

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal of Membership Determination
of:**

**SABRINA SNYDER and SOLANO COUNTY WATER AGENCY,
Respondents**

Agency Case No. 2022-0558

OAH No. 2023080336

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on December 19, 2023, by videoconference from Sacramento, California.

Austa Wakily, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Richard P. Fisher, Attorney at Law, Goyette, Ruano, & Thompson, represented Sabrina Snyder (respondent) who was present.

There was no appearance by or on behalf of the Solano County Water Agency (SCWA). A notice of hearing was properly served on SCWA. Consequently, this matter

proceeded as a default against SCWA under Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on December 19, 2023.

ISSUE

Whether CalPERS correctly determined that respondent was not eligible for membership for the period from September 2, 2012, through May 31, 2014.

FACTUAL FINDINGS

Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. SCWA is a public agency that contracts with CalPERS to provide retirement benefits for its eligible employees. The provisions of SCWA's contract with CalPERS are contained in the California Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.) By virtue of its contract with CalPERS, SCWA agreed to be bound by the terms of the PERL and agreed to make its employees members of CalPERS subject to all provisions of the PERL.

2. Respondent worked part-time for SCWA as an intern from 2012 through 2014 when she was in college. In September 2016, she accepted a full-time regular position at SCWA as a Senior Water Resource Specialist. By virtue of that employment, respondent was enrolled as a member of CalPERS on September 20, 2016.

3. On February 25, 2021, respondent contacted CalPERS seeking information on whether SCWA should have enrolled her in CalPERS membership when she began her internship in 2012. On May 28, 2021, CalPERS informed respondent she was not eligible for CalPERS member enrollment in 2012 because she was hired part-time as a nonpermanent intern.

4. In a letter dated June 1, 2021, respondent requested CalPERS change her membership enrollment date to the date she was hired as an intern. On September 9, 2021, CalPERS sent a letter to SCWA seeking respondent's payroll details and employment information for her internship. SCWA submitted the requested information to CalPERS on October 5, 2021. After reviewing the information provided by SCWA, CalPERS confirmed respondent did not qualify for CalPERS membership when she was hired as an intern in 2012. CalPERS informed respondent and SCWA of that determination by letters dated October 13, 2021.

5. Respondent appealed CalPERS's determination by letter dated November 11, 2021. On August 10, 2023, Renee Ostrander, in her official capacity as Chief of the CalPERS Employer Account Management Division, signed and thereafter filed the Statement of Issues for purposes of the appeal. The matter was set for evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Background

6. CalPERS is a defined benefit plan governed by the PERL. Benefits for members are funded by member and employer contributions and interest and other earnings on those contributions. The amount of a member's contribution is determined by applying a fixed percentage to a member's compensation. A member's

retirement allowance is calculated by applying a percentage figure based upon the member's age at the time of retirement to the member's years of service and final compensation.

7. On September 12, 2012, the Legislature enacted the Public Employees' Pension Reform Act (PEPRA), which became effective January 1, 2013. PEPRA established a new retirement plan for individuals who become CalPERS members after January 1, 2013. PEPRA made several changes to the pension benefits of those individuals, including setting a new maximum retirement benefit, a lower cost pension formula for safety and non-safety employees with requirements to work longer to reach full retirement age, and a cap on the compensation amount used to calculate membership.

8. Public employees generally become eligible for CalPERS membership when they are hired by public agencies for full-time positions exceeding six months in duration. However, there are several exceptions. For instance, an employee is not excluded from membership if he or she is already a CalPERS member when they are hired. Part-time employees are not excluded from membership if their position requires regular service of at least an average of 20 hours per week or its equivalent for a period of one year or longer. Finally, seasonal, limited term, or intermittent employees are not excluded from membership if: (1) they are employed full-time for longer than six months; or (2) they work a total of 1,000 hours or more within a fiscal year.

SCWA Internship

9. Respondent worked as a Water Conservation Intern at SCWA from September 2, 2012, through May 31, 2014. The July 31, 2012 letter respondent

received offering her the position stated the terms and conditions of the internship as follows:

- (1) Your position is temporary, beginning September 10, 2012 with an expected ending date of around December 31, 2013, dependent upon the needs of the [SCWA] and your schedule.
- (2) You are scheduled to work a maximum of 40 hours per week.
- (3) You will be reporting to [supervisor] and [supervisor] at SCWA.
- (4) Your rate of pay will be \$15.00/hour and you are classified in a non-exempt position.
- (5) You are not eligible for any regular employee benefits. However, we will cover you for workers' compensation insurance.
- (6) We encourage you to take this opportunity to learn about the Solano County Water Agency and the California water system.

Request to Purchase Service Credit

10. On November 19, 2018, CalPERS received respondent's Request for Service Credit Cost Information – Service Prior to Membership (SPM), for services rendered to SCWA during her internship. CalPERS provided respondent with cost information to purchase SPM service credit by letter dated January 3, 2019. CalPERS received respondent's election to purchase SMP service credit on February 15, 2019. CalPERS processed respondent's election to purchase SPM service credit and credited her account with additional credit for her internship on September 20, 2016.

11. Christina Rollins is the Assistant Division Chief of the CalPERS Member Services Division and testified at hearing. She explained that respondent was eligible to purchase service credit for the time she worked as an intern for SCWA because SCWA contracts with CalPERS for retirement benefits. Ms. Rollins further explained that a member's purchase of service credit is irrevocable, and money spent on the purchase of service credit may not be refunded to the member.

Respondent's Testimony

12. Respondent testified at hearing. When she received the 2012 internship offer from SCWA, she understood she could not work more than 1,000 hours and that overtime was not a possibility. However, she believed there was a possibility the internship could extend beyond the deadline of December 31, 2013, because she was told there was "flexibility" if she needed to stay longer than the term specified in the offer letter. In fact, the internship did extend for approximately five months past the deadline stated in the offer letter. Respondent was never explicitly told she was ineligible for CalPERS membership, and she was never asked to sign any document acknowledging she was ineligible.

13. Respondent's schedule at SCWA was flexible and varied from week-to-week based on her academic schedule and project needs. There were occasions she worked up to 40 hours per week. However, there were also occasions she would work fewer than 20 hours per week. Respondent calculated the average number of hours she worked during the first calendar year by dividing the total number of hours worked by the number of weeks in the year. By doing so, she concluded she worked an average of 21.51 hours during the first calendar year. Using the same basic mathematical equation, she also calculated the average hours she worked per week over the course of the entire internship. By doing so, she concluded she worked an

average of 20.43 hours per week. Respondent did not work a total of 1,000 hours during either of the fiscal years she worked as an intern at SCWA.

Analysis

14. Respondent bears the burden of proving by a preponderance of the evidence that she was eligible for CalPERS membership when SCWA hired her as a part-time student intern in 2012. Respondent acknowledges the internship did not constitute permanent, full-time employment. However, she contends the internship rendered her eligible for CalPERS membership because it was a regular, part-time position which required her to work an average of at least 20 hours per week for a period of one year or longer.

15. Respondent was hired to work as a student intern at SCWA for a term of approximately 15 months. Thus, the internship required service for a period of one year or longer. In fact, respondent ended up working as a student intern for SCWA for nearly two years.

16. However, respondent's internship cannot be categorized as a regular part-time position. Her schedule varied from week to week. While she was prohibited from working more than 40 hours per week, she presented no evidence that SCWA required her to work a minimum of an average of 20 hours per week. Moreover, she was informed when she was hired that she was "not eligible for any regular employee benefits." When all the evidence is considered, respondent did not establish by a preponderance of the evidence that she was eligible for CalPERS membership by virtue of her student internship with SCWA.

LEGAL CONCLUSIONS

1. Respondent has the burden of proving she became eligible for CalPERS membership when she began working for SCWA as an intern in September 2012. The standard of proof is the preponderance of the evidence. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex. Rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. Government Code section 20028, subdivision (b), defines "Employee" as a person in the employ of a contracting agency.

3. Under the PERL, a member is an "employee who has qualified for membership in this system and on whose behalf an employer has become obligated to pay contributions." (Gov. Code, § 20370, subd. (a).)

4. Pursuant to Government Code section 20281, "[a]n employee of a contracting agency on the effective date of its contract with the board becomes a member immediately."

5. Government Code section 20283, subdivision (a), provides:

Any employer that fails to enroll an employee into membership when he or she becomes eligible, or within 90 days thereof, when the employer knows or can reasonably be expected to have known of that eligibility shall be required to pay all arrears costs for member contributions and administrative costs of five hundred dollars (\$500) per

member as a reimbursement to this system's current year budget.

6. Government Code section 20305 provides in relevant part:

(a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six-months is excluded from this system unless:

(1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract.

(2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours per week, or requires service that is equivalent to at least an average of 20 hours a week for one year or longer, unless he or she elects membership pursuant to Section 20325.

(3) His or her employment is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of the following conditions:

(A) The appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months, but full-time continuous employment continues for longer than six months, in which case membership shall

be effective not later than the first day of the first pay period of the seventh month of employment.

(B) The person completes 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, completes 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed. For purposes of this subdivision, "day" means each eight-hour period of employment worked by an employee paid on a per diem basis so that membership is effective after he or she has completed 1,000 hours of compensated service in a fiscal year.

[¶] . . . [¶]

(b) This section shall supersede any contract provision excluding persons in any temporary or seasonal employment basis and shall apply only to persons entering employment on and after January 1, 1975. Except as provided in Section 20502, no contract or contract amendment entered into after January 1, 1981, shall contain any provision excluding persons on an irregular employment basis.

7. "Fiscal year" means any year commencing on July 1st and ending on June 30th of the following year. (Gov. Code, § 20044.)

Determination

8. Based on the Factual Findings and Legal Conclusions as a whole, respondent did not prove she was a CalPERS member when she accepted the internship offer from SCWA in 2012.

9. Based on the Factual Findings and Legal Conclusions as a whole, respondent did not prove that her internship at SCWA required regular, part-time service for at least an average of 20 hours per week for a period of one year or longer.

10. Based on the Factual Findings and Legal Conclusions as a whole, respondent did not prove that she worked for SCWA for 1,000 hours or more during a given fiscal year.

Conclusion

11. Based on the Factual Findings and Legal Conclusions as a whole, respondent did not prove she became eligible for CalPERS membership when SCWA hired her as an intern in 2012. Consequently, her appeal must be denied.

ORDER

Respondent Sabrina Snyder's appeal is DENIED. CalPERS's decision is AFFIRMED.

DATE: January 12, 2024

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings