

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Jeffrey Olguin (Respondent Olguin) is employed by Respondent Department of Consumer Affairs (Respondent DCA) as a Staff Services Analyst. By virtue of his employment, Respondent Olguin is a member of CalPERS. On October 8, 2012, CalPERS received a request for Service Credit Cost Information for Additional Retirement Service Credit (ARSC).

On March 18, 2013, Respondent Olguin submitted his Confirmation of Intent to Purchase Service Credit selecting to receive cost information for 5.000 years of ARSC. On March 21, 2013, CalPERS staff completed and mailed Respondent Olguin an ARSC cost packet for a lump sum of \$20,048.95, providing him 60 days to complete the purchase. Respondent Olguin did not return his election to purchase within the 60-day deadline, causing his cost estimate to expire. Respondent Olguin stated he never received the ARSC cost packet mailed to him.

On September 9, 2013, CalPERS informed Respondent Olguin that due to termination of the ARSC program effective for requests received after December 31, 2012, and his failure to complete his prior request to purchase, he was no longer eligible to purchase ARSC. Respondent Olguin was notified of his appeal rights. Respondent Olguin filed a timely appeal by letter dated August 15, 2013, and requested a hearing. The hearing was held on March 25 and 26, 2015. The appeal was limited to the issue of whether Respondent Olguin's failure to purchase ARSC was due to an excusable mistake.

Prior to the hearing, CalPERS explained the hearing process to Respondent Olguin and the need to support his case with witnesses and documents. CalPERS provided Respondent Olguin with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Olguin's questions and clarified how to obtain further information on the process.

Government Code section 20160 provides, in pertinent part:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

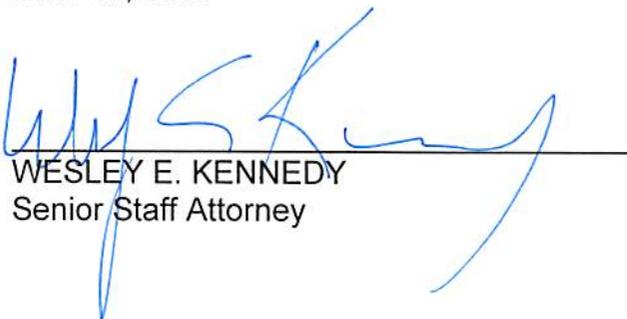
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(3) Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

After considering the testimony and documentary evidence from Respondent Olguin and other witnesses including the CalPERS witness, the Administrative Law Judge (ALJ) held that Respondent Olguin's failure to complete the purchase of ARSC in a timely manner was consistent with the conduct of a reasonable person under similar circumstances and granted his appeal, ordering CalPERS to permit Respondent Olguin to complete the purchase of ARSC. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. If the Proposed Decision is adopted, it is unlikely that the member would file a Writ Petition in Superior Court seeking to overturn the decision of the Board, since he has prevailed.

June 17, 2015



WESLEY E. KENNEDY
Senior Staff Attorney