

**ATTACHMENT D**

**MARCH 16, 2016 BOARD AGENDA ITEM**



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Ref. No. 2015-0373

March 9, 2016

**TO:** ALL PARTIES AND THEIR ATTORNEY OF RECORD

**SUBJECT:** In the Matter of the Appeal Regarding Death Benefits Payable Upon the Death of GRANTLAND LEE JOHNSON by LEE TURNER JOHNSON, Respondent.

Attached is a copy of the agenda item to be presented to the Board of Administration, California Public Employees' Retirement System at its meeting scheduled for March 16, 2016.



## Board of Administration Agenda Item 8c

March 16, 2016

**Item Name:** Proposed Decision – In the Matter of the Appeal Regarding Death Benefits Payable Upon the Death of GRANTLAND LEE JOHNSON by LEE TURNER JOHNSON, Respondent.

**Program:** Benefit Services Division

**Item Type:** Action

### **Parties' Positions**

Staff argues that the Board of Administration should adopt the Proposed Decision.

Respondent Lee Turner Johnson (Respondent Turner Johnson) argues that the Board of Administration should decline to adopt the Proposed Decision.

### **Strategic Plan**

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

### **Procedural Summary**

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 beneficiary of the lifetime monthly benefits. On August 3, 2014, Decedent submitted an incomplete Application to Modify Option and/or Life Option Beneficiary. The application was incomplete because Decedent failed to attach a court order or marital settlement agreement awarding him the entire interest in his CalPERS pension benefits. Decedent passed away on August 19, 2014, prior to CalPERS sending him an election form and retirement estimates he had requested. On December 31, 2014, the family law court entered a judgment awarding Decedent his CalPERS pension in its entirety. CalPERS determined that Respondent Turner Johnson is not entitled to Decedent's lifetime Option 2 benefits or continued enrollment in employer-sponsored health insurance and dental insurance through CalPERS. Respondent Turner Johnson appealed this determination and the matter was heard by the Office of Administrative Hearings on October 6, 2015. A Proposed Decision was issued on January 8, 2016, denying Respondent Turner Johnson's appeal.

### **Alternatives**

- A. For use if the Board decides to adopt the Proposed Decision as its own Decision:

**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated January 8, 2016, concerning the appeal of Lee Turner Johnson; **RESOLVED FURTHER** that this Board Decision shall be effective 30 days following mailing of the Decision.

- B.** For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:

**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated January 8, 2016, concerning the appeal of Lee Turner Johnson, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; **RESOLVED FURTHER** that the Board's Decision shall be made after notice is given to all parties.

- C.** For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated January 8, 2016, concerning the appeal of Lee Turner Johnson, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

- D.** Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the appeal of Lee Turner Johnson, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

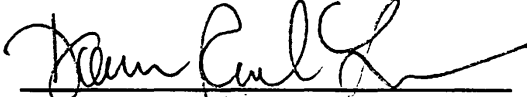
2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

**RESOLVED**, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning the appeal of Lee Turner Johnson.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

- Attachment A: Proposed Decision
- Attachment B: Staff's Argument
- Attachment C: Respondent(s) Argument(s)



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DONNA RAMEEL-LUM  
Deputy Executive Officer  
Customer Services and Support

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Appeal Regarding Death  
Benefits Payable Upon the Death of Grantland  
Lee Johnson by:

LEE TURNER JOHNSON,

Respondent.

Case No. 2015-0373

OAH No. 2015081045

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 6, 2015, in Sacramento, California.

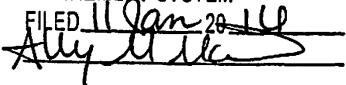
Preet Kaur, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Attorney Ian J. Barlow of the law firm Kershaw, Cook & Talley, PC, represented respondent Lee Turner Johnson, who was present throughout the hearing.

Evidence was received, and the record was left open for the parties to submit simultaneous closing briefs. The parties' closing briefs are marked as Exhibits 15 (CalPERS's), 16 (CalPERS's amended brief), and P (Ms. Turner Johnson's).<sup>1</sup> The record was closed, and the matter was submitted for decision on December 18, 2015.

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<sup>1</sup> Attachment A to Exhibit 15 was an Enrolled Bill Report for AB 553 (Moore). The record was not left open to receive further evidence. Therefore, Attachment A was not considered. Ms. Turner Johnson included with her closing brief the Declaration of Ian J. Barlow in Support of Respondent Lee Turner Johnson's Closing Brief. Attached to the Declaration were a portion of the hearing transcript and duplicate copies of the hearing exhibits with the exhibit designations changed (e.g., Exhibit D to the Declaration purported to be a true and correct copy of the exhibit that was marked and admitted at hearing as Exhibit 9o). CalPERS included the entire hearing transcript, which is included in the administrative record as Exhibit 17, with Exhibit 15, and the exhibits marked and admitted at hearing are the only official exhibits in this matter. Therefore, neither the Declaration nor any of the attachments were considered.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED 11 Jan 20 16  


## SUMMARY

Grantland L. Johnson retired for service from the State of California on November 16, 2003. On his retirement application, he made an irrevocable election of “Option 2” benefits, and irrevocably named his then-wife, Charlot Bolton, his life option beneficiary. A statutory exception allowing Mr. Johnson to change his life option beneficiary arose when the family law court entered judgment awarding him his CalPERS pension in its entirety on December 31, 2014. Fourth months prior to entry of judgment, he initiated the process for changing his life option beneficiary to his new wife, Lee Turner Johnson. But that process was not completed before Mr. Johnson passed away on August 19, 2014. Therefore, Ms. Turner Johnson is not entitled to lifetime Option 2 benefits or continued enrollment in employer-sponsored health insurance and dental insurance through CalPERS, and her appeal of CalPERS’s denial of such benefits should be denied.

## FACTUAL FINDINGS

### *Application for Service Retirement and Election of Retirement Benefits*

1. Grantland L. Johnson was employed by the California Health and Human Services Agency, and was a state miscellaneous member of CalPERS as a result of such employment. He applied for service retirement on November 12, 2003,<sup>2</sup> and retired for service four days later. In completing the application, he had a choice of one of seven retirement options – an “unmodified monthly allowance” or “Option 1,” “Option 2,” “Option 2W,” “Option 3,” “Option 3W,” or “Option 4” benefits.<sup>3</sup> Mr. Johnson elected to receive “Option 2” benefits, and named his then-wife, Charlot Bolton, his life option beneficiary, despite the fact that they had been living separate and apart since April 1, 2002. He received payment of his first monthly retirement benefit around January 1, 2004.

2. On December 4, 2003, CalPERS sent Mr. Johnson correspondence acknowledging receipt of his application for service retirement and election of Option 2

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<sup>2</sup> Mr. Johnson dated the application “12/12/2003.” The notary public who notarized Mr. Johnson’s signature, however, wrote on the notary certificate that Mr. Johnson appeared on “11/12/03,” and dated the certificate “11/12/2003.” Therefore, the date Mr. Johnson wrote appears to have been a typographical error.

<sup>3</sup> As explained further in the Legal Conclusions below, the unmodified allowance would have provided Mr. Johnson with the maximum monthly allowance possible for the remainder of his life, but neither his estate nor his beneficiary would have received a lump sum payment consisting of the amount of his accumulated contributions at retirement, less the total sum of annuity payments received prior to death, or monthly payments for the duration of the beneficiary’s life. Options 1, 2, 2W, 3, 3W, and 4 would have provided him a lower monthly allowance for the remainder of his life, but his estate or beneficiary would have received the lump sum payment or monthly benefits upon his death.



benefits. The correspondence provided the following information regarding benefits payable upon his death:

Upon your death, benefits will be paid to your beneficiary in accordance with the designation indicated on your retirement election document. If you elected a benefit which requires marriage and/or birth documentation and you have not submitted these documents, please send them immediately to the Benefit Services Division. If the documents are not in [*sic*] file at the time of your death, it may be necessary to delay payment of benefits to your beneficiary.

If your beneficiary predeceases you, your allowance will increase to the Unmodified allowance. You may modify your election to Option 1, 2, 2W, 3, 3W, or 4 and name a new beneficiary. You may also modify your election upon marriage after retirement if a former spouse was not named as a beneficiary. If a former spouse was named, you must have a court order that awards you the entire interest in your CalPERS benefits before you can name a new spouse as beneficiary. You may modify your election upon divorce, annulment or legal separation if you have a court order that awards you the entire interest in your CalPERS benefits.

To request a modification of election to name a new beneficiary for a lifetime option allowance, please contact the Benefit Services Division for information about a recalculation of allowance and the required documentation.

*Mr. Johnson and Ms. Turner Johnson's Relationship*

3. Mr. Johnson first met Ms. Turner Johnson in 1996 in a professional capacity. At the beginning of 2003, Mr. Johnson filed a petition for dissolution of his marriage to Ms. Bolton, and on October 21, 2013, the family law court entered a judgment terminating the parties' marriage, effective November 9, 2013.<sup>4</sup> He and Ms. Turner Johnson were married on November 15, 2013.

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<sup>4</sup> Prior to entering judgment, the family law court issued an order bifurcating trial of the issues of termination of marital status, on the one hand, and the division of the community estate and confirmation of the parties' interests in their respective separate property, on the other. (See, Fam. Code, § 2337, subds. (a) [court may bifurcate issue of termination of status of marriage from all other issues], (f) [judgment terminating status of marriage must "expressly reserve jurisdiction for later determination of all other pending issues"]; see also, *In re Marriage of Fink* (1976) 54 Cal.App.3d 357, 363-364 [public policy favor bifurcation to allow for early entry of judgment terminating status only].) The October

4. Mr. Johnson sent CalPERS correspondence requesting that Ms. Bolton be removed from his health benefits through CalPERS two days prior to his marriage to Ms. Turner Johnson. On December 12, 2013, he sent additional correspondence requesting that Ms. Turner Johnson be added to those benefits. And on June 23, 2014, he sent correspondence, which read, in part:

I want my wife Lee Anne Turner Johnson, [*sic*] to be named as beneficiary with my CalPERS retirement and all death benefits (previously named for Charlot Bolton and Patrice Bolton Johnson).

As of November 15, 2013, we were legally married. A court judgment or marital agreement will soon be filed and sent to you, finalizing all property with my former wife, Charlot Bolton. Upon receipt of this final settlement agreement, please immediately change all of my retirement benefit and all death benefit to my wife, Dr. Lee Turner Johnson....”

*CalPERS's Process for Modifying Option and/or Life Option Beneficiary*

5. Robin Owens is a retirement program specialist employed in the Retirement Administration and Support Unit of CalPERS's Benefit Services Division. Her unit handles Applications to Modify Option and/or Life Option Beneficiary from members, and she provided persuasive, uncontested testimony about the process a member must go through to change his settlement option and/or life option beneficiary.

6. Applications received by the Retirement Administration and Support Unit are logged in and assigned to staff for processing on a first-come, first-served basis. Once assigned, staff reviews the Application to confirm the member identified a proper qualifying event that allows him to change his settlement option and/or life option beneficiary under Government Code section 21462 – death of the named beneficiary, remarriage (as long as a prior spouse was not named as the beneficiary), or dissolution or annulment of marriage or legal separation in which the member is awarded the total interest in his CalPERS pension. Staff also confirms all documents necessary for establishing the occurrence of the alleged qualifying event were included with the application. Any deficiencies in the Application and/or supporting documents are brought to the member's attention by a letter requesting the necessary correction(s).

7. Once the Application is deemed complete and all necessary supporting documents have been received, staff prepares estimates of the Option 1, 2, 2W, 3, 3W, and, if requested in the Application, Option 4 benefits the member and his beneficiary would receive if the particular option is ultimately elected and/or a new life option beneficiary

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21, 2013 judgment did not award Mr. Johnson any interest in his CalPERS pension, and that issue was not resolved until the following year as discussed further below.

named. While Section 2 of the Application allows the member to provide “New Beneficiary Information,” including a proposed beneficiary’s name and date of birth, providing that information alone is insufficient to change the life option beneficiary. But such information is necessary to prepare the estimates, which are calculated by applying actuarial factors and option factors to the member’s and beneficiary’s respective ages. It generally takes 60 days to prepare the estimates.

8. The estimates are sent to the member with an election form for him to elect the desired settlement option (or re-elect the same one) and/or name a new life option beneficiary. He must have his signature notarized on the election form and return the form within 30 days, or his application would be cancelled. And because electing a new retirement option (or re-electing the same one) and/or naming a new beneficiary often results in a change in the amount of the monthly allowance the member receives, no changes would be made unless and until CalPERS timely receives the signed, notarized election form.

*Mr. Johnson’s Attempt to Name Ms. Turner Johnson his Life Option Beneficiary*

9. On August 3, 2014, Mr. Johnson signed an Application to Modify Option and/or Life Option Beneficiary, which CalPERS received four days later. He identified Ms. Turner Johnson and provided her date of birth in Section 2 of the Application. The instructions for Section 3 of the Application stated: “We will provide Options 1 2 2W 3, and 3W. If these do not meet your needs you can request one of the approved Option 4 types shown” [*Sic*]. While Mr. Johnson initially checked one of the boxes indicating a desire to receive information about one of the Option 4 types, he subsequently crossed out his selection and initialed it.

By signing the Application, Mr. Johnson made the following certification:

*I understand that this form is a request for an election form to modify my option and name a new beneficiary(ies). I further understand that my new option/beneficiary change will not be processed until the properly completed election form is submitted to CalPERS. I hereby certify under penalty of perjury that the foregoing information is true and correct.*

(Italics added.)

10. Mr. Johnson passed away on August 19, 2014, prior to CalPERS sending him an election form and the retirement option estimates he had requested. The following month, Ms. Turner Johnson signed the Marital Settlement Agreement in the martial dissolution action as Mr. Johnson’s “Attorney in Fact.” That Agreement divided Mr. Johnson’s and Ms. Bolton’s community estate, and awarded him his entire CalPERS pension as follows:

Any and all interest in the CalPERS defined plan attributable to Husband's employment, including but not limited to all member contributions and rights to past and future benefits, survivor and death benefits [Mr. Johnson] is entitled to select and assign according to the terms of the plan.

The family law court entered judgment approving the Marital Settlement Agreement on December 31, 2014, and Ms. Turner Johnson sent a certified copy of the judgment to CalPERS on February 11, 2015.

*Request for Lifetime Option 2 Benefits and Continued Health and Dental Benefits*

11. Ms. Turner Johnson's February 11, 2015 correspondence forwarding a certified copy of the family law court judgment to CalPERS included a demand for lifetime Option 2 benefits and continued enrollment in employer-sponsored health and dental benefits. CalPERS denied both demands, and explained that Ms. Turner Johnson was not entitled to any monthly benefits from CalPERS. And, she was no longer eligible for employer-sponsored health or dental benefits through CalPERS because she was not entitled to any monthly benefits. Ms. Turner Johnson timely appealed the denial. Anthony Suine, Chief of the Benefit Services Division of CalPERS, signed the Statement of Issues on August 26, 2015, solely in his official capacity.

*Discussion*

12. CalPERS properly denied Ms. Turner Johnson lifetime Option 2 benefits. While Mr. Johnson provided her name and date of birth under "New Beneficiary Information" on his August 3, 2014 Application to Modify Option and/or Life Beneficiary, the Application was never approved and she was never named the life option beneficiary because Mr. Johnson passed away before CalPERS sent the settlement option estimates he had requested. Therefore, he never returned a signed, notarized election form. As previously explained, the Application was merely Mr. Johnson's request for settlement option estimates based on his and Ms. Turner Johnson's respective ages, and was insufficient in and of itself to make her his beneficiary.<sup>5</sup> Mr. Johnson certified his understanding of the process for making the change when he signed the Application.<sup>6</sup>

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<sup>5</sup> That is not to say Ms. Bolton, Mr. Johnson's life option beneficiary at the time of his death, was entitled to lifetime Option 2 benefits. Upon receipt of the certified copy of the December 31, 2014 family law judgment, CalPERS removed her as the beneficiary, and concluded Ms. Johnson Turner was entitled to a lump-sum payment of the amount of Mr. Johnson's accumulated contributions at retirement, less the total amount of retirement benefits paid at the time of death, pursuant to Government Code section 21454. That statute provides, in relevant part:

The modification shall provide that payment shall be continued during the retired person's lifetime in accordance with the

And because Ms. Turner Johnson is not entitled to lifetime Option 2 benefits or any other type of monthly benefits from CalPERS, she is no longer eligible for employer-sponsored health or dental benefits through CalPERS.

13. The arguments raised in Ms. Turner Johnson's closing brief are not persuasive. Whether Mr. Johnson clearly intended to name her as his life option beneficiary was not the issue. Rather, he irrevocably named Ms. Bolton his beneficiary when he applied for service retirement on November 12, 2003. A statutory exception allowing Mr. Johnson to change his beneficiary arose when the family law court entered judgment awarding him his CalPERS pension in its entirety, but he was unable to complete the process for changing his beneficiary prior to his death.

14. Ms. Turner Johnson's reliance on the statute that allows CalPERS to correct errors or omissions that are based mistake, inadvertence, surprise, or excusable neglect (Gov. Code, § 20160) was misplaced. She did not clearly articulate what the alleged "error" or "omission" was. To the extent she claimed it was that "Grantland Johnson's Election Form was not submitted because of his untimely death," he never received an election form in the first place because CalPERS had not had the opportunity to prepare the settlement option estimates before he passed away.<sup>7</sup>

For the same reasons, Mr. Johnson did not substantially comply with the requirements of Government Code section 21462.

15. The contractual doctrine of "impossibility of performance" does not excuse someone's inability to comply with a substantive statute, and Ms. Turner Johnson cited no

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optional settlement then in effect but that no monthly allowance shall be paid following the retired person's death, and in lieu thereof there shall be paid in a lump sum to the member's estate or a beneficiary designated by him or her the amount, if any, by which the member's accumulated contributions at retirement exceed the total payments made to the retired person to the date of his or her death.

The propriety of CalPERS's decision to remove Ms. Bolton as the beneficiary is not part of this appeal.

<sup>6</sup> The argument in Ms. Turner Johnson's closing brief that the certification at the bottom of the Application was ambiguous and subject to different interpretations was premised on a gross misrepresentation of the language of the certification.

<sup>7</sup> There may have been a different outcome had he passed away after signing the election form, but before returning it. Or even if he had received the settlement option estimates and election form, but passed away before he could consider them. But those were not the facts of this appeal.

legal authority providing otherwise. And whether CalPERS breached its fiduciary duty by not providing her timely, complete, and accurate information about the process for changing a life option beneficiary would not be outcome determinative. Entry of the family law court's December 31, 2014 judgment was a *prerequisite* to Mr. Johnson being able to change his life option beneficiary. He passed away before that had occurred. In fact, he passed away before signing the Marital Settlement Agreement that was incorporated into the judgment (Ms. Turner Johnson signed it as his "Attorney in Fact").

## LEGAL CONCLUSIONS

### *Applicable Law*

1. The Service Retirement Election Application Mr. Johnson completed on November 12, 2003, required him to choose one of seven retirement options. (Gov. Code, § 21451.) An "unmodified allowance" would have entitled him to a monthly allowance for life, with no return of his member contributions or monthly benefits payable upon his death. The six "optional settlements," on the other hand, entitled him to a reduced monthly allowance for life, with payment upon his death of either: 1) a lump sum consisting of the amount of his accumulated contributions at retirement, less the total sum of annuity payments received prior to death, payable to his estate or beneficiary (Option 1) (Gov. Code, § 21455); or 2) monthly payments to his beneficiary for the remainder of the beneficiary's life (Options 2, 3, or 4) (Gov. Code, §§ 21456-21459).<sup>8</sup>

2. As previously discussed, Mr. Johnson elected to receive Option 2 benefits, which "consists of the right to have a retirement allowance paid a member until his or her death and thereafter to his or her beneficiary for life." (Gov. Code, § 21456.) Such election became irrevocable "30 calendar days after the making of the first payment on account of any retirement allowance." (Gov. Code, § 21453.) He named his then-wife, Charlot Bolton, as his life option beneficiary, and that election was irrevocable "from the time of the first payment on account of any retirement allowance." (Gov. Code, § 21492; *In re Marriage of Cooper* (2008) 160 Cal.App.4th 574, 577.) He received payment of his first monthly retirement benefit around January 1, 2004.

3. The family law court's December 31, 2014 judgment awarding Mr. Johnson all rights to his CalPERS pension gave rise to a statutory exception to the rule that his election of Option 2 benefits and naming of Ms. Bolton as his life option beneficiary were irrevocable. Government Code section 21454 provides:

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<sup>8</sup> If Mr. Johnson selected Option 2 or 3 and his beneficiary predeceased him, his monthly allowance would have increased "to reflect the benefit that would have been paid had [he] not selected an optional settlement." (Gov. Code, §§ 21456, 21457.) But if he selected either "Option 2W" or Option 3W," he would have received a larger monthly allowance because he would have waived any increase if his beneficiary predeceased him. (Gov. Code, § 21459.)

Notwithstanding Section 21453, an election of optional settlement 2 or 3, or optional settlement 4 involving life contingency in which a spouse is designated as the beneficiary, may be modified as provided in this section in the event of a dissolution or annulment of the marriage or a legal separation in which the division of the community property awards the total interest in the retirement system to the retired member. The modification shall provide that payment shall be continued during the retired person's lifetime in accordance with the optional settlement then in effect but that no monthly allowance shall be paid following the retired person's death, and in lieu thereof there shall be paid in a lump sum to the member's estate or a beneficiary designated by him or her the amount, if any, by which the member's accumulated contributions at retirement exceed the total payments made to the retired person to the date of his or her death.

Government Code section 21462, subdivision (a)(1), allowed Mr. Johnson to name Ms. Turner Johnson his life option beneficiary as follows:

Notwithstanding any other provision of this part, a member who elected to receive optional settlement 2, 3, or 4, involving a life contingency of the beneficiary, may, if the beneficiary predeceases the member or if the member marries and the former spouse was not named as beneficiary, or, if a former spouse was named, in the event of a dissolution or annulment of the marriage or a legal separation in which the judgment dividing the community property awards the total interest in the retirement system to the retired member, elect to have the actuarial equivalent reflecting any selection against the fund resulting from the election as of the date of election of the allowance payable for the remainder of the member's lifetime under the optional settlement previously chosen applied to a lesser allowance during the member's remaining lifetime under one of the optional settlements specified in this article and name a different beneficiary.

Mr. Johnson's August 3, 2014 Application to Modify Option and/or Life Option Beneficiary was insufficient in and of itself to name Ms. Turner Johnson his life option beneficiary. (Gov. Code, § 21462, subd. (d) ["This section shall not be construed to mean that designation of a new beneficiary causes the selection of an optional settlement. An optional settlement shall be selected by a member in a writing filed by the member with the board"].) The Application merely constituted his *request* for estimates of the different settlement option benefits they would have received had he ultimately elected one of the options and/or named her as the beneficiary. Mr. Johnson passed away before CalPERS

could send those estimates and he could return a signed, notarized election form. Therefore, his life option beneficiary was never changed to Ms. Turner Johnson.

*Conclusion*

4. Mr. Johnson made an irrevocable election of Option 2 benefits and irrevocably named Ms. Bolton his life option beneficiary when he applied for service retirement on November 12, 2003. While the exception codified in Government Code section 21462, subdivision (a)(1), would have allowed him to name Ms. Turner Johnson his life option beneficiary, he passed away before completing the process. Therefore, Ms. Turner Johnson is not entitled to lifetime Option 2 benefits or employer-sponsored health and dental benefits through CalPERS, and her appeal of CalPERS's denial of such benefits should be denied.

ORDER

Respondent Lee Turner Johnson's request for lifetime Option 2 benefits and employer-sponsored health and dental benefits is DENIED. CalPERS's decision to deny her such benefits is AFFIRMED.

DATED: January 8, 2016

DocuSigned by:

*Coren D. Wong*

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COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings



**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.

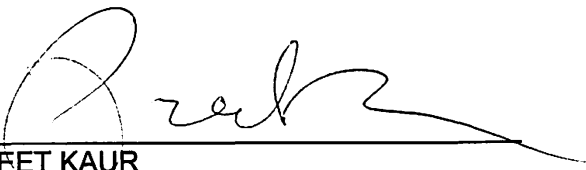
A Proposed Decision was issued on January 8, 2016, denying Respondent Turner Johnson's appeal.

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.

March 16, 2016



PREET KAUR  
Senior Staff Attorney

**ATTACHMENT C**  
**RESPONDENT(S) ARGUMENT(S)**

1 William A. Kershaw (State Bar No. 057486)  
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**BOARD OF ADMINISTRATION**

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**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

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15

In the Matter of the Appeal Regarding Death  
Benefits Payable Upon the Death of  
GRANTLAND LEE JOHNSON by

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LEE TURNER JOHNSON,

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Respondent.

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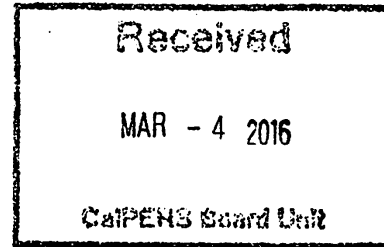
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Case No. 2015-0373  
OAH No. 2015081045

**RESPONDENT'S ARGUMENT AGAINST  
ADOPTION OF THE PROPOSED  
DECISION**

Board Meeting Date: March 16, 2016

Meeting Location: CalPERS Headquarters,  
Robert F. Carlson Auditorium

1 **I. INTRODUCTION**

2 The Proposed Decision consists of a mere recitation of statutory requirements and procedures  
3 for changing a life option beneficiary, and then finds that Respondent Lee Turner Johnson  
4 ("Respondent" or "Mrs. Johnson") did not satisfy them. In doing so, the Proposed Decision succeeds  
5 in rigidly applying formal requirements under Government Code section 21462<sup>1</sup> while disregarding the  
6 practical realities of this case. Mrs. Johnson does not contest the applicable statutory framework.  
7 Rather, she argues that the underlying facts and applicable law dictate a different outcome, and they are  
8 largely ignored by the Proposed Decision.

9 There can be no question that Grantland Johnson who managed significant governmental  
10 bureaucracies, including as an elected official, regional director for the U.S. Department of Health and  
11 Human Services and as Secretary of the Health and Human Services Agency for the State of  
12 California—intended to designate Mrs. Johnson, who is seventy years old, as his beneficiary for health,  
13 dental and lifetime Option 2 benefits. The only reason that the process was not completed was because  
14 he died prior to submitting a final confirmatory form. However, she should not be deprived of these  
15 benefits, and Grantland Johnson's hopes for his wife should not be ignored, on that basis.

16 For the reasons described below, in documents and testimony presented at the October 6, 2015  
17 hearing and in Respondent's Closing Brief, the Proposed Decision should not be adopted.<sup>2</sup>

18 **II. ARGUMENT**

19 **A. The Proposed Decision Ignores Grantland Johnson's Intent and the Substantial  
20 Compliance Doctrine**

21 Perhaps the most significant error in the Proposed Decision is that it deems "[w]hether Mr.  
22 Johnson clearly intended to name [Mrs. Johnson] as his life option beneficiary" to be irrelevant.  
23 (Proposed Dec. at p. 7.) In rote fashion, the Proposed Decision largely repeats requirements for  
24 designating a new beneficiary for life option benefits (*id.* at pp. 4-5) then swiftly concludes that Mrs.  
25 Johnson should be denied them because Grantland Johnson "was unable to complete the process . . .  
26 prior to his death." (*Id.* at p. 7.) However, that is an improper analysis; case law demonstrates that

27 <sup>1</sup> All statutory references herein are to the California Government Code unless otherwise indicated.

28 <sup>2</sup> Due to the page limit, Respondent reserves the right to raise additional objections to the decision in further  
proceedings should it be adopted.

1 intent cannot be ignored, and should be effectuated, under these circumstances.<sup>3</sup>

2 **1. The Proposed Decision Ignores *In re Marriage of Cooper***

3 The California Court of Appeal, in *In re Marriage of Cooper* (2008) 160 Cal.App.4th 574 [73  
4 Cal.Rptr.3d 71] ("*Cooper*"), looked to a CalPERS member's *intent* in determining whether he should  
5 be permitted to revoke his former wife's interest in his Option 2 benefits. The member's former wife  
6 was initially found to have an interest in his CalPERS benefits and was later awarded the entirety of the  
7 Option 2 benefit based on a domestic relations order. (*Id.* at pp. 577-78.)

8 However, the court held that such an outcome was contrary to the member's *intent* and  
9 permitted a solution *outside of the statutory framework* for designating a new beneficiary for Option 2  
10 benefits. The court allowed the member to buy out his former wife's share of the Option 2 benefit (*id.*  
11 at p. 578) and designate his daughter in her place (*id.* at p. 579). It did so because there was "no evidence  
12 that . . . [the member] *intended* to forever relinquish his community property interest in the option 2  
13 survivor benefit, . . ." (*Id.* at p. 581, italics added.) Furthermore, CalPERS agreed that it would not  
14 receive a windfall in part because after buying his former wife out, the member would name a different  
15 beneficiary. (*Ibid.*, citing Gov. Code § 21462.) In addition, the court held that "discretion here may be  
16 reasonably exercised" by allowing the buyout. (*Ibid.*)

17 Discretion should also be exercised here. The Proposed Decision fails to analyze *Cooper* and,  
18 remarkably, cites it to show the irrevocability of Grantland Johnson's prior beneficiary designation.  
19 (Proposed Dec. at p. 8.) Of course, that is exactly the opposite outcome in *Cooper*.

20 **2. The Proposed Decision Ignores *Pimentel***

21 The Proposed Decision also altogether ignores the California Supreme Court's decision in  
22 *Pimentel v. Conselho Supremo De Uniao Portuguesa Do Estado Da California* (1936) 6 Cal.2d 182  
23 [57 P.2d 131] ("*Pimentel*"), which was based on facts similar to this case. In *Pimentel*, a policyholder  
24 told his friend that he wanted to change his beneficiary and who the new beneficiary should be. (*Id.* at  
25 p. 184.) The policyholder had a change of beneficiary form prepared and signed it before a notary.

26  
27 <sup>3</sup> In addition, section 20164, subdivision (a) makes it clear that the "obligations of th[e] system to and in  
28 respect to retired members continue throughout the lives of the respective retired members, *and thereafter*  
until all obligations *to their respective beneficiaries* under optional settlements have been discharged."  
(Gov. Code, § 20164, subd. (a), italics added.)

1 (*ibid.*) However, only two of several requirements for changing a beneficiary were satisfied and the  
2 policyholder died before the form was mailed. (*Id.* at pp. 185, 187 and 189.) The California Supreme  
3 Court held that “where the [policyholder] makes every reasonable effort under the circumstances . . .  
4 and there is a *clear manifestation of intent to make the change*, which the insured has put into execution  
5 as best he can, *equity should regard the change as effected.*” (*Id.* at p. 189, italics added.)

6 The Proposed Decision appears to acknowledge *Pimentel* by stating that “[t]here may have  
7 been a *different outcome* [in this case] had [Grantland Johnson] passed away after signing the election  
8 form, but before returning it. Or even if he had received the settlement option estimates and election  
9 form, but passed away before he could consider them.” (Proposed Dec. at p. 7, fn. 7, emphasis added.)

10 That statement is significant because it recognizes that strict adherence to section 21462 is not  
11 required. The Proposed Decision, on the one hand, states that a member must, for example, “elect the  
12 desired settlement option (or re-elect the same one) and/or name a new life option beneficiary [on the  
13 election form, then] have his signature notarized . . . and return the form within 30 days, or his  
14 application would be cancelled.” (Proposed Dec. at p. 5.) On the other hand, it acknowledges a  
15 potentially “different outcome” if Grantland Johnson had received the form but passed away *even*  
16 *before considering the estimates*, much less signing and returning it within thirty days.

17 The discussion demonstrates the arbitrary significance that the Administrative Law Judge  
18 (“ALJ”) assigned to whether Grantland Johnson died before or after receiving a confirmatory election  
19 form. It also evinces a misapplication of *Pimentel*, to the extent it is analyzed at all. The ALJ ostensibly  
20 argues that *Pimentel* is distinguishable because, unlike the policyholder in that case, Grantland Johnson  
21 did not have nor sign a beneficiary change form before he died. But that misses the point. First, that  
22 comparison, as with the entirety of the Proposed Decision, fails to account for *intent*, which was critical  
23 to the holding in *Pimentel*. In addition, it ignores the overwhelming similarities between the cases.  
24 Like the policyholder in *Pimentel*, Grantland Johnson took reasonable steps to change his beneficiary  
25 but died before he could submit a final form. (*See, e.g., Resp’t Closing Br.* at pp. 3-6, 10-14, 16-17.)

### 26 3. The Proposed Decision Fails to Apply the Substantial Compliance Doctrine

27 The Proposed Decision describes the procedures for designating a new Option 2 beneficiary  
28 and simply concludes that because Grantland Johnson “never received an election form . . . [he] did



1 not substantially comply with . . . section 21462.” (Proposed Dec. at p. 7.) Such a statement is not only  
2 void of any legal analysis, it shows a complete failure to apply the substantial compliance doctrine.

3 Substantial compliance means that “[w]here there is compliance as to all matters of substance  
4 *technical deviations are not to be given the stature of noncompliance. Substance prevails over form.*”  
5 (*Cal-Air Conditioning, Inc. v. Auburn Union Sch. Dist.* (1993) 21 Cal.App.4th 655, 668 [26 Cal.Rptr.2d  
6 703], italics added; *Costa v. Superior Court* (2006) 37 Cal.4th 986, 1017, fn. 24 [39 Cal.Rptr.3d 470]  
7 [“each *objective or purpose* of a statute must be achieved” but not “‘actual compliance’ with every  
8 specific statutory requirement”], italics added.)

9 CalPERS does not and cannot argue that intent, affirmative acts in furtherance of that intent,  
10 and substantial compliance principles do not apply to section 21462.<sup>4</sup> It represents that the purpose  
11 behind section 21462 is to confirm the intentions of the member. CalPERS’ Closing Brief refers to  
12 “death-bed elections” and states that it “cannot assume which option benefit [Grantland Johnson] would  
13 [have] select[ed].” (CalPERS Closing Br. at 11.) However, these remarks ignore the plain facts of the  
14 case. There can be no question what Grantland Johnson was trying to accomplish: he contacted  
15 CalPERS in February 2013 to inquire about changing his beneficiary; in November 2013, he removed  
16 his former wife from his CalPERS health plan; on December 12, 2013, he informed CalPERS of his  
17 marriage to Mrs. Johnson, that he wanted to add her to the health plan, and she was added to his medical  
18 and dental plans within the next few months; he repeatedly communicated his intention to designate  
19 Mrs. Johnson as his beneficiary for medical, dental and Option 2 benefits to Mrs. Johnson and his close  
20 friend, Herb Anderson, among others; he sent a letter to CalPERS on June 23, 2014 expressly requesting  
21 that Mrs. Johnson be added as the beneficiary for “all of [his] retirement benefit[s] and all death  
22 benefit[s]” previously named for his former wife, which would include his CalPERS medical, dental  
23 and Option 2 benefits; he called CalPERS from the ICU for guidance on how to correctly fill out the  
24 Application to Modify Option and/or Life Option Beneficiary form (“Modification Form”) and  
25 confirmed that he was selecting “Option 2” benefits and wanted to designate Mrs. Johnson as his  
26 beneficiary; he signed and submitted the Modification Form naming Mrs. Johnson as his new  
27 beneficiary consistent with an election of Option 2 benefits; and he entered into a marital settlement

28 <sup>4</sup> CalPERS notes in its Closing Brief that “courts have not yet to address [*sic*] option settlements, particularly  
in the context of death benefits.” (CalPERS Closing Br. at p. 10.)

1 agreement in which he was awarded the entire interest of his CalPERS benefits, revoking his former  
2 wife as beneficiary. (Resp't Closing Br. at pp. 10-11.)

3 The Proposed Decision fails to consider any of these facts for purposes of determining whether  
4 the objective of the election form was satisfied under the substantial compliance doctrine.

5 **B. The Proposed Decision Recognizes that a Qualifying Event Arose For Designating  
6 a New Beneficiary But Misapplies the Statutory Exception**

7 The Proposed Decision confirms that a "statutory exception" allowing Grantland Johnson to  
8 change his life option beneficiary arose when he was awarded full interest in his CalPERS pension.  
9 (Proposed Dec. at pp. 6-8.) It also recognizes that, by virtue of the marital property settlement, his  
10 former wife was no longer entitled to any of his CalPERS benefits. (*Id.* at 6, fn. 5.)

11 However, the ALJ is incorrect that the "family law court's December 31, 2014 judgment was a  
12 prerequisite to Mr. Johnson being able to change his life option beneficiary." (*Id.* at p. 8, original  
13 italics.) There is nothing in section 21462 that requires such a determination prior to submitting a  
14 Modification Form, election form or a member's death. Indeed, there is no reason why a member's  
15 efforts to designate a new beneficiary cannot be perfected by a later community property determination,  
16 as opposed to initiated by it. The relevant statutory framework does not prevent such a scenario.<sup>5</sup>

17 There is no question that Grantland Johnson satisfied the statutory exception for revoking his  
18 previous beneficiary and designating a new one. His only incomplete step was submitting a  
19 confirmatory election form. However, that omission is more than adequately addressed by Grantland  
20 Johnson's clear intent and substantial and reasonable efforts to effectuate it.

21 **C. The Proposed Decision Fails to Analyze section 20160**

22 The Proposed Decision's analysis of section 20160 is equally scant, and altogether confusing.  
23 The only form that Grantland Johnson did not receive and submit was a final election form; it is the  
24 basis for the correctable "omission" under section 20160. However, the Proposed Decision states that  
25 omission cannot be claimed because the form was never received. (Proposed Dec. at p. 7.) But claiming  
26 that the requirements for correctable omission were not met or do not apply because the very form that  
27 was omitted was never received makes no sense. <sup>6</sup>

28 The Proposed Decision also entirely ignores the extreme circumstances under which Grantland

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<sup>5</sup> For this reason, the ALJ's breach of fiduciary duty analysis is also incorrect. (Proposed Dec. at p. 8.)

1 Johnson and Mrs. Johnson attempted to navigate and complete the process for designating her as his  
2 beneficiary for health, dental and Option 2 benefits. For example, there is no mention of the fact that  
3 Grantland Johnson had a series of debilitating health problems, including congestive heart failure and  
4 diabetes, which required constant medical attention over the last few years of his life. For the last five  
5 years of his life, he was dependent on dialysis three times a week and, in the last year of his life, four  
6 times a week. He also experienced kidney failure and underwent major surgeries in each of the last five  
7 years of his life. (Resp't Closing Br. at p. 12.)<sup>6</sup> In addition, Grantland Johnson's vision was poor and  
8 he was in the ICU when he sought guidance from CalPERS on how to properly complete the  
9 Modification Form. These severe health problems delayed Grantland Johnson's marriage to Mrs.  
10 Johnson and significantly hindered his ability to properly and efficiently complete the process for  
11 changing his life option beneficiary. (*Id.* at pp. 12-13.)

12 Furthermore, key dates and facts in the Proposed Decision and CalPERS' Closing Brief related  
13 to Grantland Johnson's diligence and the reasonableness of his efforts are incorrect. For example,  
14 CalPERS represents that Grantland Johnson did not submit a Modification Form until "November  
15 2014," which is after he died. (CalPERS Closing Br. at 16.) In fact, he submitted that document over  
16 three months earlier. It is also incorrect that Grantland Johnson initiated the process for changing his  
17 life option beneficiary only "[f]our months" prior to being awarded full interest in his CalPERS pension.  
18 (Proposed Dec. at p. 1.) To be sure, he expressly requested that CalPERS name Mrs. Johnson as his  
19 beneficiary for health, dental and Option 2 benefits in a letter to CalPERS on June 23, 2014. As a result,  
20 the ALJ's analysis under section 20160 is inaccurate and incomplete.

21 **D. The Proposed Decision Should Not Be Precedential, If Adopted**

22 The Proposed Decision, if adopted, should not be designated as precedent as it is based on an  
23 incorrect or inadequate analysis of the underlying facts and applicable law.

24 **III. CONCLUSION**

25 For the reasons described above, the Board should not adopt the Proposed Decision, and it will  
26 not withstand close judicial scrutiny.

27  
28 <sup>6</sup> Indeed, the evidence, severity and frequency of Grantland Johnson's health issues readily distinguishes  
this case from the cases cited in CalPERS' Closing Brief. (CalPERS Closing Br. at pp. 16-17.)

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Date: March 4, 2016

Respectfully submitted,

**KERSHAW, COOK & TALLEY PC**

By:



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**FACSIMILE COVER SHEET**

Date: March 4, 2016

From: Ian J. Barlow

To:

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Attn: Cheree Swendensky  
CALPERS EXECUTIVE OFFICE

(916) 795-3972

Number of Pages, Including Cover: 29

Originals to Follow: No

Rc: Lee Turner Johnson; Ref. No. 2015-0373

- **COMMENTS:** See attached Respondent's Argument.

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