

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Katherine L. Evelyn (Respondent) first established membership with CalPERS through her employment with the State Compensation Insurance Fund (SCIF) on July 31, 1996. On July 1, 2010, Respondent retired from SCIF with 12.901 years of service credit.

From July 1, 2010, to June 1, 2014, Respondent did not work for any CalPERS-covered employer.

On June 2, 2014, Respondent was reinstated from service retirement for full-time employment with the California Department of Industrial Relations (DIR). Respondent separated from state service on October 2, 2017.

On October 23, 2017, Respondent established membership with the San Francisco Employees' Retirement System (SFERS). CalPERS and SFERS are reciprocal retirement systems. CalPERS and SFERS informed Respondent of her reciprocity election effective October 23, 2017. CalPERS also sent Respondent the publication entitled "*When You Change Retirement Systems*" (PUB 16), which explains that a person may elect reciprocity only if less than six months elapse between the end of the CalPERS eligible employment and the beginning of the reciprocal system employment.

Respondent's post-reinstatement employment at DIR and the City and County of San Francisco gave her an additional 3.468 years of CalPERS service credit.

On December 31, 2022, Respondent service retired with a total of 16.369 years of service credit.

On January 23, 2023, CalPERS informed Respondent of her effective retirement date, final compensation calculation, and projected monthly allowance. Respondent's final compensation from the State of California was about \$8,000 per month. Respondent began receiving her monthly allowance on February 7, 2023, which reflected only her State of California compensation.

CalPERS requested confirmation of Respondent's final compensation from SFERS. SFERS informed CalPERS that Respondent's final compensation from the City and County of San Francisco was about \$21,000 per month.

CalPERS adjusted Respondent's retirement allowance and notified Respondent that her SCIF service (1996-2010; 12.901 years) would be calculated based on her State of California final compensation (approx. \$8,000), and her post-reinstatement work for DIR and the City and County of San Francisco (June 2017 to December 2022; 3.468 years) would be calculated based on her final compensation at the City and County of San Francisco (approx. \$21,000).

Reciprocity is defined and controlled by statute. It allows members to move from a CalPERS employer to another public employer using a different retirement system within six months without losing valuable retirement and related benefit rights. SFERS is a reciprocal retirement system with CalPERS. The reciprocity Respondent established between CalPERS and SFERS for her post-reinstatement service is not in dispute. Respondent properly submitted documents to the retirement systems within six months of movement between them to inform them of her request to establish reciprocity and obtain findings from each system. However, Respondent did not, and could not, submit documents requesting reciprocity for her 1996-2010 employment with SCIF because of her break in service from 2010 to 2014, which is more than six months.

On August 23, 2023, CalPERS informed Respondent that she had established reciprocity with SFERS beginning in 2017. When Respondent elected to retire in 2010, she separated from state service and did not establish reciprocity within six months of her separation. Therefore, Respondent's SFERS final compensation applied only to the 3.468 years of service credit earned post-reinstatement.

Respondent disagreed with the amount of her monthly retirement allowance because she believed her City and County of San Francisco compensation should apply to all 16.369 years of service, rather than only her 3.468 years of post-reinstatement service.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on December 3, 2024. Respondent was represented by counsel at the hearing.

CalPERS presented testimony and evidence showing that Respondent was a state employee from 1996 to 2010 (SCIF); she was not an employee of any CalPERS-covered employer between July 1, 2010 and June 1, 2014; she was a state employee between June 2, 2014 and October 20, 2017 (DIR); and she was an employee of the City and County of San Francisco beginning October 2017, which is a date within six months after the end of her post-reinstatement employment but not within six months after the end of her first state employment. Thus, reciprocity only applied to her last 3.468 years of service.

Respondent testified that she had two options when she left state service in 2017. She could elect to retire and receive the benefit of having CalPERS healthcare coverage into retirement, or she could separate, begin working for SFERS, and forfeit CalPERS health coverage in retirement. Respondent's SFERS compensation was considerably higher than her state compensation, and she assumed her highest compensation would apply to all 16.369 years of service. CalPERS never told Respondent unambiguously, orally or in writing, that her SFERS compensation would apply to her 16 years of service credit.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that under Government Code sections 20355 and 20638, Respondent is only eligible for reciprocal compensation sharing for her DIR employment (2014-2017) because she began her employment with SFERS less than six months after ending her state employment. Under these same statutes, the

ALJ found that Respondent is not eligible for reciprocity for her first period of state employment (SCIF, 1996-2010) because her employment with SFERS began more than six months after ending her SCIF employment. The ALJ also found that estoppel did not apply because there was no evidence that CalPERS provided Respondent with unambiguous information about how SFERS reciprocity would apply to her prior discontinuous state service in calculating her retirement allowance.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

February 19, 2025

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