

**ATTACHMENT A**  
**PROPOSED DECISION**

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

**In the Matter of the Appeal of the Retirement Election  
Option Payable Upon the Death of Joaquin Vega by:**

**NANCY P. VEGA, Respondent,**

**and**

**JASMINE M. YOUNG; LAUREN C. VALAIKA; LUCAS J. VEGA;  
AND DILLON J. VEGA, Respondents.**

**Agency Case No. 2023-0805**

**OAH No. 2024041112**

**PROPOSED DECISION**

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on November 19, 2024.

Mehron Assadi, Attorney, represented complainant Kimberlee Pulido, Chief, Retirement Benefit Services Division, California Public Employees' Retirement System (CalPERS).

Gidian R. Mellk, Attorney at Law, represented respondent Nancy P. Vega (respondent), who was present.

Respondents Jasmine M. Young, Lauren C. Valaika, Lucas J. Vega, and Dillon J. Vega were not present during the hearing other than during their testimony. The matter proceeded against them as a default pursuant to Government Code section 11520.

The ALJ received testimony and documentary evidence. The record was held open for respondent to file a closing brief by December 11, 2024; complainant to file a closing brief by December 18, 2024; and respondent to file a rebuttal brief by December 20, 2024.

On December 11, 2024, respondent filed a 20-page closing brief, marked for identification as Exhibit K. On December 18, 2024, CalPERS filed a 29-page closing brief, marked for identification as Exhibit 21. On December 20, 2024, respondent filed a 13-page rebuttal brief, marked for identification as Exhibit L.

The record closed and the matter was submitted for decision on December 20, 2024.

## **SUMMARY**

Respondent appealed CalPERS' denial of her request to correct her late husband's retirement application. Respondent asserted Joaquin Vega (Decedent) intended to select Option 4, 2W & 1 combined, rather than Option 1, and to name respondent as his individual lifetime beneficiary. Respondent proved by a

preponderance of evidence Decedent made a correctable error on his retirement application. Her appeal is granted.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. CalPERS is a government entity charged with administering the Public Employees' Retirement Law. (Gov. Code, § 20000 et seq.)
2. Decedent became a member of CalPERS through his employment as a police officer for the City of Santa Monica beginning on October 14, 1985, and he was classified as a local safety member. On December 16, 2014, Decedent retired at age 50 from service with the City of Santa Monica.
3. Respondent Nancy P. Vega is the surviving spouse of Decedent, who died in June 2021. Respondents Jasmine M. Young, Lauren C. Valaika, Lucas J. Vega, and Dillon J. Vega are respondent and Decedent's adult children.
4. In a letter dated January 27, 2022, respondent alleged Decedent made a mistake on his retirement application and requested CalPERS correct the mistake.
5. In a letter dated August 2, 2023, CalPERS denied respondent's request.
6. In a letter dated August 28, 2023, respondent timely appealed CalPERS' decision and requested a hearing.
7. On November 7, 2024, complainant filed an Amended Statement of Issues, the operative pleading in this matter.

## Background

8. CalPERS retirement allowance benefits are funded in part by contributions from both members and their employing agencies. Members make contributions through paycheck deductions.

9. Upon their application for retirement benefits, CalPERS members may choose amongst several payment options. To understand the difference between these options, CalPERS members often seek assistance from CalPERS personnel or outside consultants. CalPERS members may apply for retirement under three categories: service, disability, or industrial disability.

10. On two Retirement Allowance Estimate Requests received by CalPERS on November 4, 2013, Decedent requested CalPERS provide an estimate of his potential future retirement benefit amounts if he retired on April 1, 2014, and December 16, 2014, respectively. On the request forms, Decedent listed respondent as his individual lifetime beneficiary.

11. In two separate letters dated February 21, 2014, CalPERS provided Decedent with retirement benefit estimates based upon retirement dates of April 1, 2014, and December 16, 2014. Each letter described estimated benefits Decedent would receive under each option available. For Option 1, the letters stated "Upon your death, any unused member contributions in your account will be paid to your beneficiary(ies) in a lump sum. Option 1 does not provide for a continuing monthly allowance to a beneficiary after the member's death." (Ex. 4, p. A67.) Within Option 4, a member may elect between (1) "2W & 1 combined," for a lower monthly allowance in exchange for full monthly allowance payments for a named beneficiary upon the member's death, and (2) "3W & 1 combined," for a higher monthly allowance in

exchange for reduced monthly allowance payments for a named beneficiary upon the member's death. For either choice within Option 4, upon the member and the beneficiary's deaths, any remaining member contributions would be paid to the member's secondary beneficiary(ies). Under Option 1, Decedent's monthly allowance would be \$547.09 more than under Option 4, 2W & 1 combined.

## **Decedent's Retirement Application**

12. In a Disability Retirement Election Application (Application) dated September 22, 2014, Decedent selected Option 1 and indicated a retirement date of December 16, 2014. He did not name an individual lifetime beneficiary. He named his four children as Option 1 Balance of Contributions beneficiaries. He named respondent as the recipient of his retired death benefit and named respondent as his surviving spouse. The Application indicated that if a member does not name their spouse as a beneficiary, the spouse may be entitled to their community property share of the Option 1 lump sum payments.

13. Both Decedent and respondent signed the application, as did a CalPERS representative named Soledad Franco. Ms. Franco's handwriting appears on the Application in several sections, indicating she reviewed the Application before Decedent submitted it.

14. In a letter dated September 26, 2014, CalPERS acknowledged receipt of Decedent's Application. The letter confirmed Decedent selected Option 1, but did not provide details regarding his selected beneficiaries.

15. In a letter dated December 22, 2014, CalPERS confirmed it processed Decedent's election to receive a retirement allowance under Option 1, effective December 16, 2014. The letter further stated, "upon your death, benefits will be paid to

your beneficiary in accordance with the designation indicated on your retirement election document.” (Ex. 7.) The letter did not list Decedent’s beneficiaries or their benefits under Option 1.

16. In a letter dated September 3, 2015, CalPERS confirmed Decedent’s employer found him to be incapacitated for the performance of his duties as a Police Sergeant. His retirement status and benefits therefore would be adjusted from service retirement to industrial disability retirement retroactive to December 16, 2014. The letter did not provide details about Decedent’s beneficiaries or their benefits under Option 1.

17. In a letter dated October 19, 2015, CalPERS confirmed Decedent’s service retirement was changed to industrial disability retirement, effective December 16, 2014. The letter further stated, “upon your death, benefits will be paid to your beneficiary in accordance with the designation indicated on your retirement election document.” (Ex. 9.) The letter did not list Decedent’s beneficiaries or their benefits under Option 1.

### **Decedent’s Retirement Payments**

18. Between his retirement effective December 16, 2014, and his death in June 2021, Decedent received monthly retirement allowance payments in accordance with his selection of Option 1.

19. Dionne Harris, a CalPERS governmental analyst in the Retirement Benefits Division, testified she reviewed Decedent’s CalPERS records and found no indication he made any inquires during his retirement about the amount of his allowance.

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## **Respondent's CalPERS Benefits**

20. In a letter dated November 5, 2021, CalPERS informed respondent she was entitled to a monthly Survivor Continuance allowance of \$7,296.63. CalPERS also indicated it owed respondent a retroactive allowance amount totaling \$35,996.71.

21. In a letter dated November 23, 2021, CalPERS informed respondent that Decedent completed a beneficiary designation form which did not name respondent as a beneficiary for the Option 1 balance of accumulated contributions. This amount represents the balance of member contributions Decedent made during his employment which were not returned to him in the monthly retirement allowance payments he received before his death. CalPERS determined respondent was nonetheless entitled to 42.73 percent of the balance of accumulated contributions, pursuant to California community property law.

22. In a letter dated January 12, 2022, CalPERS informed respondent she was entitled to a payment of \$109,222.09 for the Option 1 balance of accumulated contributions, representing 42.73 percent of the total balance.

## **Respondent's Allegation of Mistake**

23. In a letter dated January 27, 2022, respondent, through counsel, alleged Decedent mistakenly selected Option 1 on his Application instead of Option 4, as intended. Respondent requested CalPERS correct the mistake pursuant to Government Code section 20160.

24. In her testimony at hearing, respondent asserted Decedent intended to elect Option 4 and name her as his individual lifetime beneficiary. According to respondent, Decedent explained his intentions to Ms. Franco when he filled out his



Application. Respondent testified the meeting occurred at her residence. Decedent told Ms. Franco he wanted respondent to receive his "continued benefits" and if both Decedent and respondent passed away, their children would be the secondary beneficiaries. Respondent acknowledged she signed the Application, stating she "just signed where they told me to" and "[the Application] was clear as mud." Based on Decedent's comments to Ms. Franco during the meeting, respondent assumed Decedent's benefits election properly reflected his intentions.

25. Once Decedent retired, respondent was not aware of the details regarding his retirement allowance payments because the payments were directly deposited in Decedent's separate bank account. Respondent did not recall Decedent mentioning any issues with the payment amount. Only upon receiving a letter from CalPERS after Decedent's death was respondent aware she would not receive the same monthly benefit payment amount as Decedent did before his death.

26. Each of Decedent's four children testified at the hearing they believed their father intended for their mother to receive his full monthly benefits upon his death. None of the four children recalled having a specific conversation with Decedent about his intentions for his CalPERS retirement benefits. Each believed, however, Decedent wanted to ensure respondent was "taken care of" after his death and received the best possible benefits. Lucas Vega testified he did not believe Decedent wanted the children and respondent to receive lump sum payments in lieu of full monthly retirement allowance payments because it was not in respondent or Decedent's best interest to do so. None of the children accepted lump sum payments offered by CalPERS pursuant to Decedent's election of Option 1, preferring for their mother to receive full monthly retirement allowance payments instead.

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27. Shane Talbot is a retired Santa Monica Police Sergeant with extensive experience helping CalPERS members apply for retirement benefits. Mr. Talbot testified when members understood the cost impacts of Option 1 and Option 4, it was a “no brainer” to elect Option 4. Both options include a return of member contributions; any minor increase in monthly payments under Option 1 before the member’s death are not worth sacrificing higher monthly payments to a surviving beneficiary for their lifetime.

28. Mr. Talbot further testified Decedent asked him for advice before completing his Application. Mr. Talbot asserted he advised Decedent to select the option providing full benefits for respondent, presumably Option 4, because Decedent wanted respondent to receive his same benefits upon his death. He acknowledged Decedent never told him during his seven years of retirement before his death that Decedent believed he was receiving incorrect retirement allowance payments. He also acknowledged he never explicitly told Decedent to choose Option 4.

29. Mr. Talbot noted CalPERS has since added language to its application form clarifying a spouse’s community property rights. On the prior form Decedent used, Mr. Talbot asserted the spouse’s rights are not clear. Mr. Talbot described it as a “big problem” that spouses do not understand the benefits they are entitled to upon the member’s death. Spouses now must explicitly waive their community property rights if the member does not name them as full beneficiary survivor of the member, as in Decedent’s case. Mr. Talbot has only seen two or three situations where the member did not name their spouse as their full beneficiary survivor.

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## **CalPERS' Rebuttal**

30. Ms. Harris testified she found no evidence of a mistake on Decedent's Application or CalPERS' payment of benefits based on Decedent's election. Decedent received several letters from CalPERS confirming his election of Option 1 and Decedent did not contact CalPERS indicating the election was incorrect.

31. Because Decedent did not indicate during his lifetime he made a mistake, Ms. Harris asserted CalPERS cannot now assume he would have made a different election. She further testified CalPERS members have the right to make the retirement election of their choice and CalPERS has no evidence Decedent intended to make a different election.

32. Ms. Harris acknowledged Decedent listed respondent as his individual lifetime beneficiary on his 2013 Retirement Allowance Estimate Requests. Ms. Harris did not find any documents in Decedent's file, other than the Application, listing his children as primary beneficiaries.

33. Ms. Harris found no evidence Ms. Franco traveled to Decedent and respondent's home to assist with completing the Application. Ms. Harris noted such visits occur only in emergency situations, such as when a member is hospitalized. Ms. Franco no longer works for CalPERS and did not testify at the hearing.

34. Ms. Harris testified CalPERS maintains participant notes in its records, including summaries of meetings between members of retirement counselors. The summaries include whether the counselor advised the member of differences between various retirement allowance payment options available to the member. CalPERS presented no participant notes documenting Decedent received such advisements from Ms. Franco or any other CalPERS representative.

## **Analysis**

35. Respondent's testimony about when she discovered Decedent's error was credible. Decedent, not respondent, received the February 2014 retirement allowance estimates. There was no evidence respondent was aware of the consequences of Decedent's Option 1 election until she received a letter from CalPERS in November 2021. The substance of any conversation between Ms. Franco and respondent during the September 22, 2014 meeting is unknown. According to respondent, she simply signed the Application as directed by Ms. Franco.

36. Respondent's evidence Decedent made a mistake on his Application was more persuasive than CalPERS' evidence to the contrary. CalPERS relied on the Application itself and the absence of any indication he made a mistake or inquiry from Decedent about his retirement allowance before his death. However, Decedent's election of Option 1 on the Application was inconsistent with his 2013 Retirement Allowance Estimate Requests, respondent and her children's credible testimony about Decedent's intent for his retirement benefits, and Mr. Talbot's advice to Decedent about his retirement benefits. On the Application, Decedent named respondent as the recipient of his retired death benefit and named respondent as his surviving spouse, consistent with an intent to make respondent his beneficiary. Mr. Talbot credibly testified electing Option 1 over Option 4 was not consistent with Decedent's goal to provide the best possible benefits for respondent.

37. CalPERS presented no evidence Ms. Franco or any other CalPERS representative confirmed Decedent intended to make an election inconsistent with his prior stated intentions. The letters Decedent received from CalPERS confirming his election did not provide any detail about the benefits payable upon his retirement; they simply confirmed he elected Option 1, with no further description. CalPERS

presented no participant notes from Decedent's September 22, 2014 meeting with Ms. Franco or any other conversation with a CalPERS representative wherein he received advice about his retirement options or elections.

38. Decedent's failure to inquire about his retirement allowance before his death was consistent with a mistake. Other than receiving a higher monthly allowance than estimated, there was no evidence Decedent had reason to believe he made an error on his Application. The \$547.09 difference between Option 1 and Option 4 payments was not large enough to conclude Decedent should have known he made a mistake, particularly because he did not receive his first retirement allowance payment until almost one year after he received his estimates.

39. Option 4, 2W & 1 combined, rather than Option 1, reflected Decedent's intentions regarding his retirement benefits.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. Respondent bears the burden to present documentation or other evidence establishing the right to correct Decedent's mistake. (Gov. Code, § 20160, subd. (d).) This burden requires proof by a preponderance of the evidence. (Evid. Code, § 115.) 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.)

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## **Applicable Law**

2. CalPERS has exclusive fiduciary responsibilities over the assets of the public retirement system and the way benefits and related services are administered to participants and their beneficiaries. (Cal. Const., art. 16, § 17, subd. (a).)

3. CalPERS may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist: (1) the request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right; (2) the error or omission was the result of mistake, inadvertence, surprise, or excusable neglect; and (3) the correction will not provide the party seeking correction with a status, right, or obligation not otherwise available. Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute a correctable "error or omission." (Gov. Code, § 20160, subd. (a).)

## **Determination of Issues**

4. Respondent timely requested CalPERS correct Decedent's error on his Application. Respondent requested a correction in a letter dated January 27, 2022, about two months after she first received notification from CalPERS about her benefit entitlements after Decedent's death.

5. As described in Factual Findings 35 through 39, respondent proved by a preponderance of evidence Decedent's election on his Application of Option 1 rather than Option 4, 2W & 1 combined, was the result of a mistake.

6. The correction sought will not provide respondent a status, right, or obligation not otherwise available. CalPERS did not dispute Decedent earned his retirement benefits or that Decedent could have elected Option 4, 2W & 1 combined, on his Application.

7. This case is distinguishable from *In the Matter of the Statement of Issues of Jolie Caughey (2015) (Caughey)*, cited by CalPERS in support of its position. *Caughey* involved a retired California Highway Patrol officer who divorced his former wife and remarried Jolie Caughey during his retirement. Before his death, the retired officer told CalPERS he wished to add Ms. Caughey as his beneficiary and CalPERS provided instructions on how to do so. However, the retired officer never submitted the required documents. Ms. Caughey claimed the retired officer's inaction was a correctable error or omission. The ALJ who presided over the matter rejected the claim, finding CalPERS was not required to take any action because Ms. Caughey did not prove the retired officer made an error or omission, given the facts of the case. The retired officer knew he had to take action to change his beneficiary and he did not. In this case, Decedent did not fail to follow explicit instructions on how to change his beneficiary after he retired, as did the officer in *Caughey*. Decedent never sought to correct his error before his death, and as described in Factual Finding 38, his inaction was consistent with a mistake on the Application.

8. CalPERS' assertion the parol evidence rule prohibits all evidence in support of respondent's claim is likewise unpersuasive. In support of its position, CalPERS cited Code of Civil Procedure section 1856 and related case law. However, as set forth in Code of Civil Procedure section 1856, subdivision (e), "Where a mistake or imperfection of the writing is put in issue by the pleadings, this section does not exclude evidence relevant to that issue."

9. Government Code section 20160 is "broadly available for the correction of errors or omissions made by employees, their employers, members or beneficiaries, or the system, and resulting from inadvertence, oversight, mistake of fact, mistake of law, or other cause..... [There is] no reason for treating an employee's mistaken choice between two types of retirement to which he is entitled by reason of past services differently from any other mistake depriving him of benefits to which he is fairly entitled." (*Rodie v. Bd. of Admin.* (1981) 115 Cal.App.3d 559 (*Rodie*), 566.) Although the holding in *Rodie* applied to a member's choice between service and disability retirements, the reasoning applies equally in this matter. Decedent was fairly entitled to elect Option 4 by reason of his past services. Correction of his error is consistent with CalPERS' fiduciary duty to its members.

**Disposition**

10. Decedent's election of Option 1 rather than Option 4, 2W & 1 combined, was a correctable error pursuant to Government Code section 20160. Decedent's Application is corrected to reflect his intent to elect Option 4, 2W & 1 combined, with respondent named as his individual lifetime beneficiary.

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## ORDER

Respondent Nancy P. Vega's appeal is granted. Decedent Joaquin Vega's retirement application is corrected to reflect his intent to elect Option 4, 2W & 1 combined, with respondent Nancy P. Vega named as his individual lifetime beneficiary.

DATE: **01/15/2025**

*Harden Sooper*

HARDEN SOOPER

Administrative Law Judge

Office of Administrative Hearings