

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Gordon Sonne (Respondent) was employed as a deputy sheriff and later as the elected Sheriff of the Monterey County Sheriff's Department. He was a local safety member of CalPERS by virtue of such employment. Respondent married respondent Theressa McKinley (Former Spouse) in 1994, while employed by the Sheriff's Department. Respondent submitted a Disability Retirement Election Application seeking a service pending industrial disability retirement on November 27, 2002, which was effective December 27, 2002. He elected to receive Option 2 benefits with Former Spouse as his sole beneficiary. In February 2006, the marriage of Respondent and Former Spouse was terminated retroactive to October 18, 2005. On January 24, 2006, Respondent Sonne informed CalPERS that he had recently learned during his divorce proceedings that he had mistakenly elected Option 2 benefits favoring his Former Spouse when he completed his retirement application. He claimed that he had intended to and believed he had made his son Jason Sonne a 74 percent recipient of his benefits, and his Former Spouse a 24 percent recipient. He claimed that he was misled by CalPERS staff as to the effect of his selection of Option 2. CalPERS' staff reviewed Respondent's claim of having made a mistake qualifying for correction under Government Code Section 20160, which authorizes CalPERS to correct mistakes or omissions of retirees under certain conditions of reasonable error. Staff determined that Respondent had not shown a reasonable error qualifying for relief from mistake under Government Code Section 20160. Respondent appealed CalPERS staff's determination and a hearing was held on June 9, 2016.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process. Respondent was represented by an attorney at hearing. This matter was continued for several years due to Superior, Appellate and Supreme Court review of community property issues in Respondent's divorce matter.

Respondent testified at the hearing that it was his intention in filling out his retirement election form to provide for his son and his wife in proportions he felt were best, and that he was confused by the forms and misled by the information provided by CalPERS staff. Respondent testified that he believed that staff was directing him as to which Option he must choose and that following those directions had lead to an unintended result.

CalPERS' staff introduced the forms filled out in this Industrial Disability Retirement Application which contain clear language in several locations stating that the Option 2 benefit selection is irrevocable. Nowhere on the election form does Respondent list his son as a beneficiary, and the form includes several opportunities to list multiple beneficiaries which are not selected. Staff testified that CalPERS employees are

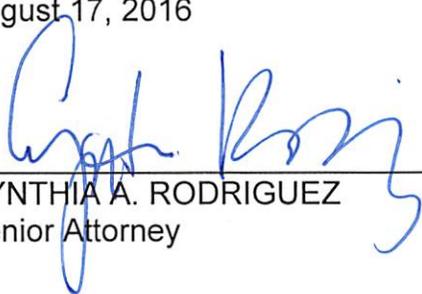
trained to follow the specific requirement that they not make choices for retirees, but instead provide information to allow the members to make their own selections.

Accordingly, the ALJ concluded that Respondent had failed to meet his burden of demonstrating that he made a reasonable error which is correctable. The ALJ determined that the explanation of Option 2 benefits was clear and not susceptible to reasonable misunderstanding as to how to name the intended beneficiary. Also, the ALJ determined that the Respondent, having not named his son anywhere on the form, could not reasonably believe he had selected an Option which would have included his son. The ALJ also determined that correspondence from CalPERS had previously informed Respondent as to his Option benefit selection, and therefore belied the claim that this selection was unknown to Respondent until 2006.

The ALJ determined that Respondent'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.

August 17, 2016



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