

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

This appeal concerns member Mary Cook's request to change from an Option 4 retirement allowance to an Unmodified Allowance following the death of her adult son, a named beneficiary.

CalPERS received Ms. Cook's Service Retirement Election Application on June 7, 2004. At the time of retirement, she elected an Option 4 allowance in order to provide a lifetime monthly benefit to each of her two adult sons, Christopher and Michael Cook, at her death.

Unfortunately, Ms. Cook's son Michael predeceased her. By letter dated August 20, 2006, member asked CalPERS to remove him as an Option 4 beneficiary. She then filed an Application to Modify Option and/or Life Option Beneficiary, listing Christopher as her only beneficiary.

The controversy leading to this appeal began when CalPERS informed Ms. Cook that the change of her option would result in new cost to her, in the form of a reduction in her current monthly allowance. At that point, she decided that she would prefer to change her election from Option 4 with two beneficiaries to an unmodified allowance retroactive to her 2004 retirement date.

CalPERS Benefit Services Division wrote to Ms. Cook on April 16, 2008, to explain that she was ineligible to change the option chosen at retirement (without cost) once her retirement began, unless there was a mistake "due to excusable inadvertence, oversight or mistake of fact or law" as defined under Government Code section 20160. Because her intent at retirement was to provide each of her sons a lifetime monthly allowance upon her death, and the Option 4 multiple beneficiary option was the only option providing that benefit, there was no mistake. In addition, because the Option 4 allowance does not have a provision that provides for an increase to an Unmodified Allowance, this could not be done for her retroactively. She was given appeal rights and she filed this appeal.

The hearing on Ms. Cook's appeal was initially set on July 30, 2012. Ms. Cook was contacted by phone during the hearing and requested a continuance. The matter was continued, with CalPERS' agreement, to October 1, 2012.

Ms. Cook did not appear on the new hearing date. However, the hearing proceeded in her absence, as a default hearing, pursuant to Government Code section 11520(a).

CalPERS presented evidence concerning the retirement allowance option selected by Ms. Cook at retirement and presented testimony by a CalPERS staff member who had written and spoken with Ms. Cook to explain her benefits.

The Administrative Law Judge (ALJ) concluded that there was no competent evidence presented showing that a mistake under section 20160 had occurred. The ALJ

concluded that Ms. Cook's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

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