

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

James L. Davey was employed by the City of Vacaville as a Wastewater Plant Operator II and classified as a miscellaneous member of CalPERS pursuant to Government Code section 20383. He retired for service on December 31, 1995. Mr. Davey's first and second spouses died in 1998 and 2005, respectively. Respondent Denise Hunt-Bangoli (respondent Hunt-Bangoli) was Mr. Davey's third spouse; they were married on January 23, 2009.

On May 15, 2012, Mr. Davey submitted an Application to Modify Option and/or Life Option Beneficiary ("Application") to add respondent Hunt-Bangoli as a beneficiary to receive a monthly pension in the event of Mr. Davey's death. Because the Application was submitted more than twelve months after the qualifying event, that is, Mr. Davey's January 23, 2009, marriage to respondent Hunt-Bengali, the Application could not become effective under Government Code section 21462(c) until 12 months after the date it was filed with CalPERS. On April 29, 2013, Mr. Davey passed away.

CalPERS determined that respondent Hunt-Bangoli was not entitled to the Option 2 allowance because under the provisions of Subdivision (c) of section 21462 of the Government Code, an election to change an optional settlement or beneficiary, if not filed within 12 months of a qualifying event, does not become effective until 12 months after the date the election is filed with CalPERS, provided neither the member nor the beneficiary dies prior to the effective date. Here, CalPERS determined that the earliest possible effective date of Mr. Davey's election for recalculation of options was June 1, 2013. However, the Application, submitted on May 12, 2012, did not become effective due to Mr. Davey's death on April 29, 2013, which was prior to the June 1, 2013 effective date.

Mr. Davey previously went through a similar experience with his second wife, Sharon Davey. In 2003, Mr. Davey sought to modify his Life Option Beneficiary to provide for Sharon as a beneficiary in the event he predeceased her. However, Mr. Davey made that election more than twelve months after the qualifying event, his marriage with Sharon. Therefore, Mr. Davey was informed by CalPERS in 2003 that his election would be subject to a mandatory twelve month deferral period.

In September and December 2011, Mr. Davey contacted CalPERS to arrange for respondent Hunt-Bengoli's addition to his CalPERS benefits. At this time, Mr. Davey did not tell CalPERS that his former Life Option Beneficiary, Sharon, had passed away. Furthermore, Mr. Davey did not inform CalPERS that he wanted respondent Hunt-Bengoli to be named as a beneficiary. The first time Mr. Davey indicated any desire to add respondent Hunt-Bengoli as a Life Option Beneficiary was May 15, 2012, when Mr. Davey submitted the Application to CalPERS.

CalPERS may correct a member's error, if that error results from the member's "mistake, inadvertence, surprise or excusable neglect." (Gov. Code §20160(a)).

CalPERS may not correct a member's error, however, if the error is the member's failure "to make the inquiry that would be made by a reasonable person in like or similar circumstances." (Gov. Code §20160(d).) Respondent Hunt-Bangoli bears the burden of presenting evidence establishing her right to the correction. (Gov. Code §20160(d).)

Prior to the hearing, CalPERS explained the hearing process to respondent Hunt-Bangoli and the need to support her case with witnesses and documents. CalPERS provided respondent Hunt-Bangoli with a copy of the administrative hearing process pamphlet. CalPERS answered respondent Hunt-Bangoli's questions and clarified how to obtain further information on the process.

At the hearing, respondent Hunt-Bangoli argued that CalPERS employees caused a delay in the processing of the Application that resulted in Mr. Davey passing away prior to the expiration of the twelve month deferral period. Respondent Hunt-Bangoli argued that Mr. Davey repeatedly provided CalPERS with a copy of Sharon's death certificate, but that it was misplaced. There was no documentation to support respondent Hunt-Bangoli's argument.

Respondent Hunt-Bangoli also argued that Mr. Davey assumed that by providing CalPERS with Sharon's death certificate and the marriage certificate between respondent Hunt-Bangoli and Mr. Davey that it would automatically result in her becoming a new life option beneficiary.

The Administrative Law Judge (ALJ) considered all of respondent Hunt-Bangoli's evidence and argument and concluded there was no evidence of Mr. Davey sending, or attempting to send, a written request to CalPERS to designate respondent Hunt-Bangoli as a Life Option Beneficiary prior to May 15, 2012. Furthermore, the ALJ concluded that there was no evidence that Mr. Davey made an oral request to designate respondent Hunt-Bangoli as a Life Option Beneficiary prior to May 15, 2012.

The ALJ also concluded that Mr. Davey's assumption that sending CalPERS a copy of Sharon's death certificate, as well as a copy of Mr. Davey's marriage certificate with respondent Hunt-Bangoli, would result in respondent Hunt-Bangoli becoming Mr. Davey's new Life Option Beneficiary, replacing Sharon. The ALJ found that no CalPERS staff ever told Mr. Davey that this would happen. Furthermore, the ALJ found that Mr. Davey failed to make the inquiry that a reasonable person would have made about exactly how to make the arrangement to add respondent Hunt-Bangoli as a beneficiary, and then failed to make a reasonable inquiry to confirm whether or not his efforts had succeeded.

The ALJ also concluded that Mr. Davey should have known that he needed to submit a written request to CalPERS for the modification of beneficiary benefits to become effective. Furthermore, the ALJ found that Mr. Davey should have known that if he did not submit the request within twelve months of his marriage to respondent Hunt-Bangoli that he would need to wait the twelve month deferral period. The ALJ based this conclusion on the fact that Mr. Davey had the same experience with his second wife.

The ALJ concluded that Mr. Davey's failure to act sooner to submit a formal written request to make respondent Hunt-Bangoli his new Life Option Beneficiary arose from his assumption that death and marriage certificates would suffice, but that unreasonable assumption was not excusable neglect.

The ALJ concluded that CalPERS may correct a member's error under section 20160 of the Government Code if that error results from a member's mistake, inadvertence, surprise, or excusable neglect. After considering all of the evidence and testimony, the ALJ found that respondent Hunt-Bangoli was not able to produce evidence to meet her burden of proof that would establish her right to any correction under section 20160.

The ALJ concluded that respondent Hunt-Bangoli'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 18, 2016



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