

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Angelina Bell (Decedent) was employed by the Public Transportation Services Corporation as a Real Estate and Development Officer. Respondent Solomon Orona (Respondent Orona) is Decedent's spouse. Respondent Dana Bell (Respondent Bell) is Decedent's natural born child from a prior marriage. Decedent also has another child from her prior marriage, Dennis Bell. Dennis, however, is not a party to this appeal.

Decedent married Respondent Orona on September 4, 1992. On September 25, 1992, Decedent filed a Beneficiary Designation (PERS-BSD-241) form with CalPERS designating Respondent Orona and Respondent Bell the primary beneficiaries of her death benefits. The form was signed by Respondent Orona. Decedent died on November 3, 2011. At the time of her death, Decedent was married to Respondent Orona, actively employed, and had not filed any documents with CalPERS changing her beneficiary designation. As a result of her death, pre-retirement lump sum basic death benefits, in the amount of \$315,665.50, became payable to Decedent's beneficiaries.

Based on the 1992 beneficiary designation, CalPERS determined that Respondent Bell and Respondent Orona were entitled to an equal share of the death benefits under Government Code section 21490. Government Code section 21490 provides that a member may designate a beneficiary at any time by a writing filed with the Board, provided the designation does not derogate the spouse's community property (CP) share. The designation provided Respondent Orona a 50% share of the benefits. CalPERS determined his CP share, which is 40.629% of the entire death benefits, was not derogated. CalPERS determined Respondent Orona was entitled to a one-time lump sum payment, in the amount of \$183,935.94, or the 1957 survivor benefit. The 1957 survivor benefit is a monthly payment that only the spouse or minor children are entitled to elect.

Respondent Orona disagreed with CalPERS' determination, claiming he is entitled to the entire amount. Respondent Orona submitted additional evidence to support his contention. He submitted a declaration claiming Decedent informed him, and others, that Respondent Orona will receive all of the CalPERS benefits. He also submitted a trust and an amendment to the trust, which named him the sole beneficiary of the trust property. Respondent Orona further claimed that he signed the Los Angeles County Metropolitan Transportation Authority Beneficiary Designation (MTA) form, which gave 30% of the share to Respondent Bell and 30% of the share to Dennis Bell and only a 40% share to Respondent Orona, in exchange for receiving the entire amount from the CalPERS death benefits.

The issue in this case is whether CalPERS correctly considered the 1992 beneficiary designation as a valid writing filed with the Board.

The matter was heard before an Administrative Law Judge (ALJ) on June 5, 2014. Respondent Orona and Respondent Bell were both represented by counsel.

A CalPERS Retirement Program Specialist II testified regarding the case review process and the basis for CalPERS' determination. All parties submitted opening briefs, outlining their legal arguments. Respondent Bell also testified at the hearing.

Respondent Orona testified that Decedent numerously stated Respondent Orona will receive all of Decedent's CalPERS benefits. Respondent Orona also presented two other witnesses, Decedent's brother and a friend, who testified that Decedent informed them that Respondent Orona was to receive Decedent's CalPERS benefits.

Respondent Orona also argued 1) the trust instruments revoked the 1992 designation as Decedent named Respondent Orona the sole beneficiary of the trust property; 2) Government Code section 21546 and relevant case law entitles the surviving spouse to preferential beneficiary status, requiring the spouse receive all death benefits; and 3) he acted in reliance on Decedent's promise to name him the sole beneficiary of her CalPERS benefits in return for signing the MTA designation form.

The Administrative Law Judge (ALJ) disagreed and upheld CalPERS determination. The ALJ held the trust instruments did not change or revoke the 1992 beneficiary designation because the CalPERS benefits were not identified as trust property and were never transferred to the trust by Decedent. Although Decedent may have proclaimed she wanted Respondent Orona to receive the CalPERS benefits, she did not take affirmative steps to effectuate her intent.

The ALJ also found Respondent Orona was not entitled to preferential beneficiary status as the case law providing for such an entitlement was overturned. In 2001, the Legislature amended Government Code section 21546, allowing married members who are retirement-eligible but employed, to designate their CP share of the death benefits to a non-spouse beneficiary. The ALJ also rejected Respondent Orona's promissory estoppel argument, finding the evidence failed to establish Decedent promised to name Respondent Orona the sole beneficiary of her CalPERS benefits, although she may have made erroneous statements that he will receive all of her CalPERS benefits. The ALJ also found no evidence of detrimental reliance by Respondent Orona.

The Proposed Decision is supported by law and the facts. Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondent Orona may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

August 20, 2014



PREET KAUR
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