

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

John Cosulich was employed by the Los Angeles County Sanitation Districts (District) for approximately 30 years as a Supervising Engineer. The District is a local public agency that contracts with CalPERS to provide retirement benefits for the District's employees. By virtue of his employment, Cosulich was a local miscellaneous member of CalPERS.

On February 18, 2010, Cosulich submitted his Service Retirement Application at the CalPERS Orange Regional Office. Cosulich selected the Unmodified Allowance Option as his service retirement benefit. Cosulich received his first warrant on March 3, 2010. Cosulich died on May 5, 2012.

In September 2012, Respondent Lori Creasey (Respondent Creasey) submitted a claim to CalPERS, stating that Cosulich had made a mistake in selecting the Unmodified Allowance Option and that Cosulich had intended to select the Option 3 Allowance, naming Respondent Creasey as a beneficiary. Respondent Creasey requested that CalPERS correct the alleged mistake and begin making payments to her. Staff reviewed the file pertaining to Cosulich's service retirement, including the signed Service Retirement Application and other documents. By letter dated February 13, 2013, CalPERS advised Respondent Creasey that there was no evidence to support a claim that Cosulich had made a mistake regarding his selection of the Unmodified Allowance Option and informed Respondent Creasey of her right to appeal this determination. Respondent Creasey appealed CalPERS' determination and a hearing was held on October 2, 2014.

Government Code section 20160 governs requests by CalPERS members or beneficiaries to correct a claimed error. It provides, in relevant part, as follows:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or of any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking the correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute 'error or omission' correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

Prior to the hearing, CalPERS explained the hearing process to Respondent Creasey and the need to support her case with witnesses and documents and provided Respondent Creasey with a copy of the administrative hearing process handbook. CalPERS answered her questions and clarified how to obtain further information on the process. Respondent Creasey is an attorney, licensed to practice law in the State of California.

In addition, at the hearing, Respondent Creasey testified that Cosulich had told her that he wanted to provide for her and intended to designate her as a beneficiary regarding his CalPERS pension. Respondent Creasey acknowledged that Cosulich was an alcoholic during the entire time that she knew him. However, she also admitted that Cosulich was an intelligent individual, was quite competent, that he researched his retirement options beginning two years before he retired, and that he secured over 20 estimates regarding his service retirement options. Respondent Creasey acknowledged that on February 18, 2010, Cosulich went to the CalPERS Orange Regional Office by himself and that he took with him a completed and signed (signature notarized) Service Retirement Application. Later that day, Cosulich supposedly told Respondent Creasey that when he went to the Orange Regional Office, the staff person that assisted him convinced him to not designate Respondent Creasey as a beneficiary, not select an Option 3 Allowance, select the Unmodified Allowance, and purchase life insurance, naming Respondent Creasey as a beneficiary on the policy.

There is no documentation to support Respondent Creasey's claim that Cosulich made a mistake in selecting the Unmodified Allowance Option. Rather, the available documentation, as more fully discussed below, directly contradicts Respondent Creasey's claim. Not surprisingly, the Administrative Law Judge (ALJ) concluded, "There is no credible evidence to support Respondent's version of events."

At the hearing, Respondent Creasey described additional communications that purportedly took place on February 18, 2010, between Cosulich, Respondent Creasey and CalPERS. The ALJ's summary – and response – to this testimony is as follows:

According to Respondent, Cosulich became very upset and wanted to change his retirement election so that Respondent could be his beneficiary. Cosulich called CalPERS and allegedly discussed changing his beneficiary. Respondent claimed that she also spoke to the CalPERS representative

that evening, and that the representative assured her that the change had taken place; that is, Respondent had become his beneficiary. This explanation is not credible. First, the evidence clearly demonstrated that in order to change a beneficiary designation, CalPERS required the member to submit the request in writing. It has never been procedure to allow such a change over the phone. Second, according to the CTP notes, the CalPERS representative discussed the procedure for disbursing money to his daughter in the event of his death. There was no mention of any discussion of option election changes or beneficiary designation changes in the CTP notes.... Respondent is a licensed attorney and knew or should have known that a change of beneficiary or option election must occur in writing. There is no credible evidence to support Respondent's version of events. (Factual Findings, #8; emphasis added.)

Against Respondent Creasey's unsupported testimony, the ALJ considered the testimony of a Retirement Program Specialist II (RPS II) with over 23 years' experience serving and counseling CalPERS members regarding their service retirement options. The RPS II witness was the CalPERS staff person who met with Cosulich at the CalPERS Orange Regional Office on February 18, 2010. The RPS II witness described the Customer Touch Point (CTP) Notes, where entries are made by staff into a database, recording the important or significant aspects of their conversations, whether face-to-face or telephonically, with an individual member, or on occasion, an authorized representative of the member. The RPS II witness authenticated the CTP Notes entry that she made on February 18, 2010, regarding her meeting with Cosulich at the Orange Regional Office. The CTP Notes showed that Cosulich came into the Orange Regional Office with a completed and signed Service Retirement Application, electing the Unmodified Allowance Option, which did not provide any continuing benefits to any beneficiary upon his death. The CTP Notes show that the RPS II witness explained to Cosulich that it was possible for him to change his retirement option but, that in order to do so, he had to submit a new or different Service Retirement Application and that he had to do so before he received his first retirement warrant, which was estimated to be in April 2010. Most importantly, the RPS II witness stated that she has never in her 23 years of service, with an estimated 23,000 interactions with individual CalPERS members, advised an individual to purchase life insurance. The RPS II witness explained that CalPERS does not provide life insurance and that she does not give advice regarding life insurance.

As previously noted, the ALJ considered the documentary evidence of another CTP Note from February 18, 2010, pertaining to the telephone conversation between Cosulich, Respondent Creasey, and staff. The ALJ found that the CTP Note contradicted Respondent Creasey's testimony, and the ALJ was forced to conclude that Respondent Creasey's "explanation is not credible."

Additionally, the ALJ considered testimony from a Staff Services Manager (SSM) witness, working in the Death Benefits Unit. The SSM witness confirmed that in February 2010, after his submission of the completed and signed Service Retirement

Application, Cosulich received a letter from CalPERS confirming his election of the Unmodified Allowance Option. That letter contained a statement again informing Cosulich that it was possible for him to change his retirement option, but he had to do so before he received his first retirement warrant. Included with this letter was a CalPERS publication entitled "Changing Your Beneficiary or Monthly Benefit After Retirement."

The ALJ also rejected evidence offered by Respondent Creasey to show Cosulich's purported state of mind, finding instead that:

- "Cosulich's decision to purchase retirement service credit [5 years before retirement] does not show that he intended to make Respondent his beneficiary." (Factual Finding #10.)
- "Respondent acknowledged that Cosulich was sober and thinking clearly immediately before he chose his retirement election option. Moreover, the evidence did not establish that Cosulich lacked the mental capacity to correct any alleged errors or mistakes that may have occurred." (Factual Finding #11.)

After considering all of the evidence and testimony, the ALJ concluded that Respondent Creasey had failed to meet her burden of proof. "The credible evidence showed that Cosulich made no mistake in selecting is retirement election option." (Legal Conclusion #4.)

The ALJ concluded that Respondent Creasey's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board should 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. Respondent Creasey may file a Writ Petition in Superior Court seeking to overturn the decision of the Board.

December 17, 2014



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