

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal of Post-Retirement Employment
of:**

MATTHEW J. HOCH,

Respondent,

and

CHINO VALLEY INDEPENDENT FIRE DISTRICT,

Respondent.

Agency No. 2024-0158

OAH No. 2024060958

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on November 21, 2024.

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

Matt Hoch (respondent) represented himself.

No appearance was made by or on behalf of respondent Chino Valley Independent Fire District (the District). The matter against the District proceeded by default.

The record closed and the matter was submitted for decision at the conclusion of the hearing.

SUMMARY

Respondent appeals CalPERS' determinations that he engaged in unlawful post-retirement employment with the District for approximately two months in 2023, and that he now must reimburse CalPERS the retirement benefits paid to him during the period of his employment with the District, totaling \$29,072.40.

However, CalPERS met its burden of establishing by a preponderance of the evidence that its determinations are correct. On the other hand, respondent's argument was unpersuasive that his brief employment was protected by one statutory exception, which allowed him to work temporarily without having to reinstate from retirement. His other legal arguments were either incorrect or irrelevant. Therefore, CalPERS' determinations are affirmed.

FACTUAL FINDINGS

Parties and Jurisdiction

1. CalPERS is a defined benefit plan administered under the California Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.; subsequent

undesigned statutory references are to this code.) CalPERS is governed by its Board of Administration (Board). (Ex. 1.)

2. Respondent became a CalPERS member through employment with the City of Alhambra on July 4, 1994. As discussed in more detail, respondent retired in April 2022. At the time of respondent's retirement, he was employed by the City of Long Beach as a Fire Engineer. By virtue of his employment, respondent is a local safety (fire) member of CalPERS. (Ex. 1.)

3. The District is a public agency that contracts with CalPERS to provide retirement benefits for its qualified employees. The provisions of the District's contract with CalPERS are contained in the PERL. Accordingly, by way of the District's contract with CalPERS, the District agrees to comply with the PERL and make its employees members of CalPERS subject to all provisions of the PERL. (Ex. 1.)

4. After his retirement, respondent worked for the District for approximately two months in 2023. When CalPERS learned of that employment and investigated the circumstances, it preliminarily determined respondent had engaged in post-retirement employment which violated the PERL. CalPERS further determined that respondent is subject to reinstatement from retirement for the period of his employment with the District, which was February 11, 2023, through April 21, 2023, and he must reimburse CalPERS all of the retirement benefits he received during that period, totaling \$29,072.40. (Ex. 11.)

5. By letter dated September 25, 2023, CalPERS informed respondent, with a copy to the District, that its above-described preliminary determinations had become final. CalPERS advised respondent of his appeal rights. (Ex. 12.)

6. On October 19, 2023, CalPERS approved respondent's request for a 30-day extension to submit an appeal. (Ex. 1.) By email of November 11, 2023, respondent submitted a timely appeal and requested an administrative hearing to challenge CalPERS' determinations. (Ex. 13.)

7. On June 19, 2024, a Statement of Issues was filed by Brad Hanson in his official capacity as Chief of CalPERS' Employer Account Management Division. (Ex. 1.) The Statement of Issues seeks affirmation of CalPERS' determinations that: (a) respondent's post-retirement employment with the District from February 11, 2023, through April 21, 2023, violated the PERL; and (b) respondent shall reimburse CalPERS the \$29,072.40 in retirement benefits paid to him during his post-retirement employment. (Ex. 1.)

Respondent's Retirement

8. On or about April 15, 2022, respondent applied for service pending disability retirement from his position as Fire Engineer with the City of Long Beach. Respondent requested a retirement effective date of March 4, 2022. (Ex. 3.) Respondent stated his disability was "neck injury, PTSD." (*Id.*, p. A41.)

9. By letter dated April 18, 2022, CalPERS acknowledged respondent's application for retirement, and referred him to its Publication 33, entitled "A Guide to CalPERS Employment After Retirement." (Ex. 4.)

10. Publication 33 provides in pertinent part:

Restrictions on Post-Retirement Employment

State and federal laws provide specific employment restrictions for retirees who return to work with an

employer in the same public retirement system from which they receive a benefit.

These restrictions are intended to prevent the “double-dipping” of a retiree receiving a monthly CalPERS retirement benefit while also receiving a salary from permanent or regular staff employment with a CalPERS employer. Retirees may work in retired annuitant positions only. . . .

When applying for employment with any employer, it is your responsibility to:

- Ask if the employer contracts with CalPERS for retirement benefits.
- Inform the employer you are a CalPERS retiree (receiving a retirement benefit from CalPERS) and specify the type of retirement, whether service, disability, or industrial disability.
- Apply for retired annuitant positions only. Disability retirees may work in a permanent position upon receipt of CalPERS’ written preapproval. . . .

(Ex. 5, pp. A58-59. Bold in original.)

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11. Publication 33 also provides in pertinent part:

Extra Help Positions

The retired annuitant employment restrictions for extra help positions are authorized by Government Code sections 7522.56, 21224, 21227, and 21229. All CalPERS-covered employers are able to use retirees to fill in for extra help positions. However, you must meet the following restrictions:

- **Limited-Duration Work**

You have skills needed to perform work of limited duration or your employment is needed during an emergency (such as floods, earthquakes, etc.) to prevent stoppage of public business. While these workloads may last more than one fiscal year, the employment should terminate when the limited-duration work you were hired to perform is completed. Examples of work of limited duration are work to eliminate a backlog, work on a special project, and work that is in excess of what regular staff can do. You cannot be employed in any regular staff position such as "seasonal," "permanent intermittent," "exempt from civil service," "exempt from membership," "TAU," or any other "temporary" position other than a retired annuitant position.

(Ex. 5, p. A62. Bold in original.)

12. CalPERS Associate Government Program Analyst Jim Dubendorf explained the above excerpts from Publication 33 correctly summarize the PERL's general prohibition of "double-dipping," i.e., receiving retirement benefits from CalPERS while also working as a regular or permanent employee for an employer covered by CalPERS. Thus, while a CalPERS retiree may work without restriction for an employer who is not covered by CalPERS, the retiree may only work for a CalPERS-covered employer as a retired annuitant under a number of restrictions. (Testimony [Test.] of Dubendorf.)

13. By letter dated September 1, 2022, CalPERS advised respondent that his service retirement application had been processed. CalPERS determined respondent's monthly retirement benefit would be \$9,399.08, based on a retirement date of March 26, 2022. Respondent would receive a retroactive payment issued on September 13, 2022, covering the period of March 26, 2022, through August 31, 2022. His first regular benefit payment would arrive on or about October 1, 2022, and would cover the period of September 1, 2022, through September 30, 2022. Future retirement benefit payments thereafter would arrive on or about the first of each month. (Ex. 6.)

14. It usually takes 30 to 45 days after a retirement application is filed for the first retirement payment to be issued. Mr. Dubendorf does not know why respondent's first payment was issued when it was. However, retirement payments may be delayed if there are community property disputes between the retiree and a former spouse, there is a disability retirement issue, or a service retirement pending disability application is involved. (Test. of Dubendorf.)

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Respondent's Post-Retirement Employment

15. Respondent testified the delay in receiving his first retirement payment caused him financial difficulty. He testified he decided to get a job to pay his debts.

16. Beginning on October 31, 2022, the District sought applications for its position of Auxiliary Worker. (Ex. 9.) According to the District's job posting, the Auxiliary Worker position "performs a variety of routine administrative and field duties in support of District operations. The Auxiliary Worker's work schedule may be varied and may require the incumbent to work after normal working hours, or on weekends and holidays." (Ex. 9, p. A85.) The job posting did not indicate this was a retired annuitant position.

17. On a date not established, respondent applied for the District's Auxiliary Worker position. In his application for the position, respondent stated he had resigned from his prior position with the City of Long Beach. (Ex. 10.) Respondent wrote nowhere in his application that he had retired.

18. Effective February 11, 2023, respondent began employment with the District in the position of Auxiliary Worker. Respondent was credited by the District as having been employed in this position through April 21, 2023. (Test. of Dubendorf; Exs. 7, 8.)

19. Respondent testified his last day of employment with the District was April 19, 2023. However, as discussed in more detail below, an employee from the District's human resources section reported the April 21st date to Mr. Dubendorf when he was investigating the matter. (See, e.g., Ex. 8.) Respondent did not corroborate his testimony concerning his last day of actual work for the District or negate that he was

paid by the District for service through April 21, 2023. Thus, the information from the District concerning respondent's dates of employment is credited.

20. On a date not established in April 2023, a human resources employee with the District contacted CalPERS to ask how to report respondent's employment with the District. Her call was directed to Mr. Dubendorf. The District employee reported she was having trouble inputting respondent's employment information in CalPERS' system. The District employee advised Mr. Dubendorf the Auxiliary Worker position was a "regular staff position." Mr. Dubendorf advised the District's employee that respondent had retired but his position with the District may cause him to be reinstated from retirement to active status with CalPERS. (Test. of Dubendorf.)

21. On April 27, 2023, the District's human resources employee informed CalPERS that she had discussed the matter with respondent, and that he had decided to remain retired and therefore had resigned from his position of Auxiliary Worker with the District. (Ex. 7.)

22. As a result of the contact he had from the District's human resources employee, Mr. Dubendorf requested the District provide personnel information regarding respondent's employment with the District. (Test. of Dubendorf.)

23. By email of June 6, 2023, the District informed Mr. Dubendorf that respondent's position as an Auxiliary Worker was permanent; CalPERS contributions were taken from respondent's pay; respondent accrued sick leave and vacation leave; and respondent's employment period was February 11, 2023, through April 21, 2023. (Ex. 8.)

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24. While Mr. Dubendorf does not know how many hours respondent worked for the District during his two-month tenure, he agrees the total was less than 960 hours. (Test. of Dubendorf.)

CalPERS' Determinations

25. CalPERS reviewed documents and information provided by the District. It determined that respondent's post-retirement employment with the District from February 11, 2023, through April 21, 2023, violated the PERL. This was because respondent's position with the District was a regular assignment, not a retired annuitant position. CalPERS concluded the "limited duration" exception, which would allow a retiree to work without reinstating from retirement, did not apply. This was because the Auxiliary Worker position was not of a limited duration. The position was not required due to an emergency or to clear up a backlog, and it was not limited to a particular task or resolving a particular situation. (Test. of Dubendorf; Ex. 11.)

26. CalPERS further determined that respondent is subject to reinstatement from retirement for the period of his employment with the District, i.e., February 11, 2023, through April 21, 2023, and respondent must reimburse CalPERS all of the retirement benefits he received during that period, totaling \$29,072.40. (Test. of Dubendorf; Ex. 11.)

Respondent's Evidence

27. As explained in more detail in the Legal Conclusions below, respondent testified his employment with the District fell within the statutory exception of section 7522.56 and therefore did not violate the PERL. According to that exception, a CalPERS retiree need not reinstate from retirement to work in a position for a CalPERS-covered employer that is "either during an emergency to prevent stoppage of public business

or because the retired person has skills needed to perform work of limited duration.” (§ 7522.56, subd. (c).) To support his argument, respondent testified that he was hired by the District due to his particular skills, and he only worked approximately 300 hours.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” (Evid. Code, § 500.) Thus, the party asserting a claim or making charges has the burden of proof in administrative proceedings. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 [*McCoy*].) Put another way, there is a built-in bias in favor of the status quo; the party seeking to change the status quo usually has the burden of proving the change is appropriate. (*Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.)

2. In determining who bears the burden of proof in this case, it is important to note that a public employee has a property interest in vested pension benefits protected by the Fourteenth Amendment of the United States Constitution and Article I, section 7 of the California Constitution. (*Hipsher v. Los Angeles County Employees Retirement Assn.* (2020) 58 Cal.App.5th 671, 699-700.)

3. In this case, CalPERS is asserting that respondent engaged in unlawful employment after his retirement, and that he must reimburse CalPERS the retirement benefits paid to him for the approximate two months while he was employed by the District after his retirement. As such, CalPERS is seeking to change the status quo

between the parties, and therefore must bear the burden of establishing its determinations are correct.

4. A preponderance of the evidence is the standard of evidence used in this case. (*McCoy, supra*, 183 Cal.App.3d at p. 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.)

Governing Law

5. Article 8 (§§ 21220-21232) of Chapter 12 of the PERL governs post-retirement employment. Section 21220, subdivision (a), provides, in relevant part: "A person who has been retired under this system, for service or for disability, shall not be employed in any capacity thereafter by . . . a contracting agency . . . unless he or she has first been reinstated from retirement pursuant to this chapter, or unless the employment, without reinstatement, is authorized by this article."

6. Thus, the default status of a retired employee receiving retirement benefits who engages in post-retirement employment for an agency contracting with CalPERS is reinstatement from retirement, unless a provision of article 8 provides an exception. As noted in Publication 33, this public policy is meant to preclude retirees from double-dipping by drawing both public salaries from a CalPERS-covered employer and a publicly funded retirement benefit from CalPERS.

7. There are some exceptions to the requirement of reinstating to service when employed after retirement. For example, section 21224, subdivision (a), provides as follows:

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A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration. These appointments shall not exceed a combined total of 960 hours for all employers each fiscal year. . . .

8. Respondent relies on another, similar statute, section 7522.56, which provides in relevant part:

(a) This section shall apply to any person who is receiving a pension benefit from a public retirement system and shall supersede any other provision in conflict with this section.

(b) A retired person shall not serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement, except as permitted by this section.

(c) A person who retires from a public employer may serve without reinstatement from retirement or loss or interruption of benefits provided by the retirement system upon appointment by the appointing power of a public employer *either during an emergency to prevent stoppage*

of public business or because the retired person has skills needed to perform work of limited duration. (Emphasis added.)

(d) Appointments of the person authorized under this section shall not exceed a total for all employers in that public retirement system of 960 hours or other equivalent limit, in a calendar or fiscal year, depending on the administrator of the system, The rate of pay for the employment shall not be less than the minimum, nor exceed the maximum, paid by the employer to other employees performing comparable duties, divided by 173.333 to equal an hourly rate. A retired person whose employment without reinstatement is authorized by this section shall acquire no service credit or retirement rights under this section with respect to the employment unless he or she reinstates from retirement.

9. The consequences of post-retirement employment in violation of the PERL are drastic. For example, pursuant to section 21202, "[a] person employed in violation of Section 21220 shall be reinstated to membership in the category in which, and on the date on which, the unlawful employment occurred."

10. In addition, section 21220, subdivision (b), provides that any retired member employed in violation of the PERL shall:

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(1) Reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law.

(2) Pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.

(3) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

Disposition

11. CalPERS met its burden of establishing by a preponderance of the evidence that respondent's post-retirement employment with the District violated the PERL. After retiring from the City of Long Beach and collecting CalPERS retirement benefits, respondent became employed in a regular position by a CalPERS-covered employer, the District. Respondent did not reinstate from retirement before seeking the position with the District as required by section 21220, subdivision (a). (Factual Findings 8-24; Legal Conclusions 5-6.)

12. The exceptions to reinstating from retirement before becoming re-employed provided by Article 8 of Chapter 12 of the PERL, including section 21224, do not apply to respondent's employment with the District. For example, the District's Auxiliary Worker was a regular position, not to be staffed by a retired annuitant. The position was not created in response to an emergency or otherwise to prevent

stoppage of public business. The person to be hired did not require any specialized skills to perform the work; in fact, the job posting for the position made clear it involved only routine duties. The position was not of limited duration. If anything, the job posting indicated the person hired for the position may be required to work beyond normal work hours. (Factual Findings 15-24; Legal Conclusions 5-7.)

13. Respondent contends his position with the District met the exception to reinstating from retirement provided by section 7522.56. Respondent contends subdivision (c) of that statute allows a CalPERS retiree to work for another CalPERS-covered employer without reinstating from retirement when the retiree is hired due to his or her particular skills to perform work of limited duration. Respondent argues he was hired by the District because of his particular skills as a former fire engineer, and that he performed work of a limited duration, as demonstrated by his only working approximately 300 hours.

14. While respondent is generally correct about the meaning of section 7522.56, he is incorrect that this exception applies to him. Section 7522.56, subdivision (c), requires a retiree to be hired "either during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration." None of these elements are present in respondent's case. The District's position was not related to an emergency. As noted above, the District's job posting indicates the position only involved routine duties; respondent articulated no particular skill he possessed that warranted his being hired by the District to perform the job. Finally, no information from the District indicates the Auxiliary Worker position was to be performed for a limited duration. Respondent only worked 300 hours because he became concerned about the consequences of post-retirement employment in violation of the PERL. He resigned from the position; he was not let go

because the work required by the position had been completed. (Factual Findings 5-27; Legal Conclusion 8.)

15. Because respondent's employment with the District violated the PERL, section 21202 required his reinstatement from retirement for the dates of the unlawful employment, which were February 11, 2023, through April 21, 2023. Section 21220, subdivision (b), requires respondent to reimburse CalPERS for the retirement benefits he received during that period, which total \$29,072.40. (Factual Findings 1-27; Legal Conclusions 9-10.)

16. Respondent argues he should not be required to reimburse CalPERS the significant amount it requests for several reasons. First, he contends CalPERS was not injured. This is because both he and the District made payments to CalPERS during respondent's employment with the District. Moreover, respondent argues CalPERS was not "out any money" because it still would have paid him his retirement benefits if he had not worked for the District. Respondent argues a fairer resolution is for him to pay CalPERS what he earned from the District, not what CalPERS paid him during the period of his employment.

17. Respondent's first contention is partially incorrect and the rest of it misses the point. It is incorrect to the extent that CalPERS would not have been allowed to pay respondent any retirement benefit while he was employed by the District had it known the situation. In any event, the PERL is clear that one must reinstate from retirement before becoming employed again in a regular position. The PERL also is clear that one consequence for unlawful post-retirement employment is reimbursing CalPERS the retirement benefits received during the period of employment in question.

18. Respondent next argues he is being punished for trying to get a job to pay his debts and be a productive member of society. However, respondent is not being punished. He simply is being required to follow the law. The PERL requires him to pay back the retirement benefits he was not entitled to receive. The operative statutes provide no discretion to implement any other remedy. The fact remains that respondent received a full-time salary *and* his retirement benefits at the same time for over two months, in clear violation of the PERL.

19. Finally, respondent argues he cannot afford to pay back CalPERS almost \$30,000. While it is understandable that reimbursing CalPERS that amount poses a serious concern for respondent, he failed to provide any corroborating evidence demonstrating his current financial situation or an inability to repay the amount. The parties can address the situation by either a small actuarial equivalent reduction of respondent's monthly retirement benefits during his lifetime, or some other periodic payment plan permitted by the PERL.

20. Based on the above, cause was established pursuant to sections 21202 and 21220 to affirm CalPERS' determinations described in its letter to respondent dated September 25, 2023, and the Statement of Issues. (Factual Findings 1-27; Legal Conclusions 1-19.)

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ORDER

Respondent Matthew J. Hoch's appeal is denied.

Respondent Matthew J. Hoch's post-retirement employment with the Chino Valley Independent Fire District, from February 11, 2023, through April 21, 2023, was in violation of the California Public Employees' Retirement Law. California Public Employees' Retirement System may collect from respondent the overpayment of \$29,072.40 in retirement benefits paid to him during his post-retirement employment.

DATE: 12/20/2024



[Eric C. Sawyer \(Dec 20, 2024 15:26 PST\)](#)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings