

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Ronald B. Hughes (decedent) was a state miscellaneous member of CalPERS through his employment with the Department of Developmental Services and Department of Corrections. Decedent service retired on November 2, 2013.

Decedent was survived by two children, respondents Samantha C. Hendrix (Respondent Hendrix) and Anne M. Hughes (Respondent Hughes; collectively Respondents Hendrix/Hughes); a fiancée, respondent Teresa Vandongen (Respondent Teresa) and her two stepchildren, respondents Kristin J. Vandongen and John A. Vandongen (collectively the Vandongens).

In his Service Retirement Application dated August 30, 2013, decedent had elected an Option 4 Multiple Lifetime Beneficiaries allowance and designated Respondents Hendrix/Hughes and the Vandongens as his beneficiaries. In addition, he designated respondent Teresa as the Retired Death Benefit recipient. The one-time Death Benefit Retirement payment of \$2,000 was paid to Respondent Hughes as the designated beneficiary.

On or about January 14, 2014, CalPERS received an Option Election/Life Option Beneficiary Change Form dated January 8, 2014, which listed Respondents Hendrix/Hughes, and Respondent Teresa as multiple lifetime beneficiaries. Although ostensibly signed by decedent, the Option Election/Life Option Beneficiary Change Form was neither notarized by a Notary Public nor was it witnessed by a CalPERS representative. On January 17, 2014, CalPERS rejected the Option Election/Life Option Beneficiary Change Form due to lack of notary and a CalPERS representative's signature. Decedent died the same day, at the age of 50. Respondents Hughes/Hendrix timely appealed CalPERS' determination disallowing the changed beneficiary designation.

Prior to the hearing, CalPERS explained the hearing process to Respondents and the need to support their case with witnesses and documents. CalPERS provided Respondents with a copy of the administrative hearing process pamphlet. CalPERS answered Respondents' questions and clarified how to obtain further information on the process.

A hearing was held on September 2, 2015, before an Administrative Law Judge (ALJ). Neither Respondents Hughes/Hendrix nor the Vandongens were represented by counsel. The issues before the ALJ were whether CalPERS should excuse the absence of a notarized or witnessed signature and after commencement of benefits to the decedent, due to an excusable mistake (pursuant to Gov. Code, §20160), and whether Respondents Hughes/Hendrix had standing to appeal.

Section 21490 also provides that with certain exceptions a member may at any time, including, but not limited to, 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. Section 21492 provides that a beneficiary designation is irrevocable from the time of the first payment on account of any retirement allowance.

CalPERS conducted a thorough review of decedent's entire file, system notes, and the information submitted by family members, and found no evidence of an excusable "mistake" as defined in the law. CalPERS also determined that the Option Election/Life Option Beneficiary Change Form is invalid and an unacceptable beneficiary designation by a member as it was neither notarized nor witnessed by a CalPERS representative.

Based on evidence, both documentary and testamentary, the ALJ found that Respondents Hughes/Hendrix did not have standing to proceed with an appeal in this matter because they did not represent the estate of the deceased and did not contest the correctness of their specific distribution of benefits. However, notwithstanding the issue of standing, the ALJ further found that CalPERS had repeatedly advised the decedent regarding the need to timely act if he wished to modify his beneficiary designation. Furthermore, there was no evidence presented that supported a finding that the decedent was unable to handle his own personal affairs prior to his demise. Therefore, there was no basis for applying the mistake statute to correct any alleged error.

The ALJ concluded that Respondents Hendrix/Hughes's appeals 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 correctly applies the law and the salient facts of the case, the risks of adopting the Proposed Decision are minimal. The Respondents may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 18, 2015



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