

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Esteban E. Ramirez (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated July 17, 2023. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

Respondent appealed CalPERS' determination to deny his request to receive a lifetime monthly allowance due to the death of Michael Garcia (Decedent).

Decedent became a school miscellaneous member of CalPERS through his employment with Sonoma County Schools beginning on March 27, 1996. On November 25, 2019, Decedent submitted a Service Retirement Election Application and elected the *Flexible Beneficiary Option 4 – Specific Percentage* (Option 4) naming his two sisters Katherine and Rebecca as lifetime beneficiaries, each to receive 25% of the monthly retirement option payable upon his death. Decedent specified on his retirement application that he was not legally married and had never been married or registered in a domestic partnership. Decedent retired for service effective December 31, 2019.

On September 17, 2020, Decedent notified CalPERS that his named beneficiary, Katherine, died on March 17, 2020. He requested assistance to adjust his beneficiary designation. On September 21, 2020, Decedent contacted CalPERS requesting a Modification of Lifetime Option Beneficiary benefit adjustment to convey Katherine's 25% benefit share to the remaining surviving beneficiary, Rebecca, so that she would receive 50% of the Option 4 allowance upon his death. That same day, CalPERS mailed the publication *Changing Your Beneficiary or Monthly Benefit After Retirement* (PUB 98)¹ to Decedent as requested.

PUB 98 informed Decedent that to name a new beneficiary for a lifetime option benefit, he must complete and submit an *Application to Modify Option and/or Life Option Beneficiary* (MOLOB) form, and identified the necessary documents to submit. Decedent was advised that after CalPERS received the MOLOB application, it would send him a *Modification of Original Election at Retirement* form with recalculated retirement option choices. Decedent would then need to return the *Modification of Original Election at Retirement* form by a stated deadline or CalPERS would cancel the request.

On November 24, 2020, CalPERS received Decedent's *Modification of Option and/or Life Option Beneficiary Estimate Request* form in which Decedent requested that Rebecca remain 25% life option beneficiary; that Katherine be removed as a life option beneficiary due to her death; and that Respondent be added as a 50% life option beneficiary.

¹ PUB 98 provides a substantial amount of information regarding the process of naming a new beneficiary for a lifetime option and the forms needed to apply for such a change are enclosed with it.

By letter dated March 1, 2021, CalPERS mailed Decedent a MOLOB estimate packet, which included a *Modification of Original Election at Retirement Estimate* for the requested effective date of April 1, 2021, a retirement options and descriptions chart, and a *Modification of Original Election at Retirement* form.

The March 1, 2021 estimate packet states in relevant part:

Making Your Election

If you would like to proceed with changing your original retirement choice to name a new beneficiary, complete and return the enclosed *Modification of Original Election at Retirement* form by 04/30/2021. If we do not receive your completed form by the due date, we will assume you have decided not to elect to change your original retirement benefit and close your request.

You must complete all sections of the form. Your signature and spouse's or domestic partner's signature must be notarized by a Notary Public or witnessed by a California Public Employees' Retirement System (CalPERS) representative at any CalPERS office.

Decedent never returned the completed *Modification of Original Election at Retirement* form to CalPERS. By letter dated April 30, 2021, CalPERS notified Decedent that his request to modify his current retirement option was canceled.

On May 27, 2021, Decedent informed CalPERS that he did not fill out the MOLOB paperwork correctly, and he inquired whether the MOLOB application could be completed online. That same day, a CalPERS representative informed Decedent that another PUB 98 and MOLOB application had been mailed to his home address, and that life option beneficiary changes cannot be completed online due to the Option 4 retirement option, which requires a special actuarial calculation. Decedent never submitted a new MOLOB application.

Decedent died on August 6, 2021, and Respondent notified CalPERS of his death on August 24, 2021. On October 6, 2021, CalPERS received Respondent's completed *Application for Retired Member/Payee Survivor Benefits* and *Tax Withholding Election* form. Respondent listed his "Relationship to Deceased" as Personal Representative.

On March 8, 2022, CalPERS sent Respondent a letter to notify him that he was not a beneficiary. On April 1, 2022, Respondent sent a letter to CalPERS asking why it determined that he was not Decedent's beneficiary. Included with his letter, Respondent submitted several documents to CalPERS, including a *Modification of Original Election at Retirement* form bearing Decedent's signature and dated April 4, 2021.

On April 7, 2022, CalPERS sent a letter to Respondent to inform him that he was not entitled to a lifetime monthly benefit because Decedent did not return a valid notarized election to name Respondent as a lifetime beneficiary. Although CalPERS mailed a new MOLOB application to Decedent on May 27, 2021, it was never completed or returned to CalPERS before his death.

On December 6, 2022, CalPERS sent a determination letter to Respondent to notify him that he is not eligible to receive a monthly lifetime benefit because Decedent did not submit a valid notarized MOLOB application by the due date of April 30, 2021. Respondent was advised of his administrative appeal rights.

On December 30, 2022, Respondent appealed and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was completed on June 15, 2023. Respondent was represented by counsel during the hearing.

Respondent testified at hearing that he and Decedent were in a committed relationship for 37 years. They lived together and shared expenses. They never married or registered as domestic partners because of their fear of homophobia, and because they preferred to keep their relationship private. In 2019, Decedent developed cancer. Respondent cared for him as his health declined. On December 11, 2020, Decedent appointed Respondent with power of attorney and authorized him to manage his financial and legal affairs.

Despite Decedent's health and Respondent's power of attorney over Decedent's affairs, Respondent did not assist Decedent with completing CalPERS paperwork. Respondent knew Decedent corresponded with CalPERS about modifying his beneficiaries after his sister's death, but Decedent "didn't really share the full picture." Respondent saw some of the paperwork and assumed Decedent completed and submitted it appropriately. Respondent did not know CalPERS required the form to be notarized and he does not believe Decedent knew either.

Respondent testified that near the end of Decedent's life, Decedent had a change of heart about publicly acknowledging his relationship with Respondent. He changed his will and named Respondent as the sole beneficiary, which Respondent argued is consistent with naming Respondent as a beneficiary in Decedent's MOLOB Application. Respondent reasoned that Decedent's changes to his will should serve as a guide to CalPERS when determining the identity of retirement beneficiaries.

Respondent also called Charles Prickett to testify on his behalf. Mr. Prickett was Decedent's lawyer for many years. He prepared Decedent's original will in March 2011 and his amended will in December 2020. Mr. Prickett did not assist Decedent with his CalPERS paperwork.

CalPERS presented documentary evidence and testimony from Tara Hench, an Associate Governmental Program Analyst in the Retirement Benefits Services Division (RBSD). At hearing, Ms. Hench testified that CalPERS denied Respondent's application

for survivor benefits because it never received Decedent's MOLOB election form. She acknowledged that Respondent submitted the form to CalPERS after Decedent's death, but she noted it was not notarized. CalPERS insists that such forms either be notarized or signed in front of a CalPERS employee because it wants to be certain that the member truly completed the form. She also confirmed that CalPERS' Customer Touch Point Report for Decedent was accurate and did not reflect that he submitted a *Modification of Original Election at Retirement* form before his death.

After considering all of the evidence introduced, which included the testimony of Mr. Prickett, as well as arguments made by the parties, the ALJ denied Respondent's appeal. Relief from an error or omission is available only if it was the result of mistake, inadvertence, surprise, or excusable neglect. (Gov. Code, § 20160, subd. (a)(2).) The ALJ found that Respondent did not show that Decedent's actions were the result of mistake, inadvertence, surprise, or excusable neglect, as opposed to an intentional decision. Ultimately, the ALJ found Decedent's true intentions regarding his CalPERS beneficiaries remained unknown, and CalPERS is not required to speculate about what a member would have wanted. Decedent did not submit the required paperwork to change his beneficiary, and Respondent did not prove Decedent's failure to do so was an error or omission resulting from mistake, inadvertence, surprise, or excusable neglect. Therefore, the ALJ found that Respondent's appeal must be denied.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The arguments brought forth in the Petition for Reconsideration were already considered by the ALJ at hearing. Respondent's Argument (which is attached to his Petition for Reconsideration), was already considered by the Board at its September 2023 meeting. The Proposed Decision, adopted by the Board at the September 20, 2023 meeting, was well reasoned and based on the credible evidence presented at hearing.

For all the above reasons, staff argues that the Petition for Reconsideration should be denied by the Board.

November 15, 2023

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