

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Statement of Issues
Against:

SUSAN STOCKHAMMER,

Respondent;

CALIFORNIA STATE UNIVERSITY,
FULLERTON,

Respondent;

CALIFORNIA STATE UNIVERSITY,
DOMINGUEZ HILLS,

Respondent;

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. 2013-1036

OAH No. 2014040645

PROPOSED DECISION

The hearing in the above-captioned matter took place on September 30, 2014, at Glendale, California, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings.

Complainant was represented by Wesley E. Kennedy, Senior Staff Counsel, California Public Employees' Retirement System. Respondent Susan Stockhammer appeared with her attorney, Thomas J. Wicke, Lewis, Marenstein, Wicke, Sherwin & Lee, LLP. There was no appearance by the other respondents identified in the caption above. (All further references to a respondent shall be to Susan Stockhammer.)

Evidence was received at the hearing, and the parties agreed to submit post-hearing briefs. Complainant's Closing Brief was received on November 25, 2014, and is identified

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for the record as exhibit C13.¹ Complainant also lodged copies of the hearing transcript, which are marked for identification as exhibit C14 (the long form transcript) and C15 (the four-in-one format). Respondent's Closing brief was received and filed on December 1, 2014, and is identified as exhibit R17.

Neither brief was timely, but there were no objections to consideration of the briefs and transcripts. Therefore, the case was deemed submitted for decision on December 1, 2014.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Karen DeFrank, Chief of the Customer Account Services Division, California Public Employees' Retirement System (PERS), filed and maintained the Statement of Issues in this case while acting in her official capacity.

2. Respondent Susan Stockhammer (Respondent or Stockhammer) was employed, at various times, by the other three parties named in this case: California State University, Fullerton (CSUF), California State University, Dominguez Hills (CSUDH), and the Los Angeles Unified School District (LAUSD). None of those entities appeared in the case.

3. At times relevant hereto, Respondent had been a member of both PERS and the California State Teachers' Retirement System (STRS), and at times had the minimum service credit necessary to retire from both systems.

4. Respondent had withdrawn her contributions from PERS in approximately 1986, after she stopped teaching at CSUDH. She worked for LAUSD until 2012, and was a STRS member during her employment there. As detailed below, when preparing for retirement, she attempted to make a redeposit into PERS so as to increase her retirement benefits through reciprocal redeposit, but the attempt went awry and PERS denied her application to make the redeposit. Respondent sought a hearing, which led to the filing of the Statement of Issues, and this hearing ensued. All jurisdictional requirements have been met.

Respondent's Efforts to Make A Redeposit

5. In 2011, Respondent began planning to retire from teaching at LAUSD. On April 24, 2012, she attended a retirement workshop and she met with a retirement counselor from STRS. From that counselor, Mr. Cohen, Respondent learned that because of her prior

¹ Each party had used numerals to identify their exhibits. Hence, the additional designation in this proposed decision of C for Complainant's exhibits, or R for Respondent's.

membership in PERS, she could possibly make a redeposit of funds to PERS, and therefore obtain concurrent retirement benefits from PERS. She submitted a retirement application to STRS on April 24, 2012—the day she met with Mr. Cohen—and it had an effective date of July 1, 2012.

6. On that same day, Respondent went to the PERS office in Glendale, California, and discussed the matter of a redeposit with a counselor there. She requested information about a redeposit, including information about the cost of the redeposit. She was informed that she would have to take the steps to complete the redeposit with PERS before her retirement from LAUSD was completed.

7. The PERS counselor also told Respondent that the process of making the redeposit, which amounted to Respondent again becoming a member of PERS, could take months, and up to one year. Despite having filed for retirement, with an effective date of July 1, 2012, Respondent did not take steps to withdraw her retirement application, or modify it to give herself more time to complete the redeposit process with PERS.

8. On May 5, 2012, Respondent mailed PERS a request for an estimate of the cost for purchasing service credit. This was not the proper form to use in her situation, where Respondent wanted to make a redeposit. However, PERS staff treated it as a request for a reciprocal redeposit. Later in May 2012, on a date not disclosed in the record, Respondent called PERS to inquire about the status of her request. To her recollection, she was told that PERS staff could not then locate her request.

9. (A) On June 28, 2012, Respondent again contacted PERS, and was informed that her request was incomplete, in part because PERS needed verifications from STRS. Respondent confirmed, in a letter sent by FAX transmission to PERS, that there were problems with her application, as described by PERS.

(B) Respondent's letter, exhibit R5, states that she had visited the Glendale PERS office on April 24, 2012, and that upon obtaining the form to apply for reinstatement for concurrent retirement benefits, she had "immediately sent it back to CalSTRS." She further stated that when she had called PERS in May 2012, she was told that it would be months before her application was processed. She then stated that during her telephone conversation with PERS staff on June 28, 2012, she learned that STRS had not completed part of the application, and that with her retirement date just two days later, she needed to have an extension of time to complete the process. In that context, she claimed that she had done everything she was supposed to do, and that STRS had failed in its task of completing part of the process.

(C) Respondent did not try to withdraw her retirement application, then pending with STRS.

10. (A) On July 3, 2012, Respondent contacted David Bradfield (Bradfield). Bradfield had at one point in time been Respondent's union representative. She asked him to

help her regarding her application to PERS. She stated that she had just retired from LAUSD-CalStrs and had been encouraged to contact PERS about concurrent retirement. She further told Bradfield that when she had called PERS about her application, she was told that their systems were down, that requests weren't being processed, and that it might take years before the matter was resolved. She asked Bradfield if he knew anything about the situation, or if he knew someone to call "other than the automated phone systems." (Ex. R5.)

(B) On July 24, 2012, Respondent received a response from Bradfield which indicated that he had brought the application to the attention of PERS management. Bradfield had contacted George Diehr, a member of the PERS Board of Administration. The latter informed Bradfield that the PERS systems were not down, but had been changed, causing a backlog. He assured Bradfield that Respondent's application was in the queue. Bradfield also forwarded to Respondent an e-mail that Mr. Diehr had sent to a PERS staff member, asking that staff investigate Respondent's claim.

11. On August 17, 2012, PERS sent a cost packet to Respondent.² One of the purposes of the cost packet, which consists of several pages, is to apprise the member of how much it will cost to purchase the service credit in question. The first page of the cost packet informed Respondent that she could, "while a member of the State Teachers' Retirement System, redeposit contributions withdrawn from [PERS]" so as to reestablish membership in PERS for retirement purposes. (Ex. R10.) The document stated that the estimated monthly pension increase would be \$938.21. The balance of the cost packet, which totals 12 pages (including attachments) stated the cost of the redeposit. Specifically, the lump sum cost of the redeposit would be \$34,405.95. That amount could be paid in installments, and a chart set out what monthly installment payments would be if Respondent did not want to pay the lump sum. Options for payment, over one to fifteen years, were laid out on the chart. For example, the chart showed that to pay off the purchase price in one year would require 12 monthly installments of \$2,953.33, while the lowest monthly installment payment was associated with the 15 year plan, 180 payments of \$287.35 per month.

12. The third page of the cost packet contained a heading "Next Step." There it was stated that if Respondent was not interested in purchasing service credit, no response was needed. However, it also provided that the election to purchase service credit was only valid if returned within 60 days, and that if it was not received by PERS within 60 days, then Respondent would have to send in a new request, which could adversely affect her eligibility to purchase the service credit. (See Ex. A to Ex. C10, at p. 3.)

13. The documents in the cost packet sent to Respondent in August 2012 made it clear that Respondent could make an election to redeposit money in PERS, and that she

² PERS records establish that a staff person called Respondent on August 30, 2012, and confirmed that she had received the cost packet. The notes made by the staff person indicate that the two had a conversation about why she was given 6.6 years of credit, and not 13; the difference was attributed to Respondent's years of part-time employment while a PERS member.

would have to make a lump sum deposit, or agree to make monthly payments. It was also clear that the election was irrevocable. During the hearing, Respondent admitted that she did not read all of the packet when she first received it.

14. (A) Respondent's election to purchase the service credit was due on October 16, 2012, the 60th day after the packet was sent to her by PERS. She did not meet that deadline. By a letter dated November 13, 2012, she sent PERS a signed certification form, and a copy of the installment payment sheet—the chart showing the various available monthly payments—with a circle around the payments on the 15-year plan. Her letter asked that PERS contact her if they needed anything further to complete the application.

(B) Respondent did not send the proper form back to PERS. She was supposed to sign a form entitled "Election to Purchase Service Credit," which, among other things, repeated the need to respond to PERS within 60 days of August 17, 2012, and which had three payment options, one of which had to be checked off.³ The document is clear that Respondent was obligated to make some sort of payment to PERS. Respondent testified that she signed that page from the cost packet on October 1, 2012, but did not send it to PERS before October 16, and that she inadvertently failed to send it in with the certification form on November 13, 2012, in part because she was not feeling well, and in part because she had many forms to deal with at that time.

(C) Respondent filled out a certification form to be used if the participant—here Respondent—was going to roll money over from another retirement plan to pay for the redeposit. By signing this document, rather than the Election to Purchase Service Credit, Respondent had not properly committed herself to make the redeposit by buying the appropriate level of service credit. And, she did not designate another retirement plan that would roll over money into PERS to pay for the redeposit.

15. In February 2013, Respondent had not heard anything about her application, and she contacted PERS. It appears she again enlisted Bradfield's assistance. On February 28, 2013, Respondent sent an e-mail to Mary Ann Burford (Burford) at PERS. Burford was an assistant to the president of the PERS Board of Administration. Respondent's e-mail states, in part, that "here is a copy of the form I submitted in November to be able to collect Retirement Funds from CalPERS. As it noted, I chose to have the monthly deduction of \$278.35 turned over to CalPERS. I have heard nothing since that time." (Ex. R14.) Attached was a copy of the certification form that Respondent sent to PERS on November 16, 2012.

16. On March 3, 2013, Respondent sent another e-mail to Burford. That document states, in part: "In brief, I missed the deadline (October 16, 2012) to submit my

³ The options were the lump sum payment of \$34,405.59, or a monthly payment, or a partial payment with a monthly payment that would be later calculated by PERS. In the monthly payment option, PERS had typed in \$287.35 for 180 months, but Respondent could strike that and choose another monthly payment from the "Choose Your Installment" table.

CERTIFICATION FORM: Plan-to Plan Transfers and Direct Rollovers (Submitted November 13, 2012, just notified of receipt March 1, 2013" (Ex. R15, capitalization, underlining, and punctuation in original.)

17. The March 3, 2013 e-mail makes inquiries regarding reapplication, and what forms must be utilized. Respondent wanted to know if payment, when made to her, would be retroactive to June 2012.

18. On March 22, 2013, PERS sent another packet to Respondent. This one revealed an estimated monthly pension increase of \$444.14, with a lump sum cost of \$35,589.49. Respondent did not act on that packet, in part because the benefit was about one-half of the earlier estimated retirement benefit. And, within a few weeks she was informed by PERS that the March 2013 packet was improperly issued, because she was no longer a member of either STRS or PERS, and therefor ineligible to complete the redeposit and obtain concurrent retirement benefits.

19. As noted above, Respondent testified that she had filled out the Election to Purchase Service Credit form on October 1, but did not send it in in a timely manner. She further testified that when she realized she had not acted within the 60 day time period, that she only sent in the certification form, and not the required Election to Purchase Service Credit form. She attributed her late filing to distraction and illness, stating that during this period she was deluged with documents from STRS, Kaiser, Social Security, and she was suffering from the flu. She did not elaborate on when exactly she had the flu. She also described the cost packet as being an inch-thick, when it totaled 12 pages.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed pursuant to Government Code section 20134⁴ and title 2, California Code of Regulations (CCR), sections 555.1 through 555.4 was established, based on Factual Findings 1 through 4.

2. Section 20752, subdivision (a), states:

A member of the . . . State Teachers' Retirement Plan, the University of California Retirement Plan, or a county retirement system, who has withdrawn accumulated contributions from this system shall have the right to redeposit those contributions, subject to the same conditions as imposed for redeposits of accumulated contributions by Section 20750, including the rights that he or she would have had under Section 20638 had he or she not withdrawn his or her contributions.

⁴ All statutory references are to the Government Code unless otherwise noted.

This statute implicitly requires that person seeking redeposit be a member of one of the enumerated retirement systems in order to have the right of redeposit. Respondent was a member of an eligible retirement system—STRS—through June 30, 2012. (Factual Findings 4, 5, 7, 9(C), and 10(A).)

3. Respondent sought reciprocity through concurrent retirement, which is authorized for PERS members who belong to certain other retirement systems, under the first paragraph of section 20639, which states:

The compensation earnable during any period of service as a member of the . . . State Teachers' Retirement Plan shall be considered compensation earnable as a member of this system for purposes of computing final compensation for the member, if he or she retires concurrently under both systems.

4. (A) Respondent failed to make a timely election to redeposit funds into PERS, based on Factual Findings 11 through 14, and 16, and thus lost the power and right to make the redeposit. This Conclusion follows from the fact that the packet submitted to Respondent in August 2012 made it clear that she had 60 days to make the election. The packet had aspects of an offer conditioned on acceptance within a stated time, and the imposition of a time limit to accept the offer is reasonable, especially because the actuarial calculations that went into both the estimated retirement benefit and the cost of the redeposit could change over time.

(B) Section 21050, subdivision (a), provides that an election by a member to receive credit for service, in addition to current and prior service credit, is only effective if the election is accompanied by a lump sum payment, or an authorization for payments in accordance with governing regulations. Not only did Respondent not submit an election to PERS, what she did submit was not accompanied by a lump sum payment or an authorization for payments. (Factual Finding 14.)

5. (A) Respondent seeks relief under section 20160, which authorizes PERS to correct errors and omissions by members or retired members, or beneficiaries. The request for relief must be filed in a reasonable time, not to exceed six months from discovery of the right to make the correction. The parties have focused on a key provision of section 20160, found at subdivision (a)(2), as follows: “The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.”

(B) The cases cited by Complainant, interpreting Code of Civil Procedure section 473, are apposite to this case, and establish that Respondent has failed to carry her burden of showing that her failure to timely file an election to make the redeposit was the result of mistake, inadvertence, surprise, or excusable neglect.

(C) In *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 909, a defendant in a civil case sought relief from a default judgment under Code of Civil Procedure section 473, stating that she had been under a doctor's care for a heart attack, taking medication, and caring for an elderly mother and dying husband. The court, noting the lack of corroboration by a doctor as to the defendant's medical condition found the evidence insufficient to justify relief. The court found that the claim of illness was insufficient to justify months of inaction. Likewise, the court stated that occupation with other affairs is not an excuse for inaction.

(D) In *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 280-281, it was held that a conclusory assertion of anxiety, depression, and financial hardships was inadequate to support an excuse from the failure to respond to a summons and complaint under section 473 of the Code of Civil Procedure.

(E) Respondent knew that time was of the essence in the matter of making the redeposit so as to obtain concurrent retirement benefits. This is indicated by her inquiries to PERS in May and June 2012. When she received the cost packet in August, she did not read it carefully, by her own admission. She attested she filled out the election form on October 1, 2012, 15 days before it was due, but she did not then send it back. When she belatedly sent the wrong form to PERS, it was four weeks after the election was due. The vague claim that she was inundated with other documents, and suffering from the flu, are not sufficient to provide excuse for her failure to respond in a timely manner. Her conclusory testimony that her failure to do so was by inadvertence is inadequate to provide relief.

6. By the time that Respondent made another request—in March 2013—she was no longer a member of STRS and thus ineligible to make a redeposit for concurrent benefits. This could not be cured. Under the circumstances, Respondent's request to make a redeposit, for purposes of obtaining reciprocal or concurrent retirement benefits, must be denied.

ORDER

The denial of Respondent's application to purchase reciprocal redeposit service credit and is upheld, and her appeal is denied.

December 31, 2014



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings