

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Tyrone Sharpe, Sr. (Mr. Sharpe) worked as a Janitor for Respondent San Diego Unified School District (Respondent District). By virtue of his employment, Mr. Sharpe was a local miscellaneous member of CalPERS, subject to the terms and conditions of the California Public Employees' Retirement Law (PERL).

Mr. Sharpe passed away on December 5, 2010, at 60 years of age. At the time of his death, Mr. Sharpe had not applied for retirement benefits and had not designated a beneficiary. Mr. Sharpe is survived by his two sons, Respondent Tyrone Sharpe, Jr. and Jermaine Sharpe, his mother, Respondent Sadie Sharpe, and 12 siblings, including Viola Wilson and Carol King. As a result of contributions paid to CalPERS, Mr. Sharpe's lawful beneficiary has the right to receive death benefits totaling \$84,944.75.

In December 2012, Respondent Sadie Sharpe visited a CalPERS regional office, and presented Mr. Sharpe's death certificate and a letter dated October 9, 2009. The typed letter, purportedly signed by Mr. Sharpe, conveyed "everything" he owned to his mother, including his CalPERS retirement benefits. On the basis of that letter, Respondent Sadie Sharpe submitted an application for death benefits. Mr. Sharpe's sons, Tyrone Sharpe, Jr. and Jermaine Sharpe, applied for death benefits as statutory beneficiaries. Lacking any evidence challenging the validity of the October 2009 beneficiary designation, CalPERS accepted the letter. On June 25, 2015, CalPERS advised Respondent Tyrone Sharpe, Jr. and Jermaine Sharpe that it had accepted the letter and would pay the death benefits to Respondent Sadie Sharpe.

Respondent Tyrone Sharpe Jr. appealed CalPERS' determination. Two days of hearing were held in San Diego, California on June 14, 2016 and August 22, 2016. Counsel appeared on behalf of CalPERS. Respondent Tyrone Sharpe, Jr. represented himself. Respondent Sadie Sharpe appeared at hearing personally and by telephone. Viola Wilson, who is not an attorney, served as a personal representative for Respondent Sadie Sharpe. Prior to the hearing, CalPERS explained the hearing process to Respondents and the need to support their case with witnesses and documents. CalPERS provided Respondents with a copy of the administrative hearing process pamphlet. CalPERS answered Respondents' questions and clarified how to obtain further information on the process.

Pursuant to the PERL, a member may "designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the Board." (Cal. Gov. Code §21490.) The designation may be made by filing a completed CalPERS beneficiary form, or by filing a valid written instrument that demonstrates a clear intent to designate a beneficiary. (*Lyles v. Teachers' Retirement Bd.* (1963) 219 Cal.App.2d 524, 528; *Watenpaugh v. State Teachers' Retirement System* (1959) 51 Cal.2d 675, 681-82.) Where there is no beneficiary designation, benefits are paid by statutory order, first to a surviving spouse, and if none, to the

children. If there are no children, benefits are paid to any surviving parents. (Gov. Code §21493.)

At hearing, CalPERS presented the testimony of analyst Daniel Schofield. Mr. Schofield testified that CalPERS pays benefits consistent with the intent of the member as set forth in a writing filed with the Board. Additionally, Mr. Schofield testified that CalPERS has a fiduciary obligation to pay benefits only one time, to the lawful beneficiary. Having no basis to doubt the validity of the October 9, 2009 letter prior to making its determination in June 2015, Respondent Schofield testified that CalPERS accepted the letter.

At hearing, Respondent Sadie Sharpe testified and presented the original October 9, 2009 letter, but no other documents. Viola Wilson, Carol King and Karen Pritchett testified on Respondent Sadie Sharpe's behalf, but had no personal knowledge of the October 9, 2009 letter, did not observe it being prepared, and did not find the letter originally. Rather, a friend of the family who did not testify advised the Sharpe family of its existence. These witnesses all testified to their belief that Tyrone Sharpe, Sr. intended to name his mother, Respondent Sadie Sharpe, as the sole beneficiary of his CalPERS' benefits.

Respondent Tyrone Sharpe, Jr. presented various photographs of his father, all of which had handwriting or notes on the back. He also presented his father's signed marriage license and a document containing the signature from his father's driver's license on file with the Department of Motor Vehicles. Respondent Tyrone Sharpe, Jr. testified at hearing that he believed his father wanted him and his grandmother, Respondent Sadie Sharpe, to use the retirement money to take care of each other. He also testified that the October 9, 2009 letter did not look like his father's writing or signature. He claimed he never saw his father use a computer or prepare a typewritten document, and that the signatures on the marriage license and DMV documentation did not match the signature on the October 9, 2009 letter.

The Administrative Law Judge (ALJ) considered all the evidence, and ruled in favor of Respondent Tyrone Sharpe, Jr. The ALJ found that Respondent Tyrone Sharpe, Jr. bore the initial burden to prove the letter was not a valid beneficiary designation. The burden then shifted to Respondent Sadie Sharpe. By accepting the letter, CalPERS also had a burden to demonstrate its legitimacy. However, the ALJ found that CalPERS accepted the letter in good faith, relying on the representations of the family members who submitted it.

Based upon the evidence received during the two days of hearing, the ALJ held that (1) no witnesses authenticated the letter, (2) there was inconsistent evidence regarding the letter's chain of custody, (3) there was conflicting evidence regarding the decedent's intent and (4) a comparison of the signature on the letter to the signature on the DMV documentation supported a finding that the signature on the letter was not genuine.

The ALJ concluded that Respondent Tyrone Sharpe Jr.'s appeal should be granted. The Proposed Decision is supported by the law and the evidence presented during the two days of hearing. 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 Sadie Sharpe may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 16, 2016



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