

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Blaine M. Michaelis (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated December 20, 2023. For reasons discussed below, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

Respondent became a CalPERS member through his employment with the City of Claremont in 1981. Respondent was last employed as the City Manager for the City of San Dimas (Respondent City). Respondent is a local miscellaneous member of CalPERS.

Respondent applied for service retirement on January 5, 2019, and retired for service effective May 4, 2019, with a total of 35.516 years of service. He began receiving his retirement allowance on June 1, 2019.

CalPERS sent Respondent a first payment letter confirming his retirement date and his monthly retirement benefit based on payroll reported by Respondent City through April 20, 2019. Respondent City reported 125.50 days of unused sick leave for Respondent. CalPERS converted the 125.50 days of unused sick leave to 0.502 years of service credit.

During an audit performed by CalPERS' Office of Audit Services, CalPERS discovered that Respondent cashed out the 125.50 days of unused sick leave prior to his retirement but Respondent City did not remove the 125.50 days of unused sick leave from Respondent's leave bank after it was cashed out.

Respondent City corrected its error and changed Respondent's unused sick leave from 125.50 days to zero days. The correction resulted in a reduction of Respondent's service credit from 35.516 years of service credit to 35.014 years of service.

The reduction of Respondent's service credit required a recalculation of his retirement benefits. The recalculation decreased his monthly retirement allowance by \$228.06. CalPERS determined that it overpaid Respondent \$7,212.50 in retirement benefits because of the change in service credit. CalPERS notified Respondent of its determination and his right to appeal. Respondent repaid the amount in full on December 28, 2021.

Respondent appealed this determination and exercised his right to a hearing before an ALJ with the Office of Administrative Hearings (OAH). A hearing was held on November 28, 2023. Respondent represented himself at the hearing. Respondent City did not appear at the hearing, and the case proceeded as a default under Government Code section 11520 as to Respondent City only.

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

At the hearing, Respondent testified that he always took a "detailed interest" in his retirement benefits throughout his career. He attended CalPERS seminars and asked clarifying questions to learn how his retirement benefits were calculated. He used the information available on the CalPERS website, including the retirement benefits calculator, so he could make his final retirement decisions as accurately as possible.

Respondent admits he was compensated for the 125.50 days of unused sick leave when he retired. He was under the impression he would receive both compensation and service credit for the unused time. He believes the 125.50 days remain unused because he did not actually use them to take off work when he was sick. He believes this interpretation is consistent with the policy of encouraging employees to regularly go to work rather than use sick days as a means of vacation.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent was compensated for 125.50 days of unused sick leave when he retired in 2019. The ALJ explained that when Respondent elected to use his entire sick leave balance by being compensated for it when he retired, his sick leave balance reduced to zero hours. The ALJ further held that the 125.50 days of sick leave for which Respondent was compensated upon retirement were erroneously used to calculate his total years of service credit for purposes of determining his monthly retirement benefits. CalPERS was obligated to collect the overpayment of benefits within three years of the payment.

In the Proposed Decision, the ALJ concludes that Respondent had 0 days of unused sick leave credit when he retired. CalPERS properly reduced Respondent's total years of service credit to 35.014 years and lawfully collected repayment of retirement benefits in the amount of \$7,212.50.

The Petition for Reconsideration raises various points to make three key arguments: (1) CalPERS did not have authority to consider information relating to the City's unused sick leave incentive program or Respondent's retirement benefit when it conducted an audit pursuant to Government Code section 20965; (2) Sick leave credit remains unused when compensated through a leave buyback program; and (3) CalPERS did not inform Respondent that sick leave credit compensated in a leave buyback program could not also be used as "unused sick leave credit" under section 20965. Respondent's arguments are incorrect and should be rejected.

Respondent's first argument misconstrues Government Code section 20965, as that section states "[r]eports of unused days of sick leave shall be subject to audit and retirement benefits may be adjusted where improper reporting is found." There is nothing in the statute that limits the information CalPERS can review in its audit. On the contrary, the statute is broadly phrased to identify "improper reporting." Next,

Respondent repeats his assertion that sick leave credit compensated in a leave buy-back program is not “used” and should be reported to CalPERS as unused sick leave. This argument was considered and rejected by the ALJ and this Board. Last, Respondent reiterates his complaint that CalPERS never informed him that sick leave credit compensated in a leave buyback program would not be converted to service credit at retirement. Government Code section 20965 makes clear that “unused sick leave” will be converted at retirement. Respondent’s misunderstanding as to the word “unused” does not entitle him to a benefit that is not permitted by the Public Employees’ Retirement Law.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the February 21, 2024 meeting was well reasoned and based on the credible evidence presented at hearing.

For all the above reasons, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

April 16, 2024

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