

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Appeal by:

KATHERINE L. EVELYN, Respondent.

Agency Case No. 2023-1065

OAH No. 2024051075

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 3, 2024, by videoconference.

Senior Attorney Cristina Andrade appeared representing complainant Kimberlee Pulido, Chief of the Retirement Benefit Services Division, California Public Employees' Retirement System.

Attorney Ryan Keever appeared representing respondent Katherine L. Evelyn. Respondent also was present.

The record was held open for submission of additional documentary exhibits. Those exhibits were timely received, without objection, and admitted into evidence.

After the hearing, respondent also submitted a request to reconsider the exclusion during the hearing of one evidentiary exhibit (Exhibit F). That request is denied.

The record closed and the matter was submitted for decision on December 6, 2024.

FACTUAL FINDINGS

1. Respondent Katherine L. Evelyn retired for service effective December 31, 2022. When she retired, respondent was a member of the California Public Employees' Retirement System (CalPERS), because of more than 16 years' employment with the State of California (as summarized below in Findings 7 through 12).

2. During the several months immediately after respondent's retirement, she exchanged correspondence with CalPERS staff members regarding her monthly retirement allowance. On August 23, 2023, CalPERS Retirement Program Specialist II Austin Uhri notified respondent by letter that CalPERS would not calculate respondent's retirement allowance in the manner she requested. Respondent timely appealed.

3. After further review, CalPERS Retirement Benefit Services Division Section Manager Justin Garrett notified respondent by letter on November 7, 2023, that CalPERS would not change its position. Respondent again timely appealed.

4. Acting in her official capacity as Chief of the CalPERS Retirement Benefit Services Division, complainant Kimberlee Pulido filed a statement of issues against respondent in May 2024. Complainant amended this statement of issues in November 2024.

5. As amended, the statement of issues alleges that respondent was both a CalPERS member and a member of the San Francisco Employees' Retirement System

(SFERS) when she retired. It alleges further that respondent had elected reciprocity between CalPERS and SFERS when she began to work for the City and County of San Francisco and became a SFERS member, and that she retired simultaneously in both systems. CalPERS alleges, however, that because of respondent's employment history with the State of California, only her final period of state service (about 3.5 years) is eligible for a reciprocally calculated retirement allowance reflecting respondent's final compensation from the City and County of San Francisco rather than her final compensation from the State of California. CalPERS alleges further that respondent's retirement allowance for the remainder of her state service (about 13 years) should reflect her final compensation from the State of California rather than her final compensation from the City and County of San Francisco.

6. Respondent alleges that CalPERS should treat her entire period of state service (about 16.5 years in total) as eligible for a reciprocally calculated retirement allowance reflecting respondent's final compensation from the City and County of San Francisco rather than her final compensation from the State of California. She asserts a statutory argument in favor of this position, and contends in the alternative that her detrimental reliance on misinformation from CalPERS staff members should estop CalPERS now to decline reciprocal treatment for all of her state service.

Relevant Employment History

7. Respondent is a registered nurse and a certified nurse practitioner. After several years in clinical practice in the private sector, respondent began working for the State Compensation Insurance Fund on July 31, 1996.

8. Respondent worked for the State Compensation Insurance Fund as a Nurse Consultant III until June 30, 2010.

9. After leaving the State Compensation Insurance Fund, respondent did some volunteer service for the California Association of Occupational Nurses. She also traveled abroad with her husband for his career.

10. In 2014, respondent decided to return to the workforce. Respondent began working again as a Nurse Consultant III, this time for the State of California, Department of Industrial Relations, on June 2, 2014.

11. After a few years, respondent decided that she wanted to return to clinical practice to end her career. She resigned from the Department of Industrial Relations effective October 20, 2017.

12. Respondent's final compensation from the State of California, Department of Industrial Relations, was about \$8,000¹ per month.

13. On October 23, 2017, respondent began employment with the City and County of San Francisco in its Occupational Health Service.

14. Respondent ended her employment with the City and County of San Francisco on December 30, 2022.

15. Respondent's final compensation from the City and County of San Francisco was about \$21,000 per month.

¹ The precise calculation of respondent's monthly retirement allowance is not at issue in this matter. This decision describes final compensation figures and monthly retirement allowances to illustrate the parties' positions, but not to preclude future correction to these figures if appropriate.

CalPERS and SFERS Membership, Reciprocity, and Retirement

16. Respondent's employment at State Compensation Insurance Fund qualified her for CalPERS membership.

17. Effective July 1, 2010, respondent retired in CalPERS for service. When she retired, she had 12.901 years of CalPERS service credit and was in her late 50s.

18. When respondent decided in 2014 to return to state employment, she applied to CalPERS for reinstatement from retirement. CalPERS approved her reinstatement effective June 2, 2014.

19. Respondent was about 65 years old when she left the Department of Industrial Relations on October 20, 2017. Her post-reinstatement employment gave respondent 3.468 additional years of CalPERS service credit. Respondent did not retire from CalPERS again at this time, or within 120 days after leaving her position with the Department of Industrial Relations.

20. Respondent became a SFERS member when she began working for the City and County of San Francisco on October 23, 2017. She notified CalPERS in November 2017 that she intended to elect reciprocity between CalPERS and SFERS.

21. Respondent retired again effective December 31, 2022, when she was about 70 years old. She retired simultaneously in both CalPERS and SFERS.

22. CalPERS notified respondent initially that her monthly CalPERS retirement allowance would be about \$3,400, reflecting only her final State of California compensation as of October 20, 2017.

23. CalPERS requested information from SFERS regarding respondent's final compensation for her position with the City and County of San Francisco. After receiving this information, CalPERS notified respondent that the portion of her CalPERS retirement allowance attributable to her 12.901 years of pre-reinstatement state service would reflect her final State of California compensation as of October 20, 2017, and that only the portion of her CalPERS retirement allowance attributable to her 3.468 years of post-reinstatement state service would reflect her final City and County of San Francisco compensation as of December 30, 2022. By letter dated September 8, 2023, CalPERS informed respondent that this total monthly allowance would be about \$4,500.

24. Respondent estimates reasonably that if CalPERS calculated her final retirement allowance by applying her final City and County of San Francisco compensation as of December 30, 2022, to all 16.369 years of her state service, rather than to only 3.468 years as described in Finding 23, her retirement allowance would be about \$4,000 per month greater (or \$5,100 per month greater than a CalPERS retirement allowance reflecting solely her State of California compensation, as described in Finding 22).

Communications Between Respondent and CalPERS

25. CalPERS records show that in August 2015, respondent called to ask questions about potential health insurance coverage in retirement. A summary of that telephone call states, "Explained the [member] must retire within 120 days from her last day on payroll to be eligible for health into retirement and going to work for a reciprocal agency does not preserve the vesting or eliminate the 120 day rule." Several other entries in CalPERS's records over the next two years show questions from respondent regarding retirement, reciprocity with another retirement system, and

health insurance coverage in retirement. These entries show as well that staff members reiterated the “120-day rule.”²

26. Respondent testified credibly that she explained to CalPERS representatives, during telephone calls and during an in-person information-gathering visit to the CalPERS Walnut Creek office in May 2017, that she understood that she would have two options if she left the Department of Industrial Relations for the City and County of San Francisco. In light of all evidence, respondent’s understanding of these options was reasonable, as was her belief that the representatives with whom she spoke understood her questions.

a. One option would have been to retire again for service in CalPERS and to elect CalPERS health coverage in retirement. Based on the information she had received by telephone (summarized in Finding 25), respondent understood that this option would be available to her only within 120 days after leaving state employment. If respondent chose this option, she understood that CalPERS would pay for a portion of her and her husband’s health coverage costs. She also understood that her CalPERS retirement allowance would reflect her final State of California compensation and her approximately 16 years of state service.

b. The other option would have been to elect reciprocity between CalPERS and SFERS and retire simultaneously in both systems. This option, if respondent retired more than 120 days after leaving state employment, would effectively forfeit respondent’s ability to elect CalPERS health coverage in retirement. At the same time,

² No other evidence establishes whether this information regarding the availability of retiree health coverage is correct.

this option would allow respondent's CalPERS retirement allowance to reflect her final City and County of San Francisco compensation, which she expected to be considerably higher than her final State of California compensation.

27. In June 2017 (before leaving the Department of Industrial Relations for the City and County of San Francisco), respondent requested an estimate from CalPERS of her monthly retirement allowance. She received an estimate in writing showing that if she retired effective June 11, 2017, her retirement allowance calculation would reflect 16.001 total years of service credit and final compensation of \$8,231 per month. This estimate did not distinguish the service credit respondent earned in and before 2010 from the service credit she earned in and after 2014.

28. Respondent asked CalPERS representatives with whom she spoke to confirm to her that if she elected reciprocity and deferred retirement, her final City and County of San Francisco compensation would apply to all of her State of California service rather than applying only to her post-reinstatement service. No one ever told respondent unambiguously, either orally or in writing, that it would.

29. Before moving from the Department of Industrial Relations for the City and County of San Francisco, respondent consulted several CalPERS publications, including one describing reinstatement from retirement and one describing reciprocity between CalPERS and other retirement systems. The reciprocity brochure mentions that a person may elect reciprocity only if less than six months elapses between the end of the person's CalPERS-eligible employment and the beginning of the person's employment with a reciprocal-system employer. None of these documents addresses specifically whether a person who retires in CalPERS, receives a retirement allowance for about four years, reinstates, moves after about three post-reinstatement years to a reciprocal retirement system, and retires again with reciprocity may receive a final

CalPERS retirement allowance that applies the person's final compensation from the reciprocal employer to both pre- and post-reinstatement state service. Respondent interpreted the publications, however, to say that her final City and County of San Francisco compensation would apply to all of her State of California service rather than applying only to her post-reinstatement service.

30. Respondent testified, credibly but without corroborating documentary evidence, that the value to her family of the CalPERS retiree health coverage for which she no longer is eligible is more than \$1,100 per month. She explained that she chose in late 2017 to forego CalPERS retiree health coverage in favor of reciprocity and later retirement because she believed that the additional retirement allowance she would receive by applying her final City and County of San Francisco compensation rather than her final State of California compensation to her entire period of state service would be worth more to her than the retiree health coverage. If she had known that reciprocity would gain her only \$1,100 per month (as summarized in Findings 22 and 23) rather than gaining her \$5,100 per month (as summarized in Finding 24) she would have retired in CalPERS in 2017 and elected continuing retiree health coverage rather than electing reciprocity and deferring retirement until 2022.

LEGAL CONCLUSIONS

1. The CalPERS Board of Administration "shall determine and may modify benefits for service and disability" in accordance with the Public Employees' Retirement Law (PERL, Gov. Code, § 20000 et seq.). (Gov. Code, § 20123.) If respondent believes that CalPERS staff members have calculated her retirement allowance in error, she may ask the CalPERS Board of Administration to correct that error. (Gov. Code, § 20160, subd. (b).)

2. Respondent bears the burden of demonstrating an error that the Board of Administration should correct. (Gov. Code, § 20160, subd. (d).)

Monthly Retirement Allowance Calculation

3. The Government Code establishes retirement systems for many California counties' employees (see Gov. Code, § 31200 et seq.), and also permits cities to establish city retirement systems (see *id.*, § 45300 et seq.). Either type of local retirement system may be a reciprocal retirement system with CalPERS. (Gov. Code, §§ 20351, 20353.) The parties agree that CalPERS and SFERS are reciprocal retirement systems, within the meaning of the PERL, and that the provisions of the PERL that govern reciprocity between CalPERS and county retirement systems also apply to reciprocity between CalPERS and SFERS.

4. When a CalPERS member works first for a CalPERS employer and later for a reciprocal-system employer, and meets the PERL's reciprocity requirements at retirement, CalPERS uses the member's final compensation from the reciprocal-system employer, rather than from the CalPERS employer, to calculate the person's CalPERS monthly retirement allowance. (Gov. Code, § 20638.) The reciprocity requirement that pertains to this dispute between CalPERS and respondent is the requirement that less than six months elapse between the end of the person's CalPERS-eligible employment and the beginning of the person's employment with the reciprocal-system employer. (Gov. Code, §§ 20355, 20638, subd. (a)(1).)

5. Because of the matters stated in Findings 8 through 10, respondent was not a State of California employee between July 1, 2010, and June 1, 2014. Because of the matters stated in Findings 10 and 11, respondent was a State of California employee between June 2, 2014, and October 20, 2017. The matters stated in Finding

13 establish that respondent's employment with the City and County of San Francisco, began October 23, 2017, which is a date that is within six months after the end of her second period of state employment but that is not within six months after the end of her first such period.

6. Under Government Code sections 20355 and 20638, respondent is eligible for reciprocity between SFERS and CalPERS with respect to her second period of state employment that ended October 20, 2017, because she began her employment with the City and County of San Francisco less than six months after ending her state employment. Under these same statutes, however, respondent is not eligible for reciprocity with respect to her first period of state employment that ended July 1, 2010, because she began her employment with the City and County of San Francisco more than six months after ending her state employment.

7. Respondent argues that CalPERS has erred by treating her post-reinstatement CalPERS membership as if the Public Employees' Pension Reform Act of 2013 (PEPRA, Gov. Code, § 7522 et seq.) governed her retirement rights.³ CalPERS has not; the parties agree that PEPRA does not apply to respondent. The reciprocity requirements stated in Government Code sections 20355 and 20638 apply to all CalPERS members, however, not only to members whose CalPERS membership began after PEPRA's effective date.

8. Respondent argues further that because CalPERS reinstated her to membership effective June 2, 2014, it must treat her CalPERS membership as having

³ The CalPERS letter referenced in Finding 3 cited a regulation that applies only under PEPRA. This error by CalPERS likely prompted respondent's confusion.

been continuous from 1996 through 2017, even though she was receiving a retirement allowance rather than accruing service credit between July 1, 2010, and June 1, 2014. Whether or not accurate, however, this argument does not aid respondent, because Government Code section 20638 states its requirement that a CalPERS member move within six months from CalPERS employment to reciprocal-system employment specifically in terms of employment, not retirement system membership. The only period of state employment that preceded respondent's San Francisco employment by less than six months was the period between June 2, 2014, and October 20, 2017, during which respondent earned 3.468 years of service credit (according to the matters summarized in Findings 11, 13, and 19). For this reason, this post-reinstatement period is the only period for which Government Code sections 20355 and 20638 offer respondent reciprocity.

Estoppel

9. Respondent also argues that because she made irrevocable retirement choices, to her own detriment, in reliance on her reasonable belief that reciprocity between SFERS and CalPERS would apply to all her years of CalPERS service credit, CalPERS now should be unable to limit reciprocity to her post-reinstatement service credit. She points specifically to the decision summarized in Finding 30 as the now-irrevocable choice that she would not have made if she had understood in 2017 that postponing CalPERS retirement and electing SFERS reciprocity would increase her monthly retirement allowance only by an amount less than the cost to her family of non-CalPERS health coverage in retirement.

10. In unusual circumstances, a party's misrepresentations may bar that party from acting in a manner that does not conform to those representations. Such equitable estoppel occurs only if the person or party who gives incorrect information

intends the information to induce the other party's action, or gives the other party a reasonable basis for believing that the party can rely on the information. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489; *Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1567.)

11. The matters stated in Finding 26 show that in 2017, as respondent contemplated leaving state service, she understood the importance of weighing the potential value of retiree health coverage against the potential value of reciprocity. As summarized in Findings 25 through 27 and 29, respondent asked several CalPERS representatives relevant questions and consulted some publications, but did not explicitly seek confirmation in writing as to how her four-year break in state service would affect the value to her of reciprocity between CalPERS and SFERS. Moreover, the matters stated in Finding 28 establish that CalPERS staff members never gave respondent unambiguous, written information about how SFERS reciprocity would apply to her prior discontinuous state service in calculating her CalPERS monthly retirement allowance.

12. For the reasons summarized in Legal Conclusions 10 and 11, respondent has not established that her communications with CalPERS member service representatives estop CalPERS to deny reciprocity to respondent for her 12.901 years of pre-reinstatement state service.

ORDER

The appeal by respondent Katherine L. Evelyn from CalPERS's determination that it should calculate her retirement allowance by applying her final compensation from the City and County of San Francisco only to her post-reinstatement CalPERS service credit (3.468 years) is denied.

DATE: 12/27/2024


JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings