

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Jill Paolini (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision, dated June 21, 2023. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

As a result of a community property settlement with her former spouse, Respondent holds a CalPERS nonmember account. On May 1, 2012, her account was established and credited with 12.264 years of service credit and \$125,942.57 in contributions, with interest. Also on May 1, 2012, CalPERS provided Respondent with a copy of CalPERS Publication 44 – *A Guide to Completing Your Nonmember Service Retirement Application* (PUB 44). PUB 44 explains the difference between various options that members may choose from. It specifically states that the Unmodified Option provides the member with the highest possible monthly allowance.

On May 14, 2012, Respondent submitted a Non-Member Service Retirement Application (Application) with a requested retirement date of December 15, 2011. Respondent began receiving payments on August 1, 2012. Respondent selected two different payment options, Option 2W and Option 4. Under either Option, Respondent's retirement benefits are calculated at a lower amount, in return for lifetime payments to named beneficiaries after her death.

On June 25, 2012, CalPERS notified Respondent that her application for Option 2W retirement benefits had been processed and that her monthly payment amount would be \$2,872.52 per month.

In October 2020, CalPERS' staff informed Respondent that since she had selected two different retirement options, her 2012 application should have been rejected. Staff 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.

On October 30, 2020, Respondent submitted an Option Election/Life Option Beneficiary Change Form, seeking to change her retirement payment option to Unmodified.

On November 5, 2021, Respondent wrote CalPERS to explain that when she submitted her application, she did not understand the difference between the various payment Options and so had filled out her application "blindly." Respondent also informed CalPERS that she anticipated receiving monthly payments in the amount of \$3,257 per month 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.

On December 30, 2021, CalPERS notified Respondent that it could not change her benefit payment option because she had not requested this change within 30 days of the issuance of her first retirement payment check.

On January 10, 2022, Respondent asked CalPERS for reconsideration of her request to change her benefit payment option. On January 14, 2022, CalPERS requested additional information, including an explanation as to why she failed to contact CalPERS when she noticed that her monthly retirement benefit amount was less than expected. On February 18, 2022, Respondent provided the requested information to CalPERS. On March 7, 2022, CalPERS denied Respondent's request for reconsideration, and provided her with appeal rights.

Respondent appealed this 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 May 16, 2023. Respondent was present and was represented by counsel at the hearing.

Respondent testified on her own behalf. Respondent testified that her former spouse is a CalPERS member. Her 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. She acknowledged that she received a copy of PUB 44 but did not find it helpful and did not understand how to fill out the application. Respondent called CalPERS multiple times in March 2012, but she was not able to get assistance, so she used her "best guess" when she submitted her application in 2012. She hoped that if she filled out the paperwork incorrectly, CalPERS would contact her.

Respondent testified that when she received her first payment on August 1, 2012, it was approximately \$800 less than what her former spouse had agreed to. Respondent assumed that her spouse had lied about the sum that she would receive. Respondent also testified that her 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. It was not until after speaking with CalPERS' staff that Respondent realized she should have selected the Unmodified Allowance Option.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to establish that she made a correctible mistake. Respondent acknowledged that she received PUB 44 which explains the different payment options CalPERS members may select from when applying for retirement benefits, and that PUB 44 clearly states the Unmodified Allowance Option provides the member with the highest possible monthly payment. Respondent expected to receive \$3,257 per month by virtue of her divorce settlement; however, she received \$2,800 per month. She received the lower allowance for over eight years and never contacted CalPERS to inquire about the discrepancy. The ALJ found that Respondent failed to establish that she made the inquiry that would be made by a reasonable person in like or similar circumstances. A reasonable person would

undoubtedly inquire as to why they were receiving nearly \$10,000 less per year than expected. Rather than contact CalPERS to determine the reason for receiving a lower amount than she expected, Respondent assumed that her former spouse had lied to her about what she would be receiving.

In the Proposed Decision, the ALJ concluded that Respondent had the burden of proof and failed to establish by a preponderance of the evidence that she made a correctible mistake.

No new evidence has been presented by Respondent's Petition for Reconsideration that would alter the analysis of the ALJ. The Proposed Decision that was 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

ELIZABETH YELLAND
Assistant Chief Counsel, Litigation