

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Decedent Mark Soto (Decedent) was employed by the Department of Water Resources from July 1, 1992 through October 12, 2007. By virtue of his employment, he was a state miscellaneous member of CalPERS. Decedent died on May 22, 2013. At the time of his death, Decedent had not filed a beneficiary designation with CalPERS.

Respondent Annette Soto (Respondent Soto) was Decedent's spouse at the time of his death. Respondent Soto and Decedent were legally separated on October 20, 2011, and remained separated until his death. They had one adult son, Anthony. Pursuant to a Marital Separation Agreement signed by both parties, Decedent and Respondent Soto were awarded full interest in their own respective CalPERS benefits.

Respondent Marina Hernandez (Respondent Hernandez) is Decedent's mother. After the parties separated, Decedent moved in with his mother and was living in her home at the time of his death.

On July 24, 2013, CalPERS notified Respondent Soto that as Decedent's surviving spouse, she was the proper beneficiary of death benefits payable on his account. The benefits payable consist of a lump sum Group Term Life Insurance payment of \$5,000, plus a Basic Death Benefit of \$86,006.02.

On July 25, 2013, Respondent Hernandez sent a letter to CalPERS inquiring as to the death benefits payable on Decedent's account.

On July 30, 2013, Respondent Soto submitted an application for Pre-Retirement Death Benefits payable.

On August 14, 2013, CalPERS notified Respondent Hernandez that the legal separation did not terminate the marital relationship between Decedent and Respondent Soto, and in absence of a written designation to the contrary, all death benefits were payable to Respondent Soto. Respondent Hernandez was given two weeks to find any beneficiary designation Decedent may have signed.

On August 23, 2013, Respondent Hernandez sent a letter to CalPERS. The letter purports to show Decedent's intent to designate Respondent Hernandez and Decedent's son as beneficiaries. The letter reads in its entirety:

June 14, 2010

To Pers,
I request my Calif. State Retirement Beneficiary be Marina Hernandez and my son Anthony Soto only three thousand. I cannot pay any attorney cost. Please follow my wishes.

/s/Mark A. Soto
[address]

Respondent Hernandez testified that she found the document in a box of papers her son kept at her home.

On September 18, 2013, CalPERS sent a determination letter to Respondent Soto advising her that due to the June 14, 2010 beneficiary designation, she was not the eligible beneficiary of the death benefits payable on Decedent's account. Respondent Soto appealed.

Hearing was completed on November 16 and 30, 2015. Both Respondents were represented by counsel.

At hearing, the central factual issue was whether the June 14, 2010 beneficiary designation was authentic. CalPERS and Respondent Soto both retained forensic document examiners to compare the June 14, 2010 beneficiary designation with known writings of Decedent and Respondent Hernandez. CalPERS' examiner opined against the validity of the document, but stated that his opinion was not conclusive due to the limited number of writings for comparison. Respondent Soto's examiner concluded that Decedent did not write or sign the June 14, 2010 letter, and that Respondent Hernandez did write and sign the letter.

The Administrative Law Judge (ALJ) found that the testimony and reports of both examiners credibly demonstrated by a preponderance of evidence that Decedent did not write or sign the letter. For this reason, the ALJ found that CalPERS incorrectly accepted as valid the June 14, 2010 beneficiary designation.

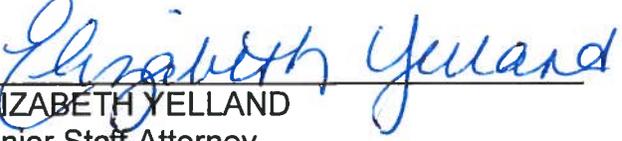
The ALJ concluded that Respondent Soto's appeal should be granted. The ALJ ruled that Respondent Soto should be recognized as the beneficiary of the death benefits payable on Decedent's account, consisting of a \$5,000 lump sum Group Term Life Insurance Benefit, plus an \$86,006.02 Basic Death Benefit. The ALJ found that CalPERS' acceptance of the purported beneficiary designation dated June 14, 2010 should be reversed.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the date of "June 10, 2014" be replaced with the date of "June 14, 2010" on page four, paragraphs eleven and thirteen.

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.

May 18, 2016



ELIZABETH YELLAND
Senior Staff Attorney