

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Grantland Lee Johnson (Decedent) retired for service on November 16, 2003. At the time of his retirement, Decedent selected the Option 2 allowance, and designated his then wife Charlot Bolton as a beneficiary of the lifetime monthly benefits. An Acknowledgement of Retirement Letter informed Decedent that this election was irrevocable and could not be modified unless there was a dissolution or annulment of marriage and he was awarded the entire interest in the retirement allowance. (See Government Code section 21462.) Decedent terminated his marriage with Ms. Bolton effective November 9, 2013, and married Respondent Lee Turner Johnson (Respondent Turner Johnson) on November 15, 2013. On June 23, 2014, Decedent sent a letter to CalPERS requesting that Respondent Turner Johnson be named beneficiary of all of his retirement and death benefits.

On August 3, 2014, Decedent submitted a signed Application to Modify Option and/or Life Option Beneficiary (Application). In signing the Application, Decedent acknowledged that the Application was only a request for an election form to modify his option and the beneficiary, and that the option benefit would not change until a "properly completed election form is submitted to CalPERS." The Application submitted by Decedent was incomplete because Decedent failed to attach a court order or marital settlement agreement awarding him the entire interest in his CalPERS pension benefits upon dissolution of his marriage to Ms. Bolton.

Decedent passed away on August 19, 2014, prior to CalPERS sending him an election form and retirement estimates he had requested. As a result, Decedent had not completed the process to elect a new option or modify his beneficiary.

Subsequent to Decedent's death, Respondent Turner Johnson entered a Marital Settlement Agreement in the marital dissolution action between Decedent and Ms. Bolton as Decedent's "Attorney in Fact." A judgment was approved by the family law court on December 31, 2014, awarding Decedent the entire interest in his CalPERS pension benefits. On February 11, 2015, Respondent Turner Johnson forwarded the judgment to CalPERS claiming she was entitled to the lifetime Option 2 benefits.

CalPERS determined that Respondent Turner Johnson was not entitled to Decedent's lifetime Option 2 benefits or continued enrollment in employer-sponsored health insurance and dental insurance. Respondent Turner Johnson appealed CalPERS' determination and the matter was heard by an Administrative Law Judge (ALJ) at the Office of Administrative Hearings on October 6, 2015.

Respondent Turner Johnson was represented by counsel and testified at the hearing regarding Decedent's intent to name her as a beneficiary. CalPERS staff testified at the hearing regarding their interaction with Decedent and Respondent Turner Johnson. CalPERS staff testified that Decedent Johnson was mailed the relevant publications outlining the process to modify his life option beneficiary.

A Proposed Decision was issued on January 8, 2016, denying Respondent Turner Johnson's appeal.

The ALJ found that that Decedent's Application was never approved and Respondent Turner Johnson was never named the life option beneficiary because Decedent passed away prior to CalPERS sending him the settlement option estimates he had requested. Decedent never returned a signed notarized election form electing and new option or a new beneficiary. The ALJ explained that the Application was Decedent's request for settlement option estimates, not the final election form. The ALJ also found that Decedent was aware of the process for modifying his life option beneficiary because he signed a certification that outlined the process. The Proposed Decision acknowledged Respondent Turner Johnson's arguments concerning Decedent's intent but held that Decedent failed to substantially comply with the requirements of Government Code section 21462 as he failed to obtain an order granting him the entire interest in his retirement benefits. The Proposed Decision explains that such an order was a prerequisite to Decedent being able to change his life option beneficiary and should have been provided to CalPERS along with the Application, demonstrating his eligibility to modify his option.

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. Respondent Turner Johnson may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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PREET KAUR
Senior Staff Attorney