ATTACHMENT D

DECISION

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Request to Change Option Selection on a Non-Member Service Retirement Application of JILL D. PAOLINI, Respondent,	)	CASE NO. 2022-0444 OAH NO. 2023020334 DECISION

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517, subdivision (c)(2)(C) which authorizes the Board to "make technical or other minor changes in the proposed decision," hereby modifies the Proposed Decision by adding "(a)" after "Government Code section 20160, subdivision" in the last sentence of paragraph 17 on page 7 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated June 21, 2023.

* * * * *

I hereby certify that on September 20, 2023, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the Administrative Law Judge's Proposed Decision is a true copy of the Decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
MARCIE FROST
CHIEF EXECUTIVE OFFICER

Dated: 9/25/2023 BY _____
KIMBERLY A. MALM
Deputy Executive Officer
Customer Services and Support

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

In the Matter of the Request to Change Option Selection on a Non-Member Service Retirement Application of:

JILL D. PAOLINI, Respondent

Agency Case No. 2022-0444

OAH No. 2023020334

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 16, 2023, by videoconference from Sacramento, California.

Noelle Lamprecht, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Daniel J. Griffin, Attorney at NewPoint Law Group, LLP, represented Jill D. Paolini (respondent), who was present.

Evidence was received. The record was held open until May 26, 2023, to enable the parties to submit written closing arguments[1]. The matter was submitted for decision on May 26, 2023.

ISSUE

Did respondent make a mistake which was the result of inadvertence, mistake, surprise or excusable neglect correctable by Government Code section 20160, which would have entitled her to the Unmodified Allowance Option for retirement benefits?

FACTUAL FINDINGS

Jurisdiction

1. By virtue of a community property settlement with her former spouse, respondent is a CalPERS member in her own right. Respondent's nonmember CalPERS account was established effective May 1, 2012.

2. On May 14, 2012, respondent submitted a Non-Member Service Retirement Application with a requested retirement date of December 15, 2011. She began receiving retirement payments on August 1, 2012.

[1] CalPERS' Closing Argument was marked as Exhibit 18 and admitted as argument. Respondent's Closing Argument was marked as Exhibit N and admitted as argument.

3. On October 30, 2020, respondent submitted an Option Election/Life Option Beneficiary Change Form, seeking to change her retirement payment option to Unmodified Allowance. After reviewing the facts and information at its disposal, CalPERS determined that no correctable mistake had been made which would allow CalPERS to change respondent's retirement payment option to the Unmodified Allowance Option. Respondent timely appealed CalPERS' decision.

4. On February 9, 2023, Kimberlee Pulido, in her official capacity as Chief of CalPERS' Retirement Benefit Services Division, signed and thereafter caused to be filed a Statement of Issues for purposes of the appeal. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

CalPERS' Evidence

5. On May 1, 2012, CalPERS notified respondent that her nonmember account had been established with one half of the contributions and service credit earned by her former spouse from July 17, 1982, through September 1, 2009, which was the date of their separation. Respondent's account was credited with 12.264 years of service credit and $125,942.57 in contributions with interest credited through May 1, 2012. CalPERS also provided respondent with a copy of CalPERS Publication 44 – A Guide to Completing Your Nonmember Service Retirement Application (PUB 44).

6. When a CalPERS member fills out an application for retirement benefits, they are required to select one retirement benefit payment option. The PUB 44 explains the difference between the various options that members may choose from. It specifically states that the Unmodified Allowance Option provides the member with the highest possible monthly allowance.

7. On May 14, 2012, respondent submitted a Non-Member Service Retirement Application (application), with a requested retirement date of December 15, 2011. When she filled out the application, respondent selected two different payment options, Option 2W and Option 4. Under either option, respondent's retirement benefits would continue to be paid to her named beneficiaries after her death. However, under either option, respondent's monthly retirement payments would be significantly less than if she chose the Unmodified Allowance Option. Respondent listed her two children as her beneficiaries and included copies of their birth certificates with the application.

8. By letter dated June 25, 2012, CalPERS notified respondent that her application for Option 2W retirement benefits had been processed and that the monthly payment amount was $2,872.52. The letter also informed respondent that upon her death, her retirement benefits would continue to be paid to the beneficiaries listed in her application. Respondent has been receiving monthly retirement benefit payments of $2,872.52 since August 2012.

9. In October 2020, respondent had a conversation with a friend named Deborah Fogel, who is a CalPERS employee. During the conversation, and while accessing respondent's CalPERS account, Ms. Fogel noticed that respondent selected two different retirement payment options in her 2012 application and informed her that the application should have been rejected. Ms. Fogel also explained that Option 2W provided retirement benefits to respondent's beneficiaries upon her death, which correspondingly reduced the amount of respondent's monthly retirement benefits.

10. At Ms. Fogel's suggestion, respondent submitted an Option Election/Life Option Beneficiary Change Form to CalPERS in October 2020. However, it was misplaced by CalPERS and left unaddressed for approximately one year. In a letter to

CalPERS dated November 16, 2021, respondent explained that when she submitted her application, she did not understand the difference between the various payment options and that she had filled out her application "blindly." She stated that she thought she would be receiving monthly payments in the amount of $3,257 by virtue of her divorce settlement and asked that her Option Election/Life Option Beneficiary Change Form be processed. She also stated that her intent had always been to maximize the monthly benefits for herself and not her beneficiaries.

11. By letter dated December 30, 2021, CalPERS notified respondent that it could not change respondent's benefit payment option because she had not requested the change within 30 days of issuance of her first retirement payment check. Respondent emailed CalPERS on January 10, 2022, asking for reconsideration of her request. In a letter dated January 14, 2022, CalPERS requested additional information of respondent, including, but not limited to, an explanation as to why she failed to contact CalPERS when she noticed that her monthly retirement benefit amount was less than expected.

12. Respondent provided the requested information in a letter dated February 18, 2022. CalPERS denied her request for reconsideration on March 7, 2022.

Respondent's Evidence

13. Respondent testified at hearing. Her former spouse is a CalPERS member by virtue of his employment with the City of Roseville. Their divorce was finalized in 2011. As part of the divorce settlement, respondent's former spouse agreed that she would receive $3,257 per month in CalPERS retirement benefits.

14. Respondent's former spouse provided her with paperwork pertaining to his CalPERS retirement benefits in 2011. Respondent reviewed the documents but did

not understand how to fill them out. She acknowledges receiving the PUB 44 but did not find it helpful. She called CalPERS multiple times in March 2012 but was unable to speak with anyone for assistance. When she submitted her application in 2012, she used her best guess as to which payment option was most beneficial to her. She assumed that if she filled out the paperwork incorrectly, CalPERS would contact her, and she would be able to explain what she intended to apply for.

15. When respondent received her first payment on August 1, 2012, it was approximately $800 less than what her former spouse had agreed to. Respondent assumed that he lied to her about the amount she would be receiving. Respondent's goal has always been to maximize benefits for herself. Her two children are financially independent and do not need to receive benefits upon her death. After speaking with Ms. Fogel, respondent realized that she should have selected the Unmodified Allowance Option.

Analysis

16. Respondent expected to receive $3,257 in monthly CalPERS retirement benefits by virtue of her divorce settlement. She acknowledges receiving the PUB 44. The PUB 44 explains the different payment options CalPERS members may select from when applying for retirement benefits. It clearly states that the Unmodified Allowance Option provides the member with the highest possible monthly payment.

17. The courts have recognized that "pension statutes are to be liberally interpreted in favor of the applicant so as to effectuate, rather than defeat, their avowed purpose of providing benefits for the employee and his family." (*Button v. Bd. of Admin.* (1981) 122 Cal.App.3d 730, 737, quoting *Campbell v. Bd. of Admin.* (1980) 103 Cal.App.3d 565, 571.) Government Code section 20160 provides CalPERS with the

authority to correct certain types of errors or omissions made by its members which are the result of inadvertence, surprise, or excusable neglect. However, Government Code section 20160, subdivision (3), provides in relevant part:

> 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 an "error or omission" correctible under this section.

18. Respondent received her first retirement benefit payment on August 1, 2012. The payment was $800 less than what she had been promised. Rather than contact CalPERS to determine the reason, respondent simply assumed that her former spouse had lied to her about what she would be receiving. She received monthly retirement benefit payments in the amount of $2,872.52 for over eight years and never contacted CalPERS to ask why the amount was less than expected. Respondent is entitled to receive the monthly retirement benefit payments for the remainder of her life. A reasonable person would undoubtedly inquire as to why they were receiving nearly $10,000 less per year than expected.

19. When all the evidence is considered, respondent failed to establish that she made the inquiry that would be made of a reasonable person in like or similar circumstances. Therefore, she failed to establish that she made a mistake that may be corrected by Government Code section 20160, and her appeal must be denied.

LEGAL CONCLUSIONS

1. Respondent has the burden of proving by a preponderance of the evidence that her Option Election/Life Option Beneficiary Change Form should be

accepted pursuant to Government Code section 20160. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"]; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) A 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.)

2. Government Code section 20160, subdivision (a), provides that:

> Subject to subdivisions (c) and (d) the board may, in its discretion and upon 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, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

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 an "error or omission" correctable under this section.

3. Based on the Factual Findings and Legal Conclusions as a whole, respondent failed to establish she made a mistake that may be corrected by Government Code section 20160. Thus, her appeal is denied.

ORDER

The appeal of respondent Jill D. Paolini is DENIED.

DATE: June 21, 2023

Matthew Block

MATTHEW S. BLOCK
Administrative Law Judge
Office of Administrative Hearings

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On September 25, 2023, I served the foregoing document described as:

DECISION - In the Matter of the Request to Change Option Selection on a Non-Member Service Retirement Application of JILL D. PAOLINI, Respondent. Case No. 2022-0444; OAH No. 2023020334.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and/or e-filed as follows:

Stephan M. Brown
New Point Law Group, LLP
2408 Professional Dr.
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ATTORNEY FOR JILL PAOLINI

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MEMBER

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COURT

(Via OAH Secure e-File)

[XX] BY CERTIFIED AND FIRST CLASS MAIL -- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

[XX] BY ELECTRONIC FILING: I caused such documents to be e-Filed via OAH SECURE e-FILE.

Executed on September 25, 2023, at Sacramento, California.\

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Deb Jo Wooten	Deb Jo Wooten
NAME	SIGNATURE