a superior court ruling. In support of his argument, respondent cited Exhibit 2. However, Exhibit 2³ is CalPERS's August 30, 2018 letter to respondent regarding forfeiture of benefits. Respondent did not introduce any evidence of a superior court ruling supporting respondent's claim.

Respondent's Requests for Reconsideration of Evidence

15. Two weeks after the hearing concluded in this matter, respondent requested reconsideration of the non-admission of the declaration by John Sarsfield, respondent's criminal attorney.⁴ In his declaration, Mr. Sarsfield confirmed that respondent's felony conviction was reduced to a misdemeanor. At hearing, CalPERS's counsel objected to the declaration on relevance grounds and because it was not

³ Respondent's numbered exhibits were re-labeled using the alphabet, so as to avoid confusion with CalPERS's numbered exhibits. Therefore, respondent's Exhibit 2 is now Exhibit B.

⁴ Mr. Sarsfield's declaration was identified and marked as Exhibit K. Respondent's motion incorrectly identified this document as Exhibit L.

produced in a timely manner pursuant to Government Code section 11514 or the prior discovery order issued in this matter. CalPERS's objection was sustained, and the declaration was not admitted.

In his request for reconsideration, respondent contended that he could not have submitted the declaration 10 days prior to the hearing because the subject matter of the declaration did not take place until four days prior to the hearing. Respondent also contended that the declaration fell within the following exceptions to the hearsay rule: (1) "Evidence of a judgment of conviction for certain purposes;" (2) "Judgments of a court concerning personal history, family history, general history, or boundaries, where those matters were essential to the judgment;" (3) "Past recollections recorded;" (4) "Statements of the absence of a public record or entry;" and (5) "It has sound guarantees of trustworthiness." Finally, respondent argued that the declaration should be admitted under the principles of equity and due process.

Having considered the parties' arguments, respondent's request for reconsideration of Mr. Sarsfield's declaration is denied. Respondent could have subpoenaed Mr. Sarsfield to testify at hearing, but elected not to do so. The hearsay exceptions asserted by respondent are inapplicable because the declaration was previously ruled to be irrelevant. Furthermore, the principles of equity and due process do not demand a different result as it is undisputed that respondent's felony conviction was thereafter reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b).

16. On August 20, 2019, respondent requested reconsideration of the non-admission of excerpts from the certified superior court transcript.⁵ At hearing, CalPERS's counsel objected to the transcript on relevancy, timeliness, and hearsay grounds. CalPERS's objection was sustained, and the transcript was not admitted.

In his request for reconsideration, respondent contended that the transcript fell within the exceptions to the hearsay rule, and that judicial notice should be taken of the transcript. He further asserted that the transcript should be admitted to ensure due process and under equity principles. In opposing the request, CalPERS reasserted its objections raised at hearing. Specifically, (1) if the transcript was irrelevant and any hearsay objection is likewise irrelevant; and, (2) the transcript cannot be considered as administrative hearsay because it did not supplement or explain any other direct evidence. CalPERS pointed out that (1) each of respondent's admitted exhibits were undisputed, and the transcript was unnecessary to supplement or explain their contents, and (2) the transcript could not be used to supplement or explain respondent's testimony as he chose not to testify. Finally, CalPERS argued that the excerpts from the transcript, on which respondent relies, do not reflect the judge's rulings, factual findings, or legal conclusions. Rather, the excerpts contain the judge's comments made in dicta during the course and scope of the criminal proceedings.

Having considered the parties' arguments, respondent's request for reconsideration of the superior court transcript is denied.

⁵ At hearing, the transcript was marked and identified as Exhibit H; however, in his request, respondent incorrectly identifies the transcript as Exhibit I.

Discussion

REDUCTION OF 0.668 YEARS OF SERVICE CREDIT AND CORRESPONDING REDUCTION OF RETIREMENT BENEFIT

17. Under the Public Employees' Retirement Law (PERL), a member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of conviction. (Gov. Code, § 7522.72, subd. (c)(1).)

18. Respondent was convicted of a felony by a state tribunal on June 4, 2018. Respondent's contention that he was not convicted of a felony because his conviction was later reduced to a misdemeanor under Penal Code section 17, subdivision (b), was unpersuasive. Nothing in that statute suggests that the reduction is retroactive in operation. (*Gebremicael v. California Com. On Teacher Credentialing* (2004) 118 Cal.App.4th 1477, 1483 [if a felony is reduced to a misdemeanor under Penal Code section 17, subdivision (b), "the crime is *thereafter* regarded as a misdemeanor for all purposes" (emphasis added)].) Furthermore, respondent's contention that his conduct did not arise out of or in the performance of his official duties was not tenable. Respondent used his connections as a CHP officer to facilitate actions taken unlawfully to assist his son to flee to Mexico to avoid appearing in court on charges of rape, sexual penetration, burglary and robbery, and further used his CHP work equipment to move related documents offsite.

19. Respondent's underlying criminal conduct occurred on December 11, 2012. Although his conviction date was June 4, 2018, respondent's last day of earned service credit was August 29, 2013. Therefore, the applicable forfeiture period for

service credit is December 11, 2012 through August 29, 2013 (forfeiture period), which is the equivalent to 0.668 years. Accordingly, CalPERS correctly reduced respondent's service credit, and corresponding retirement benefit, by 0.668 years.

RETURN TO SERVICE RETIREMENT

20. At hearing, CalPERS contended that respondent was not substantially incapacitated from performing his job duties during the forfeiture period due to a lack of medical substantiation and respondent's full-time employment during that period. Therefore, CalPERS argued, respondent's industrial disability retirement should be canceled and he should be returned to service retirement. As explained below, CalPERS's argument fails.

21. Respondent last worked on December 20, 2012, when his physician removed him from duty based on his industrial injuries. Therefore, CalPERS's previous determination that respondent worked full time during the forfeiture period or that there was a lack of medical substantiation was incorrect.

22. As there was no industrial disability retirement for CalPERS to cancel during the forfeiture period, CalPERS's removal of respondent from the disability retirement roll and placing him back on service retirement was incorrect.

23. In addition, CalPERS contended that respondent submitted his application for disability retirement two and a half months after the conspiracy began. Thus any "right" he may have had to apply for industrial disability retirement expired on December 11, 2012. However, respondent also applied for service retirement on August 26, 2013, while waiting for his disability retirement application to be approved. CalPERS did not argue that this "right" similarly expired. Thus, CalPERS's contention was not persuasive.

REIMBURSEMENT TO CALPERS FOR OVERPAYMENT

24. Government Code section 7522.72, subdivision (c)(1), provides in relevant part: "A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony . . . to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence . . . following the date of the member's conviction." As previously discussed, the forfeiture period applicable in this case is December 11, 2012 through August 29, 2013, or 0.668 years, and respondent's service credit must be reduced by this amount. As a result, respondent must repay CalPERS for any overpayment of industrial disability retirement based on the reduction of 0.668 years of service credit.

25. CalPERS calculated the amount of respondent's overpayment as \$21,884.12 as of July 18, 2019. However, this calculation is based upon a calculation of respondent's service retirement, not industrial disability retirement, with 0.668 years removed. CalPERS improperly removed respondent from industrial disability retirement and returned him to service retirement for the forfeiture period. CalPERS must calculate respondent's industrial disability retirement with 0.668 years of service credit removed to determine the correct amount of overpayment.

LEGAL CONCLUSIONS

1. As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) In the absence of a statutory provision to the contrary, the applicant has the burden of proving a right to

the claimed entitlement or benefit; said burden is unaffected by the general rule that pension statutes are to be liberally construed. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

2. Government Code section 7522.72 provides, in pertinent part:

[¶] . . . [¶]

(b)(1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

[¶] . . . [¶]

(c)(1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service

performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.

[¶] . . . [¶]

(d)(1) Any contributions to the public retirement system made by the public employee described in subdivision (b) on or after the earliest date of the commission of any felony described in subdivision (b) shall be returned, without interest, to the public employee upon the occurrence of a distribution event unless otherwise ordered by a court or determined by the pension administrator.

Conclusion

3. As set forth in Factual Findings 7 through 11, and 17 through 25: (1) CalPERS correctly reduced respondent's service credit for the period of December 11, 2012, through August 29, 2013, an equivalent of 0.668 years of service credit, which was forfeited as a result of respondent's felony conviction; (2) CalPERS correctly reduced respondent's retirement benefit attributable to the reduction in service credit during the forfeiture period; (3) CalPERS incorrectly removed respondent from the disability retirement roll and placed him back on service retirement; and (4) respondent must reimburse CalPERS for the total amount of overpayment in an amount to be calculated by CalPERS, reflecting respondent's monthly industrial disability retirement reduced by 0.668 years.

ORDER

Respondent Sheldon Kyle Scarber's appeal from the forfeiture of benefits is DENIED in part, and GRANTED in part.

DATE: November 20, 2019

DocuSigned by:
Danette C. Brown
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DANETTE C. BROWN

Administrative Law Judge

Office of Administrative Hearings