

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Decedent Thomas LeChuga (Decedent) was employed by BART from 1972 until he retired on July 16, 2000. Decedent was married twice. Decedent's first wife is not a party to this appeal. Decedent's second wife was Respondent Patricia (LeChuga) O'Hara (Respondent O'Hara).

On October 18, 2000, Decedent elected retirement benefit Option 4/2W (Community Property Option), and designated his first and second wives as co-beneficiaries. On October 8, 2008, Decedent and Respondent O'Hara divorced.

On November 18, 2008, Decedent notified CalPERS that his divorce from second wife Respondent O'Hara was final, and he asked CalPERS how to remove her from his health care enrollment. On November 11, 2011, Decedent died.

On April 2, 2012, Respondent O'Hara submitted an Application for Survivor Benefits, claiming her Option 4/2W benefits. CalPERS determined Respondent O'Hara was entitled to a lifetime monthly Option 4/2W benefit of \$3,454.81, a one-time death benefit of \$500, and a one-time pro-rated benefit of \$1,266.77.

Decedent's daughter, Respondent LeChuga-Falk, and Decedent's son, Respondent Todd LeChuga, (Respondent Children) asserted that all payments due to Decedent's death should be made to his trust and/or his children. CalPERS reviewed Respondent Children's request, and affirmed the distribution should be made to Respondent O'Hara. Respondent Children appealed. A hearing was held on November 18, 2015. Respondent O'Hara was represented by counsel, but the Respondent Children were not.

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

The essence of Respondent Children's appeal rests on the interpretation of a letter written by Decedent on November 15, 2008. The letter requests that CalPERS "remove my wife Patricia A. LeChuga from my enrollment." Decedent provided CalPERS with her CalPERS ID and social security numbers. The second paragraph of the two-paragraph letter states:

If any information is needed please contact me ASAP. I should have a single enrollment with PERS Care. Are there any additional forms that need to be changed? My contact number is a Cellular telephone [number omitted], in Grants Pass, Oregon.

Respondent Children assert that the sentence, "I should have a single enrollment with PERS Care" manifests Decedent's intent to remove his second wife as a recipient of any benefits related to Decedent's CalPERS account. The ALJ did not agree with Respondent Children. He found that Respondent Children focus on a single sentence of a very brief letter ignores the context as a whole, which dealt exclusively with enrollment in Decedent's health care benefits. This conclusion is buttressed by Decedent's telephone calls to CalPERS summarized in the CTP Report entries which show that on various dates in October 2008 and January 2009, Decedent called CalPERS several times asking about health care benefits, and was told to send a letter with a copy of his divorce decree to delete his spouse. The ALJ found that even though Decedent had the right to delete and/or change his beneficiary after the divorce from Respondent O'Hara, there is no evidence Decedent ever exercised such right.

The ALJ concluded that the appeal of Respondent Children 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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