

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Appeal Regarding the Final  
Compensation Calculation of:**

**DOROTHY COLE, Respondent.**

**Agency No. STRS20220003**

**OAH No. 2022050676**

**PROPOSED DECISION**

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on January 31, 2023, by videoconference.

Jaismin Kaur represented Complainant William Perez, Chief Benefits Officer (Complainant), California State Teachers' Retirement System (CalSTRS). Attorney Jonathan C. Turner, Law Offices of Jonathan C. Turner, represented Dorothy Cole (Respondent).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on the hearing day.

## ISSUE

Should the longevity pay Respondent received while employed as a psychologist at the Lynwood School District (District) be included in calculating her retirement benefits?

## FACTUAL FINDINGS

### BACKGROUND

1. CalSTRS provides retirement, disability, and survivor benefits for California's public school education professionals and their beneficiaries (members or member). The defined pension benefit, a lifelong monthly payment received by members from the inception of retirement, is calculated by multiplying years of service by highest year or years' creditable compensation by a factor established based on the member's age at the time of retirement.

2. "Creditable compensation" is a statutorily defined term and may not include all remuneration received by a member. Only qualifying creditable compensation is credited to the member's Defined Benefit Program (DBP) for purposes of calculating the member's monthly retirement payment. Any contributions from non-creditable compensation are not included in calculating the member's monthly retirement payment.

3. Respondent became a CalSTRS member on October 20, 1980, and received a refund of her CalSTRS contributions on October 31, 1983. She again became a CalSTRS member on May 1, 1984, and remained a member until her retirement on July 1, 2020, with 35.719 years of service credit.

4. Except for her first few years with the District when she was a third-grade teacher, Respondent's position with the District was school psychologist. Her salary was established in the "Administrative and Special Services Salary Schedule" (Salary Schedule). Through the 2006-2007 school year, the Salary Schedule provided longevity pay equal to ten percent of base pay to those long-term employees meeting the threshold number of years of service required to qualify.

5. Beginning with the 2007-2008 school year, the District discontinued longevity pay except for those qualifying employees already receiving it, as was Respondent. Respondent continued to receive longevity pay until the 2017-2018 year when, for reasons not established by the record, the District removed psychologists from the Salary Schedule. At approximately the same time, Respondent and other psychologists became members of the Lynwood Teachers' Association (LTA). As a member of LTA, Respondent did not initially receive longevity pay. She grieved the matter and, on May 1, 2017, entered into a settlement agreement with the District under which the District agreed to pay Respondent's missed longevity payments and, going forward, continue to make the longevity payments to Respondent until her retirement. The settlement agreement provides in part:

1. The Parties understand and agree that this Agreement is made to bring an end to any and all current and potential disputes or claims regarding [Respondent's] salary and additional longevity amount as a School Psychologist in [the District].

2. Effective May 1, 2017 and until such time [Respondent] retires from service from [the District], [Respondent's] salary

will continue to include an additional longevity amount equivalent to 10% of her salary.

3. The District agrees to make whole and correct [Respondent's] pay for the monthly periods since May 1, 2017, where the additional longevity amount was not included as part of [Respondent's] monthly paycheck.

(Exh. 10, p. A181.)

6. While considering the timing of her retirement, Respondent contacted CalSTRS multiple times to request an estimate of her retirement benefits. CalSTRS produced estimates based on Respondent's salary as reported by the District. The District reported a salary amount that included Respondent's longevity pay. Nothing in the record indicates the District sought advice or guidance regarding whether the longevity pay should be included in the reported compensation. Based on the District's reported compensation amounts, Respondent's current monthly pension benefit is \$9,142.63. Without the inclusion of the longevity pay, the amount is \$8,326.34.

7. At the hearing, Respondent stated she relied on the CalSTRS' estimated pension benefits to set her retirement date and would not have retired at the time she did had she known her pension benefit amount would be calculated without the longevity pay counted as part of her creditable compensation. Respondent's testimony regarding her reliance on CalSTRS' representations before she applied for retirement is understood to be a claim of equitable estoppel.

8. CalSTRS received Respondent's service retirement application on June 4, 2020, and approved her for service retirement with a benefit effective date of July 1, 2020. On August 11, 2020, personnel at CalSTRS' Compensation Review Unit (CRU)

reviewed the calculations and determined Respondent's longevity pay should not have been included in calculating her retirement benefit amount.

9. For reasons not established by the record, CRU personnel did not inform Respondent of their recalculation of her benefit amounts until December 8, 2020, when they issued its Decision Letter. The Decision Letter provided in pertinent part:

According to the District, prior to your becoming part of the LTA, you were part of the Administrative and Special Services salary schedule. In the past, administrators and psychologists received longevity pay for 15, 20, 25, 30 and 35 years of service. However, in the early 2000s, administrators and psychologists no longer earned longevity pay. The settlement agreement provided that even though longevity was not paid to psychologists on the current salary schedule, you would continue to be paid longevity until retirement.

Education Code [section] 22119.2 defines creditable compensation as remuneration paid in cash by an employer to all persons in the same class of employees and that the compensation must be paid in accordance with a publicly available written contractual agreement and was not paid to the entire class of psychologists. Therefore, the compensation paid for longevity is not creditable to CalSTRS.

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Additionally, the longevity payment that you received was pursuant to a compromise settlement agreement. Education Code section 22119.2, [subdivision] (d)(8), states in part:

(d) "Creditable compensation" does not mean and shall not include:

(8) Severance pay, including lump-sum and installment payments, or money paid in excess of salary or wages to a member as compensatory damages or as a compromise settlement.

(Exh. 12, pp. A188-A189.)

10. Respondent sought a review of the CRU determination, which CalSTRS undertook. Thereafter, nearly a year later, on November 4, 2021, CalSTRS issued a second letter, known as a Determination Letter, reiterating its position that Respondent's final compensation amount could not include the longevity pay she received while working.

11. Respondent appealed CalSTRS' determination. As a result of the appeal, Complainant issued a Statement of Issues. The Statement of Issues set out three grounds for not including the longevity pay in calculating Respondent's retirement benefit as follows:

(i) The longevity pay Respondent received is not creditable compensation pursuant to Education Code section 22119.2, subdivision (a)(2) (further statutory references are to the Education Code unless otherwise designated) because it was not paid to the entire employee class to which Respondent belonged.

(ii) The longevity pay Respondent received is not creditable compensation according to section 22119.2, subdivision (a)(1), because it was not paid according to a publicly available written contractual agreement.

(iii) The longevity pay Respondent received is not creditable compensation pursuant to section 22119.2, subdivision (d)(8), because it was received as part of a compromise settlement agreement.

## LEGAL CONCLUSIONS

### General Principles of Law

1. This matter is governed by the Teachers' Retirement Law (§ 22000 et seq.) CalSTRS' retirement plans are administered by the Board of Administration (Board), which "shall set policy and shall have the sole power and authority to hear and determine all facts pertaining to application for benefits under the plan or any matters pertaining to administration of the plan and the system." (§ 22201, subd. (a).)

2. The Board and its officers and employees are required to discharge their respective duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims. (§ 22201, subd. (a).)

3. The interpretation and application of laws by those charged with their interpretation and enforcement are entitled to great weight and courts will generally not depart from such interpretations unless they are clearly erroneous. (See *Cummings v. California State Teachers' Retirement Bd.* (1966) 241 Cal.App.2d 149, 157.)

## **Burden and Standard of Proof**

4. Generally, the party seeking to change the status quo bears the burden of proof. (Evid. Code, § 500.) Here, CalSTRS is seeking to change the status quo by retroactively reducing Respondent's pension and therefore bears the burden of proof. Respondent bears the burden of proving her affirmative defense of equitable estoppel. Because no other statutory provision addresses the standard of proof, it is deemed to be preponderance of evidence. (Evid. Code, § 115.)

## **Corrections and Payment Recoupment**

5. The Board "may correct all actions taken as a result of errors or omissions of the employer or [CalSTRS]." (§ 22308, subd. (c)). The Board's right to commence recovery for an incorrect payment is subject to a statute of limitations, expiring three years from the date the incorrect payment is made due to lack of information or inaccurate information about member eligibility, and that period begins with discovery of the incorrect payment. (§ 22008, subd. (c).)

6. The Board is authorized to recover overpayments from subsequent benefits. (§ 24616.) This ability to recover overpayments is limited to withholding no more than five percent of future, corrected monthly allowance. (§ 24617, subd. (a).)

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## Causes for Excluding Longevity Pay

### EDUCATION CODE SECTION 22119.2, SUBDIVISION (A)(2)

7. Section 22119.2 sets out the requirements for creditable compensation, including that any remuneration beyond salary or wages be "paid to all persons who are in the same class of employees in the same dollar amount, the same percentage or wages, or the same percentage of the amount being distributed." (§ 22919.2, subd. (a)(2).) "Class of employees" means "employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed." (§ 22919.2, subd. (a).) Complainant argued that, because other District psychologists who reached the threshold level of service for longevity pay after the 2007-2008 school year were not eligible for it, Respondent's longevity pay was pay not available to everyone in the class of employees to which she belonged, school psychologists, it did not meet section 22119.2, subdivision (a)(2)'s requirement.

8. In *Blaser v. State Teachers' Retirement System* (2022) 86 Cal.App.5th 507, 302 Cal.Rptr. 3d 428 (*Blaser*), the Court of Appeals interpreted section 22119.2, subdivision (a)(2) as it applied to a group of teachers arguing their monthly retirement benefit amount should include extra pay they received for agreeing to teach a sixth period and preparing for classes outside the six periods constituting the school day. The *Blaser* court noted the policy considerations for limiting creditable compensation are embedded within the language of the statute: "This definition of 'creditable compensation' reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member's career, consistent treatment of compensation among an entire class of employees, consistent treatment of compensation for the

position, preventing adverse selection, and excluding from compensation earnable remuneration that is paid to enhance a member's benefits." (*Blaser, supra* 302 Cal.Rptr.3d at 448 [quoting § 22119.2, subd. (g)] [pagination reference is to the California Reporter because pagination for the official state reporter was not available at the time this proposed decision was prepared.]

9. In applying section 22119.2's definition of creditable compensation, the *Blaser* court found all teachers, whether they taught through a sixth period or not, belonged to the same class. Since only a subset of the class agreed to forego a preparation period and therefore received the additional pay, that additional pay was not "paid to all persons who are in the same class of employees" and therefore was not creditable compensation. The *Blaser* court also found the extra pay received by the teachers who agreed to teach a sixth class was tantamount to overtime pay because the employing district considered teaching five periods as constituting full-time work. The teachers teaching during all six periods were working in excess of a full-time schedule and such pay was not included within the definition of creditable compensation. (*Id.* at 449.)

10. The instant case is distinguishable from the facts in *Blaser*. Respondent did not choose to take on extra work – i.e., working an extra class period or shifting a portion of her work to what would otherwise be her free time. Rather, pursuant to a longevity formula, including the "grandfathering" component, she was automatically eligible for the additional pay. That under the formula, only Respondent happened to qualify for longevity pay does not change the fact that it was applied equally to all class members and had others qualified for longevity pay, they would have received it as well.

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**EDUCATION CODE SECTION 22119.2, SUBDIVISION (A)(1)**

11. Section 22119.2, subdivision (a)(1) limits "creditable compensation" to salary or wages "paid in accordance with a publicly available written contract." Because the District phased out longevity pay after the 2006-2007 school year, it was not reflected in subsequent contracts, including the contract in effect when Respondent retired. Respondent argued the statute does not require that all contracts in effect throughout an annuitant's work years reflect the pay used to calculate creditable compensation, and therefore the fact the longevity pay was reflected in the employment contracts during some of the years Respondent was working is sufficient to meet this criterion. Complainant argued its interpretation of section 22119.2, subdivision (a)(1), is that the contract in effect at the time Respondent's retirement must reflect the longevity pay for it to be considered creditable compensation. Neither party produced any further evidence or analysis to support their respective positions. However, in light of the deference accorded to agencies in interpreting the statutes they administer, Complainant's argument is credited.

**EDUCATION CODE SECTION 22119.2, SUBDIVISION (D)(8)**

12. Section 22119.2, subdivision (d)(8) excludes from creditable compensation "money paid in excess of salary or wages to a member . . . as a compromise settlement." As set out in Factual Finding 6, Respondent entered into a settlement regarding her claim for continued longevity pay and the longevity pay was paid in accordance with that settlement agreement for the remainder of her tenure with the District. Respondent argued the agreement did not constitute a "compromise" as the word is generally defined and used because Respondent's claim was resolved entirely in her favor. Documentation of Respondent's claim or complaint was not introduced into the record. It is therefore not factually established whether the

settlement agreement resolved all outstanding issues in the grievance to Respondent's favor. For instance, she may have requested attorney's fees as part of the claim. Under these circumstances, Respondent's argument is not credited.

### **Equitable Estoppel**

13. Four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) the party to be estopped must intend that its conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the other party must rely upon the conduct to her injury. "The doctrine of equitable estoppel may be applied against the government where justice and right require it." (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305-306.) "It is generally held that the power of a public officer cannot be expanded by application of this doctrine." (*Page v. City of Montebello* (1980) 112 Cal.App.3d 658,667.)

14. Applying the equitable estoppel factors here, the record did not establish CalSTRS knew all the surrounding facts about Respondent's longevity pay including that, for the last few years, it was paid pursuant to a settlement agreement. Whether CalSTRS intended or reasonably believed its pre-retirement estimates would be relied upon is a more complicated question. It is common knowledge these calculations are provided with disclaimers about their ultimate accuracy. However, in this case, and relevant to the third factor, Respondent had been receiving the longevity pay for many years and it may not have even been in her ken to consider they constituted separate or unusual payments not integrated into a normal salary. As such, as she credibly testified, Respondent relied on the estimated amounts CalSTRS reported to her before she decided to retire, thus fulfilling the last equitable estoppel factor. Regardless of

the parties' respective beliefs and extent of reliance, the equitable estoppel argument must fail because applying it would require compelling CalSTRS to take an action beyond its statutory authority. Thus, Respondent's equitable estoppel argument must fail.

15. In light of the statutory constraints limiting creditable compensation, there is no legally viable basis to disturb CalSTRS' recalculation of Respondent's benefits. CalSTRS' internal procedures of reassessing retirement benefits only after members retire and begin to draw payments they naturally come to rely upon is disturbing and difficult to reconcile with CalSTRS' general fiduciary duties. However, the requirements of the only potential defense to these procedures, equitable estoppel, are also not met in the instant case. Under these circumstances, Respondent's retirement benefits must be reduced and overpayments recouped subject to the applicable three-year statute of limitations.

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## ORDER

1. Complainant's determination of overpayment based on erroneous inclusion of longevity pay in Respondent's creditable compensation is upheld.
2. Complainant will decrease Respondent's monthly pension benefit amount from \$9,142.63 to \$8,326.34 and will collect the overpaid benefits paid within the applicable statute of limitations by reducing her corrected retirement benefits by five percent.

DATE: 03/02/2023

Deena R. Ghaly  
Deena R. Ghaly (Mar 2, 2023 10:47 PST)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings