

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Donald Caughey (decedent), was a member of CalPERS by virtue of his employment as a Patrol Officer with the California Highway Patrol. Decedent retired effective December 23, 1993, and died on October 10, 2010. Respondent Jolie Caughey (Respondent Caughey) and decedent were married on October 26, 1996.

Upon his retirement, decedent elected an "Option 2" benefit allowance and designated his then wife, Susan Caughey (Susan) as beneficiary of the Option 2 election. Under Option 2, decedent would receive a lower monthly retirement allowance and upon his death, Susan would receive a monthly benefit for life. Decedent and Susan divorced on October 19, 1996. Under the terms of the dissolution of marriage, decedent retained total interest in his CalPERS pension.

After the divorce to Susan and marriage to Respondent Caughey, decedent sent three handwritten notes to CalPERS indicating that he wanted to remove Susan from his health benefits and to designate Respondent Caughey as his new beneficiary; that he wanted to leave his retirement option the same—just change the beneficiary to Respondent Caughey; and wanted to provide relevant information about Respondent Caughey, such as her name, date of birth and marriage certificate. The last note also indicated, "If I need the proper form, please send it to me."

On August 18, 1997, CalPERS sent decedent a Modification of Original Election at Retirement package (PRS-204). The package contained information and instructions on how to effectuate a change of benefit option.

The cover letter of the package asked for the new beneficiary's birth certificate and instructed decedent to complete the election form in the presence of a notary. The cover letter also provided a deadline to return the completed election form to CalPERS by September 30, 1997.

Enclosed with the cover letter was the Modification of Original Election at Retirement form that contained benefit amounts based on possible elections decedent could make. For an unmodified allowance the benefit is \$2,825.99, for an Option 1 the benefit is \$2,729.94, for an Option 2 the benefit is \$2,266.44, for an Option 2W the benefit is \$2,272.10, for an Option 3 the benefit is \$2,515.13 and for an Option 3W the benefit is \$2,517.96. The package also contained the election form to be returned. The election form contained instructions, Respondent Caughey's name as the beneficiary, and a space for decedent to choose an option.

CalPERS never received an election form from decedent. Instead, on September 4, 1997, decedent mailed CalPERS the cover letter from the package that CalPERS had sent to him and a copy of Respondent Caughey's birth certificate.

In a letter dated August 22, 1997, CalPERS informed decedent that as a result of his divorce to Susan, the Option 2 election that he made at the time of retirement was nullified and that his benefit amount "popped up" to the unmodified amount effective July 1, 1997.

After decedent passed away, Respondent Caughey contacted CalPERS to inquire about a lifetime benefit she believed decedent had arranged for her. CalPERS informed Respondent Caughey that decedent had been receiving the unmodified benefit amount and had not elected any lifetime benefits or designated beneficiaries. Respondent Caughey filed a timely appeal.

Respondent Caughey was represented by counsel and testified on her own behalf. Respondent testified that decedent had always told her that he was going to leave her a lifetime benefit with his CalPERS pension. She also testified that decedent received only the cover page of the August 18, 1997, modification package and that he believed sending in her birth certificate was all that was needed to effectuate the change. Respondent Caughey stated that in the ensuing years, neither of them (her or decedent) realized decedent was receiving the full, unmodified amount of his pension despite the August 22, 1997, letter. Respondent Caughey also testified that decedent contacted CalPERS on a number of occasions to make sure that she was his beneficiary and that he received an affirmative response. CalPERS has no record of any such contacts.

Respondent Caughey argued that decedent's failure to complete and return the modification of original election form is a correctable mistake under Government Code section 20160 and that CalPERS failed to discharge its fiduciary duty to inform her about community property rights.

The Administrative Law Judge (ALJ) determined that Respondent Caughey cannot avail herself of the benefits of section 20160 because she failed to establish that decedent made an error or omission that was the result of mistake, inadvertence, surprise or excusable neglect. The ALJ found that because decedent had gone through the process of electing an Option 2 with Susan, he was aware of the requirement of executing an election form, and that there would be a resulting reduction from the unmodified benefit allowance in order to fund that lifetime benefit. Further the ALJ found that the submission of the birth certificate was at best the first step in satisfying the prerequisites to complete the election form, but it did not mean that decedent was going to execute the form.

The ALJ noted that even if Respondent Caughey were to establish the existence of a correctable error or omission under section 20160, decedent's failure to make an inquiry for over 13 years as to why he was receiving the full unmodified allowance and not a reduced allowance was unreasonable.

Lastly, the ALJ found that CalPERS properly discharged its fiduciary duties to decedent by responding to his requests to change beneficiaries, including presenting him with the necessary calculations to make an informed decision.

The ALJ concluded that Respondent Caughey'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.

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