

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Sam Vetro (Decedent Vetro) had been an employee of the University of California and a state miscellaneous member of CalPERS. Decedent Vetro service retired and, at that time, named his wife, Bonnie Vetro, as his beneficiary for receipt of an Option 2 Allowance and a lump sum Retired Death Benefit. Bonnie Vetro died in 2005. As a result of Ms. Vetro dying first, Decedent Vetro was entitled to receive an increased monthly allowance and to name a new or replacement beneficiary for the lump sum Retired Death Benefit. In 2006, Decedent Vetro submitted to CalPERS a completed Request for Option 2 Pop-Up Increase form and a new Post Retirement Lump Sum Beneficiary Designation form (Beneficiary Designation). The Beneficiary Designation named Respondent Christine Fuller and Respondent Daniel Fuller (Respondents Fuller), Vetro's stepdaughter and stepson, respectively, as beneficiaries.

Decedent Vetro died on September 3, 2015. In 2012, Decedent Vetro had prepared and signed a will. The will did not refer to the Beneficiary Designation and did not mention the Retired Death Benefit. Following Decedent Vetro's death, both Respondents Fuller and Decedent's daughter, Respondent Helene Aiwaz (Respondent Aiwaz) submitted claim forms (Application for Retired Member/Payee Survivor Benefits) to CalPERS, asking that "any benefits" to which they may be entitled be paid to them. CalPERS' Staff (Staff) determined that Respondents Fuller were entitled to receive the Retired Death Benefit, in the amount of \$2,000.00, and a prorated amount for the month of September 2015, in the amount of \$383.09. Respondent Aiwaz appealed Staff's determination and a hearing was held on January 4, 2017.

Prior to the hearing, CalPERS explained the hearing process to Respondents Fuller and to Respondent Aiwaz 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.

The Administrative Law Judge (ALJ) received and considered documentary evidence and the testimony provided by a CalPERS Program witness. Respondent Aiwaz testified. Respondents Fuller did not testify.

In relevant part, Government Code section 21490 provides that:

- (a) Except as provided in subdivision (b), a member may at any time, including, but not limited to, at any time after reaching retirement age, 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.

Government Code section 21492 provides, in relevant part:


Upon revocation of any beneficiary designation, a member may designate the same or another beneficiary by writing filed with the board, except as otherwise provided in section 21490.

After considering all of the documentary evidence and testimony, the ALJ found that the Beneficiary Designation, filed by Decedent Vetro, naming Respondents Fuller as beneficiaries, was valid and that Decedent Vetro did not revoke the Beneficiary Designation nor file a new Beneficiary Designation prior to his death. The ALJ also found that Decedent Vetro's will made no specific reference to his CalPERS Retired Death Benefit. Accordingly, the ALJ found that "[t]he provisions of decedent's will do not revoke decedent's Beneficiary Designation. CalPERS correctly determined that decedent's last will is not a valid change of decedent's Beneficiary Designation."

The ALJ concluded that the appeal of Respondent Aiwaz 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 Aiwaz may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

April 19, 2017



RORY J. COFFEY
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