

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO REMAND THE PROPOSED DECISION

Background

Joaquin Vega (Decedent) became a member of CalPERS through his employment with the City of Santa Monica beginning October 14, 1985. On December 16, 2014, he disability retired from his position as a Police Sergeant and received retirement benefits until his death on June 2, 2021. Nancy P. Vega (Respondent) is the surviving spouse of Decedent. Jasmine M. Young, Lauren C. Valaika, Lucas J. Vega, and Dillon J. Vega are Decedent and Respondent's four adult children (Respondent Children).

Before applying for retirement benefits, Decedent submitted two Retirement Allowance Estimate Requests for industrial disability retirement (IDR) with projected retirement dates of April 1 and December 16, 2014. CalPERS provided estimates for both projected dates. Both estimates provided estimated allowances for all the retirement option choices which were available to Decedent, including the member's monthly benefit, lifetime beneficiary's monthly benefit, and survivor continuance benefit. The estimates provide a description of the retirement options next to each estimated allowance. The Option 1 description advised Decedent: "Upon your death, any unused member contributions in your account will be paid to your beneficiaries in a lump sum. Option 1 does not provide for a continuing monthly allowance to a beneficiary after the member's death."

Decedent submitted a Service Pending IDR application with a requested retirement date of December 16, 2014. The application forms are contained in CalPERS' publication "A Guide to Completing Your CalPERS Disability Retirement Election Application (PUB 35)." PUB 35 contains detailed instructions for completing the forms, and descriptions for each retirement option available.

Decedent chose Option 1 and did not name an individual lifetime beneficiary. He named his Respondent Children individually as Option 1 balance of contributions beneficiaries (e.g. 1 of 4, 2 of 4, 3 of 4, and "see attached" to add his fourth child. The attached document was a Post-Retirement Lump Sum Beneficiary Designation form. Decedent had the choice to select Option 1 balance or Option 4 Option 1 balance. He checked the Option 1 Balance and labeled the beneficiary 4 of 4). Decedent named Respondent as the recipient of his lump sum Retired Death Benefit and named her as his surviving spouse. The application specifies that even if a member does not name their spouse as a beneficiary, the spouse may be entitled to their community property share of Option 1 lump sum benefits. Both Decedent and Respondent signed the application and Decedent was initially approved to receive service benefits.

In a letter dated December 22, 2014, CalPERS confirmed that 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." On September 3, 2015, Decedent was notified that his IDR application had been approved,

and that his benefits would be adjusted from service retirement to IDR retroactive to his requested retirement date. Decedent received Option 1 retirement benefits until his death on June 2, 2021. Respondent notified CalPERS of Decedent's passing on June 11, 2021.

On November 3, 2021, CalPERS sent beneficiary notification letters to Respondent Children, with appropriate forms. On November 5, 2021, CalPERS informed Respondent that she was entitled to a monthly Survivor Continuance allowance of \$7,296.63 per month. CalPERS also informed Respondent that she was entitled to a retroactive survivor continuance payment totaling \$35,996.71.

On November 23, 2021, all Respondents were notified of Respondent's spousal interest share of the Option 1 balance of contributions. Also, on November 23, 2021, CalPERS informed Respondent that Decedent did not name her as beneficiary for the Option 1 balance of accumulated contributions. However, Respondent was entitled to a 42.73% community property share of the balance of accumulated contributions.

On January 6, 2022, CalPERS notified all Respondents of benefits payable to them and provided appropriate documents to be filled out and returned. Six days later, CalPERS informed Respondent that she was entitled to a payment of \$109,222.09 for the Option 1 balance of accumulated contributions, representing her 42.73% community property share.

On January 27, 2022, Respondent alleged Decedent mistakenly selected Option 1 on his application instead of Option 4. Respondent requested that CalPERS correct Decedent's alleged mistake using Government Code section 20160.

On August 2, 2023, CalPERS informed Respondent that it is not authorized to change Decedent's option election because Decedent is not alive to make the change, and he had received the higher Option 1 benefits from 2015 to 2021.

On August 28, 2023, Respondent appealed CalPERS' 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 November 19, 2024. Respondent was represented by counsel at the hearing.

The Hearing

At the hearing, Respondent Children all testified that they did not wish to receive their share of the Option 1 benefit. They would like Respondent to receive the maximum benefit possible. They believed Decedent intended for Respondent to receive his full monthly benefits upon his death. Although, none of Respondent Children recalled having a specific conversation with Decedent about his intentions for his CalPERS benefits.

Respondent testified at the hearing that a CalPERS representative came to her home to assist with filling out CalPERS documents. Respondent also testified that Decedent told the representative he wanted Respondent to receive "continued benefits" and if both

Decedent and Respondent passed away, Respondent Children would be secondary beneficiaries. Respondent acknowledged her signature on the documents but testified that she “just signed where they told me to” and the application was “clear as mud”. Because Decedent had explained his intentions to the representative, Respondent assumed the election properly reflected his intentions. Once Decedent retired, Respondent was not aware of the details of his retirement allowance because the payments were directly deposited into his separate bank account. Respondent did not recall Decedent ever mentioning any issues with the payment amount. It was only when she received the November 2021 letters from CalPERS after Decedent’s death that she was aware she would not receive the same monthly benefit amount as Decedent.

Respondent called a retired Santa Monica Police Sergeant with extensive experience helping CalPERS members apply for retirement benefits to testify on her behalf. The Sergeant testified that Decedent asked him for advice before completing his application. The Sergeant advised Decedent to select the option providing full benefits for Respondent (presumably Option 4) but admitted that he never explicitly told Decedent to choose Option 4. He acknowledged Decedent never told him that he believed he was receiving incorrect retirement payments.

CalPERS presented evidence and testimony from a CalPERS analyst to show that there was no mistake on Decedent’s application or CalPERS’ payment of benefits based on Decedent’s election. Over the years, Decedent received several letters from CalPERS confirming his election of Option 1, and he never contacted CalPERS indicating the election was incorrect. CalPERS members have the right to make the retirement election of their choice, and CalPERS must follow the member’s written beneficiary designation. CalPERS cannot now assume Decedent would have made a different election. Further, there is no record of a home visit by CalPERS. The CalPERS analyst testified that home visits by a CalPERS employee are extremely rare, typically only occurring in emergency situations, such as when a member is hospitalized or in imminent risk of dying. Finally, the CalPERS analyst explained that the monthly difference between the Option 1 election which Decedent made, and the Option 4 Election which Respondent claims he meant to make, would have resulted in a \$547.09 reduction each month for the duration of Decedent’s retirement.

The Proposed Decision

After considering all the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent’s appeal. The ALJ found that Respondent bears the burden of proof, and she met her burden.

The ALJ found that Respondent’s testimony that Decedent made a mistake on his application was credible. The ALJ found that Decedent’s election of Option 1 on his application was inconsistent with his 2013 estimate requests. The ALJ also found that the Respondents’ testimony that Decedent intended Respondent to be the full beneficiary for his benefits, and the Police Sergeant’s testimony regarding advice he gave to Decedent were more persuasive. Decedent named Respondent as recipient of his retired death benefit and named Respondent as his surviving spouse, which the ALJ found consistent with an intent to make Respondent his beneficiary.

The ALJ found that CalPERS relied on the application and the absence of any indication that Decedent made a mistake or inquiry about his retirement allowance before his death. The ALJ reasoned that CalPERS presented no evidence to confirm that Decedent intended to make an election inconsistent with his estimates. Finally, the ALJ found that the letters Decedent received from CalPERS confirming his election, did not provide details about the benefits payable upon his death; they confirmed he elected Option 1 with no further description.

The ALJ found that Decedent's failure to inquire about his retirement allowance before his death is 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 ALJ found that the \$547.09 higher monthly allowance Decedent received was not large enough to conclude that Decedent should have known he made a mistake.

The Proposed Decision Should be Rejected and Remanded for the Taking of Further Evidence

In reaching the Proposed Decision, the ALJ did not consider CalPERS' statutory authority provided in the Public Employees' Retirement Law (the PERL). CalPERS is created by statutes codified in the PERL which grant it certain powers. CalPERS has no authority other than those granted by the PERL. It has the authority to pay benefits to a member only when the statutes authorize it, and then only in the amount authorized. *Hudson v. Posey* (1967) 255 Cal.App.2d 89.

The ALJ did not recognize or cite the Board's authority and duties. The Board manages and controls pensions for public employees and retirees. (PERL §§ 20120-20122.) "The Board . . . is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system." (PERL § 20125). "The Board shall determine and may modify benefits for service and disability." (PERL § 20123).

Instead, the ALJ reasoned that CalPERS presented no evidence to confirm that Decedent intended to make an election inconsistent with his estimates. Such reasoning misplaces the burden on CalPERS to prove that it was Decedent's intention to elect Option 1. But the burden in this case is on Respondent.

Here, based on Decedent's election of Option 1 on his retirement application, CalPERS determined that Respondent is ineligible to collect an additional lifetime monthly beneficiary option election benefit. Respondent appealed; she is asserting the affirmative. Respondent must establish that she is entitled to receive beneficiary payments, and the standard of proof is a preponderance of the evidence. PERL section 20160 explicitly provides that Respondent has the burden of presenting evidence establishing the right to correction.

From 2015-2021 (a period of 6 ½ years), Decedent received a \$547.09 higher retirement allowance than he would have received had he elected Option 4 (totaling approx. \$42,673.02). His election remained constant throughout his life. The PERL provides that Respondent may only receive benefits derived under Decedent's Option 1 election.

PERL section 21453 provides that a change of election may only be made within 30 calendar days after the making of the first payment on account of any retirement allowance, or in the event of a change of retirement status after retirement, within 30 calendar days after making the payment on account of Decedent's retirement allowance. Here, Decedent was initially approved for service retirement on December 16, 2014. Then on September 3, 2015, Decedent was approved for disability retirement retroactive to December 16, 2014. By statute, Decedent's time to change his Option 1 election expired at the latest on October 3, 2015.

Respondent contends that CalPERS abused its discretion by failing to grant her lifetime beneficiary pension benefits, even though Decedent never modified his original election to provide her with monthly lifetime beneficiary benefits. The only way to provide lifetime beneficiary benefits to Respondent is if Decedent's benefit was reduced to fund her future benefits. Since that was never done, Respondent is ineligible.

PERL section 20160: Criteria for Correction ("The Mistake Statute")

Respondent contends that CalPERS can and should correct its alleged mistake regarding her eligibility to receive benefits as a surviving spouse pursuant to the Mistake Statute. The evidence does not support her argument because CalPERS did not make a correctable error.

Respondent and Respondent Children claim that Decedent wanted Respondent to have the highest lifetime monthly benefit allowable. There are many potential reasons or explanations why a CalPERS member might not choose to designate a surviving spouse as a lifetime beneficiary upon their death. The most common reason not to change the election is because all Optional elections result in a lower retirement benefit payable to the member while he is still alive. Here, the evidence shows that Decedent would have received \$547.09 less per month if he elected Option 4.

Asking questions of CalPERS staff, and receiving detailed information in response, even a home visit (if one occurred), is not the same as completing required forms. Changes to benefits are not accomplished as a result of conversations. CalPERS may only act upon completed, signed forms, which are notarized or witnessed by CalPERS staff in order to effect a change in benefits. That did not happen here.

PERL section 20160 allows for correction of mistakes due to misunderstanding of fact or law, inadvertence, surprise or excusable neglect. There is no excusable mistake in this case. Government Code section 20160 states, "[f]ailure 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 an 'error or omission' correctable under this section." Decedent's lack of action, over more than six years, that resulted in not completing the required election to provide a lifetime monthly option to Respondent is not a mistake CalPERS can correct under PERL section 20160.

CalPERS cannot assume Decedent's intent. What Decedent may or may not have told Respondent is irrelevant. Since Decedent predeceased Respondent and there was no valid modification to his Option 1 election filed with CalPERS, there is no on-going

lifetime beneficiary allowance, beyond the monthly survivor benefit, payable to Respondent.

Staff recommends that the Board reject the Proposed Decision, and remand it to the ALJ for consideration of additional evidence including the participant notes and the transcript from Day 1 of the hearing. The ALJ notes that CalPERS presented no participant notes from the alleged home visit on September 22, 2014, or any other conversation Decedent and/or Respondent may have had with CalPERS representatives where they received advice about Decedent's retirement options or elections. The entirety of Decedent's participant notes will be added to the evidence for the ALJ's consideration. These notes document what CalPERS representatives told Decedent and/or Respondent over the years about his retirement benefits.

For all the above reasons, staff argues that the Proposed Decision should be rejected and remanded by the Board for consideration of additional evidence.

March 19, 2025

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