

ATTACHMENT C
RESPONDENT'S ARGUMENT

Sandra L. Baron

• • • Phone E-Mail

Respondents Argument
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Dear Board Members,

Thank you for allowing me the opportunity to present my case after being heard in front of the Honorable Judge Mary-Margaret Anderson.

Attached you will find the decision made by Judge Anderson, along with a copy of the factual findings and finally the legal conclusions.

I will not be submitting the details that were provided to Judge Anderson however; the letter submitted to court from myself is attached.

In Judge Anderson's proposed decision page #4 under Legal Conclusions, she notes under 3. the general sense of what transpired is unfair, in part due to the CalPERS computer system. She stated that no authority under PERL was advanced or could be found that would authorize CalPERS to comply with my request. I read that to mean; **no authority under PERL has been created to protect the member from these types of error whether human or machine.**

She continues to say that under Gov. Code section 20160, provides for corrections but that my case does not qualify.

I believe when you read through Gov. Code sections 20160 through 20164 my case does qualify and if there is disagreement than there is a provision the Board has the ability to make the final decision.

Section 17, under Article XVI of the California Constitution states under a. have the sole and exclusive fiduciary responsibility over the asset of the public pension or retirement system." It also states, "... shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system..."

Therefore, if the interests of my account were held to have fiduciary responsibility, in my case they did not.

As per the letter, it states The Board considers;

- *a significant legal or policy determination of general application that is likely to recur?*
It may not easily occur, but yes, this exact situation may repeat itself and again the employee would either let it go or like myself, fight on principle.
- *does it include a clear and complete analysis of the issues in sufficient detail so that interested parties can understand why the finding of fact were made, and how the law was applied?*

I am not a law person and found the California Public Employees Retirement Law CalPERS at times challenging at best to decipher. Indeed there are clear and complete facts, examples, and analysis on this complex but simple case.

I have put many more hours into than the amount I am asking for. Why you might ask yourself? It is not so much the money as it is the principle and how as an employee I was treated. If I can be of assistance to make, sure no other employee in the State of California has to endure what I have for three years, than it has been worth it.

I do however, hope you grant towards favoring my case, as it has been a long few years.

Sincerely,

Sandra Baron

copy



Dear Honorable Judge,

The following are the chronological dates of the correspondence regarding my CalPERS retirement and requested additional interest of \$2733.26. I have meticulous dates, notes, emails and all correspondence that prove statement in this letter.

This has taken 3 ½ years to be resolved. As you will note from emails/letters the shift of responsible from my employer to CalPERS and State Controllers office. I have a notebook full of my due diligence completed with dates; person(s) spoke with and detailed notes. There are large gaps in the dates because there was information back and forth for a total of 3 ½ years. This process has been frustrating and neither one of these agencies want to take responsibility for this mistake. It was negligence on both agencies and I have been the one to continue this process in hopes to resolve this matter.

08/02/2015- Received letter from CalPERS as to why they do not owe the difference, which is the current appeal. It appears the CalPers letter is leaning on the law that states interest cannot be paid if funds were not deposited.

I have been waiting to make lump sum payment since 2011 and would have if the following did not take place:

- The 3 years of back and forth between CalPERS and PUC, with neither wanting to take responsibility.
- CalPERS errors in the contribution and interest amount.
- CalPERS having issue with their system, and therefore could not produce an invoice for payment.

The letter is erroneous in the following statements:

- 2nd paragraph states "Legislation passed allowing new hires...." I am not a new hire but a returning employee; therefore, it should have been automatic.

- 3rd paragraph states "Our office provided you with a First Tier Arrears election date 04/16/2011 which was valid for 60 days", which is false because the date was extended due to the back and forth between the two agencies.

"To received credit under the first tier retirement plan at no cost to you" which is false, I agreed to pay the arrears contribution in letters and emails but disputed the interest.

- 4th paragraph states "Once you and your employer had come to an agreement CalPERS was unable to process your First Tier Arrears/Contribution Adjustment until the election dated 10/15/2014 was issued"; the agreement to pay was in March of 2012 and CalPERS neglected to process an amount due from PUC for over 2 years.

"You disputed the additional interest... in approximately June 2012", this date is incorrect as I disputing the original interest 04/2011, then the 10/2014 letter was in dispute with the new amount and a different amount of interest as it had accrued during the time PUC was waiting for a bill that Kelly Solari - CalPERS stated she would send for payment was disputed 10/2014 and final letter in 12/2014 was received and both contribution and interest was paid.

- 5th paragraph states "The law does not authorize CalPERS to credit interest on funds that were never on deposit"; In April of 2011, I have emails of discussions that payment would be made in one lump sum but that the interest is being disputed. In emails it was made clear by me, that under no uncertain terms do I want the money taken from my check and that the amount would be made in one lump sum. As stated above in 2011 along with the conference call, the wait was on CalPERS producing a bill so that both the contribution and the interest could be paid.

1.

10/13/2010- Met with Ms. Weeks regarding the Tier 1 retirement. A conversation with other staff members prompted me to ensure that my CalPERS are in the correct Tier. She told me that I was in the wrong Tier.

10/27/2010- Several emails between Ms. Weeks and Ms. Van Haaster. I completed a Cost Information Request and met with both PUC representatives. It was then that Ms. Van Haaster offered buy back time because she thought I only

wanted to change Tiers. Reviewing the benefits election package (pg. 4), which states that I should have been automatically enrolled and I was not.

12/06/2010- Between these above dates, there were several communications with PUC. I spoke with Ronnie from CalPERS who verified with myself and Ms. Weeks that there was an error by my employer regarding which Tier I should have been enrolled in.

At this point, no one is taking responsibility for the error. PUC told me to speak with CalPERS, CalPERS indicates it is PUC needs to correct.

12/15/2010- According to Ms. Straling from State Controllers office, she noted that an election choice to go from Tier 2 to Tier 1 was not offered by my employer.

02-18-2011- Received an email from Ms. Van Haaster indicating to correct my retirement to show Tier 1 from 2005, which will generate an estimated amount, due for me.

2.

04/16/2011- Letter dated stating I elected to be placed in Tier 1, which is incorrect. According to the information, I have received and read there was an error made and I should have been placed in Tier 1. In this letter, an amount of \$11,673.54 is due.

04/22/2011- I called CalPERS and spoke with Mr. Jenson to let him know the above letter is incorrect and that I do not want deductions taken from my paycheck until the dispute regarding the letter has been resolved.

05/19/2011- Faxed a letter to Mr. Jenson stating that I do not authorize any money to be taken from my paycheck until this matter is resolved. I am disputing the interest, as it was an error made by PUC.

06/23/2011- Spoke with Kelly Solari from CalPERS who sent me a letter dated July 14, 2011 regarding the adjustment on my retirement. I requested a breakdown of contributions and interest between 02/22/2005 and 01/31/2011. The interest in the amount of \$2044.71 is being disputed.

07/14/2011 - 08/03/2011- Emails back and forth with Ms. Van Haaster communicating the letter from CalPERS and that I wanted to speak to her about PUC paying the interest since they made the error. A meeting was set for 08-04-2011.

3.

08-04-2011- Had meeting with Ms. Van Haaster who stated she needed to discuss with her Director.

Aug 2011 through Mar 2012-

Kelly Solari and PUC have been in contact through email and there is a dispute and accusations as to who is at fault. Both CalPERS and PUC continue to not accept responsibility. I have never disputed the contribution amount that has been calculated from 2005 in the amount \$9628.83. Ms. Van Haaster again states she must speak to the Director. I explain in several emails that the shift of responsibility continues to happen and the bottom line is that I was automatically put into Tier 2 without being asked and nothing was submitted to me stating this nor was I given a choice.

12/22/2011- An email from me has been sent to Ms. Van Haaster stating that waiting three months is enough and that I wanted a response by 12/29/2011 as to what the Director has said on this matter.

03/06/2012- An email from me has been sent directly to the Director Mr. Lee requesting a response from him regarding my case.

03/12/2012- Met with Ms. Van Haaster who advised me that PUC would be moving forward to pay the interest amount.

Mar 2012 through June 2012-

Emails driven by me to CalPERS and PUC regarding when the above interest payment will be paid. At the end of June, CalPERS states they aren't accepting arrears request and they will contact PUC when their system is updated.

June 2012 - October 2014

Again emails driven by me to CalPERS and PUC regarding the payment of the arrears interest; has CalPERS billed PUC and has PUC paid it.

10/24/2014- A letter from CalPERS stating a new amount of \$14798.26. Now I begin to dispute this amount.

10/23/2014- Conference call with Ms. Van Haaster and Kelly Solari regarding the Oct 2015 letter. Kelly Solari stated she would need to look into the letter that I am disputing. She also informed us that CalPERS will not bill PUC and instead they must pay me directly.

From 03/2012 until 10/2014- PUC waited for a bill that CalPERS said they would send, now we find out that is not the case and that PUC would have to pay me directly.

10/28/2014- Ms. Van Haaster stated she is waiting for a decision to be made by upper management regarding the additional interest from the Oct 2014 letter.

12/17/2014- Letter received from CalPERS stating the previous letter dated 04/16/2011 stated mandatory contribution was a lump sum of \$11,673.54, which included interest. However based on the contribution being changed to 8% the new amount due is \$12,065.00 including interest.

4.

12/2014- Received a check from CalPERS for \$2111.33 and I went to CalPERS and made a payment in the amount of \$12,065.00. With my check, a letter dated 12/29/2014 was submitted disputing the 10/2014 letter, which has an interest difference of \$2733.26 to fully fund my account. This amount has occurred due to the CalPERS negligence in taking 3 1/2 to resolve this matter.

CalPERS did not offer to pay me interest on the arrears contribution that was made in one lump sum yet they want to penalize me for their mistake.

The amount due is not my responsibility. Between CalPERS and PUC, their negligence in not taking care of it when I brought this issue up in 2011. This seems a lot for under \$3000.00 however; this has been an ongoing battle for the past 3 years and it has come to the principle.

Sincerely,
Sandra L. Baron

