

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Felida Icabalceta (Decedent) was employed by California Department of General Services. Respondent Rosario J. Lopez is Decedent's niece. Respondent Doris Estrada is Decedent's sister.

Decedent executed a Service Retirement Election Application on February 10, 2006, naming Respondent Rosario Lopez as the beneficiary of any Balance of Contributions and Retired Death Benefit available upon her death. Decedent retired for service on April 30, 2006.

Decedent was hospitalized on June 19, 2012, for terminal cancer. While hospitalized, Decedent was under the care of Alison Cooke, M.D.

On June 25, 2012, CalPERS received a Post Retirement Lump Sum Beneficiary Designation, signed by Decedent on June, 21, 2012, changing her designated beneficiary from Rosario Lopez to Doris Estrada.

On June 26, 2013, Decedent was transferred from the hospital to hospice and died on July 1, 2012.

The issue in this case is whether CalPERS correctly determined that Respondent Rosario Lopez is not an eligible beneficiary to receive the retirement death benefits on account of the Decedent.

### Claim to Benefits and CalPERS Determination:

Shortly after Decedent's death, CalPERS received applications from both Respondents, each claiming a right to Decedent's retirement death benefits.

Government Code section 21490(a) provides that ". . . a member may at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board."

Upon CalPERS' request, Dr. Cooke submitted a statement to CalPERS, certifying Decedent was capable of independent financial and medical decision-making during her hospitalization.

CalPERS determined that Decedent was entitled to change the designated beneficiary and did so while she was mentally competent. CalPERS based its decision on Dr. Cooke's statement and other medical records related to Decedent's hospitalization. CalPERS informed Respondents that the change of beneficiary form was valid and Respondent Doris Estrada was entitled to the lump sum death benefits. The lump sum death benefits included the Option 1 Balance of approximately \$12,970.00, the prorated

monthly retirement allowance of approximately \$50.00, and a \$2,000.00 lump sum Retired Death benefit. Respondent Rosario Lopez appealed CalPERS' determination and the matter was set for hearing.

Proceedings at Hearing:

At hearing, both Respondents were self-represented and were provided a Spanish-speaking interpreter. Prior to the hearing, CalPERS counsel notified both Respondents that although CalPERS determination is in favor of Respondent Doris Estrada, CalPERS counsel does not represent them. CalPERS counsel further clarified that if Respondents wish to present any documents, they should do so on their own, as CalPERS counsel will only present documents that CalPERS deems relevant.

Respondent Rosario Lopez testified that Decedent desired to leave all the benefits to Rosario Lopez and Decedent appeared to be mentally incompetent at the time she signed the form changing the beneficiary. Respondent Rosario Lopez called her son, daughter, and a friend as witnesses to further support her arguments.

Respondent Doris Estrada testified that she was present during Decedent's hospitalization and Decedent appeared to be mentally competent at the time Decedent signed the form changing the beneficiary. Respondent Doris Estrada called her daughter as a witness to testify regarding her observations of Decedent's mental state.

Both Respondents also presented documents to further support their arguments. CalPERS presented a statement of Dr. Cooke and additional medical records to demonstrate Decedent was mentally competent at the time she executed the change of beneficiary designation form.

The Administrative Law Judge (ALJ) agreed with CalPERS determination, and ruled that Respondent Rosario Lopez failed to meet her burden of proof. The ALJ reasoned that medical evidence, particularly Dr. Cooke's statement, demonstrated that Decedent was competent when she signed the form changing the beneficiary.

The ALJ concluded that Respondent'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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 20, 2014



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PREET KAUR  
Staff Attorney