

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The issue in this case was whether CalPERS correctly determined the recipient of death benefits payable due to the death of David Duran (Decedent). The disputed benefits payable consist of: (1) lump sum Option 1 Balance Benefit of \$109,699.91, and (2) Pro-rated Allowance Payment of \$1,375.94.

Decedent was a state safety member of CalPERS. He was not married and did not have any children. Three Respondents claimed to be entitled to his death benefits. Respondent Jessica Crane (Respondent Jessica) is Decedent's niece. Respondents Chane and Chase Billow (Respondents Chane and Chase, respectively) were not related to Decedent by blood, but they and their family were lifelong friends of Decedent, and called him their "Uncle."

On September 5, 2013, Decedent executed a Beneficiary Designation designating Respondent Chase as the beneficiary of the Option 1 Benefit. On February 20, 2014, Decedent executed a Beneficiary Designation designating Respondent Chane as the beneficiary of the Option 1 Benefit.

On March 6, 2014, Decedent executed a Beneficiary Designation designating Respondent Jessica as the beneficiary of his death benefits. The signature on this document was an "X," accompanied with a notary public acknowledgement that Decedent personally appeared and proved on the basis of satisfactory evidence that he was the person who executed the Designation. Also on March 6, 2014, Decedent submitted a Special Power of Attorney, designating Respondent Jessica as Decedent's Attorney in Fact. This document was also partially signed and accompanied by a notary's acknowledgement. Decedent died on March 11, 2014.

In May 2014, CalPERS received a letter from Respondents Chase and Chane, claiming that Respondent Jessica, by way of fraud and/or undue influence, unlawfully made herself beneficiary of Decedent's death benefits.

On September 18, 2014, CalPERS sent a letter to Respondents Chase and Chane, requesting additional information, including a statement from Decedent's treating physician as to Decedent's cognitive state on March 5, 2014.

Also on September 18, 2014, CalPERS wrote Respondent Jessica stating that CalPERS had received a dispute to the validity of the Beneficiary Designation. Given the dispute, CalPERS would take into account Decedent's competency and understanding of signing the Designation.

On July 7, 2015, CalPERS wrote Respondents Chase and Chane, notifying them that there was no information indicating that Decedent was not mentally competent on March 5, 2014. Nothing in the death certificate indicated decreased mental competency. No statement from Decedent's treating physician was supplied. In the

absence of proof otherwise, CalPERS recognized the March 6, 2014 Beneficiary Designation as valid. Respondents Chase and Chane appealed.

Respondents Jessica and Chane were represented by counsel at hearing. Respondent Chase represented himself, with assistance from Respondent Chane's attorney.

At hearing, Respondents Chase and Chane did not submit any documentation from a medical professional regarding Decedent's competency. There was nothing in the Death Certificate to indicate Decedent suffered from dementia or Alzheimer's.

The Administrative Law Judge (ALJ) found that Respondents Chase and Chane had the burden of proof. In order for Respondents to successfully bring a claim of undue influence, they had to establish three elements: (1) a confidential or fiduciary relationship between Respondent Jessica and Decedent; (2) show that Respondent Jessica received an undue benefit from the Designation; and (3) that active participation by such person in preparation or execution of the document. The ALJ found that Respondent Jessica did actively participate in preparation of the March 2014 Beneficiary Designation. The handwriting on the Designation was hers, but Decedent checked the boxes and signed with an "X." The ALJ found that Respondents did not prove the other two elements. On Respondents' fraud claim, the ALJ found "opportunity for fraud in this matter was minimal," given the notary's acknowledgment.

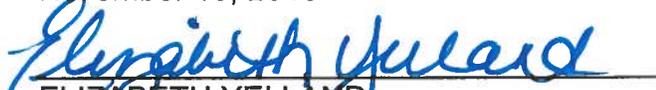
Of the three Respondents, the ALJ also found that Respondent Jessica was the most natural object of his Designation. She was the only blood relative. Decedent lived in her home for the last year of his life without paying for rent or food. She coordinated his health care and assisted him with daily living. In contrast, Respondents Chase and Chane were not blood relatives, lived across the country from Decedent, and visited occasionally.

When all the evidence was considered, the ALJ found that Respondents Chase and Chane did not meet their burden. The ALJ upheld CalPERS' determination, finding that Respondent Jessica is the proper beneficiary to receive Decedent's death benefits.

The ALJ concluded that Respondents' 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. Respondent Chase and Chane may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 16, 2016


ELIZABETH YELLAND
Senior Staff Attorney