ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Daniel I. Goldfield (Respondent) retired on Industrial Disability Retirement with an effective date of May 4, 2008. Respondent selected Option 1 and named his daughter as beneficiary.

Respondent married Karen Holtz (Holtz) on October 9, 2014. As a result of the new marriage, Respondent modified his prior beneficiary designation. Pursuant to Government Code section 21464, Respondent could elect a new option settlement and name his new wife as the beneficiary.

On February 9, 2015, CalPERS received Respondent’s signed Modification of Original Election at Retirement Form. Respondent selected Option 2W and named his wife, Holtz, as the Option 2W beneficiary. An Option 2W provides a retired person and his beneficiary a higher monthly allowance; however, in return, the retired person forfeits the right to a pop-up increase to his or her monthly allowance upon the death or divorce of the beneficiary. If the retired person were to choose an option with a pop-up, he or she and his or her beneficiary would get a lower monthly benefit; however, the retired person’s monthly benefit would increase in the event the beneficiary died or was divorced.

On April 4, 2017, Respondent notified CalPERS of his divorce from Holtz. Respondent requested Holtz be removed as a beneficiary and that he receive a pop-up to his retirement benefits. Respondent claimed that he was not adequately informed about Option 2W and he selected Option 2W by mistake.

Government Code sections 21453 and 21454 allow a retired member who has selected a 2W to remove the beneficiary, but do not allow the retired member to change his or her settlement option upon the occurrence of a qualified event, such as a dissolution or death of the beneficiary.

Government Code section 20160 allows CalPERS to correct the errors or omissions of a retired member if the “error or omission was a result of mistake, inadvertence, surprise, or excusable neglect…” However, “the correction will not provide the party seeking protection with a status, right or obligation not otherwise available…”

CalPERS determined that Respondent’s option benefit cannot be changed because there was no correctable error under Government Code section 20160. The Modification of Original Election at Retirement Form that Respondent signed and submitted on February 9, 2015 specifically stated that Option 2W would provide Respondent a higher retirement allowance, but Respondent would forfeit his right to a pop-up increase upon the death or removal of the beneficiary.
Respondent disagreed with this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 23, 2018. Respondent was represented by counsel at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS answered Respondent’s questions and clarified how to obtain further information on the process.

Respondent testified on his own behalf. Respondent testified that he chose Option 2W because he wanted to ensure Holtz was taken care of after he dies. Respondent testified that he received counseling from a CalPERS representative, Renzo Vergara, on February 9, 2015, and Mr. Vergara failed to specifically inform Respondent that if he divorced Hotlz, he would forfeit his right to a pop-up under Option 2W. Respondent also called Mr. Vergara to testify at the hearing about the information Mr. Vergara provided to Respondent.

CalPERS also presented testimonial and documentary evidence, including the testimony of Mr. Vergara and other CalPERS staff, to demonstrate that Respondent was adequately informed about his retirement options, including Option 2W.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that while Government Code section 20160 allows CalPERS to correct errors or mistakes made by the member due to mistake, inadvertence, surprise or excusable neglect, such errors or mistakes “cannot be a result of the member making a knowing decision and later changing his mind.” The ALJ noted that, “CalPERS cannot correct a mistake that is a result of change of circumstances; in addition, the mistake must pass the ‘reasonable person in like or similar circumstances’ standard.”

In the Proposed Decision, the ALJ concludes that “Respondent made an informed decision to elect Option 2W.” That Respondent was specifically informed in writing by CalPERS that the Option 2W would provide him and his beneficiary a higher monthly allowance but in return, Respondent “would forfeit his right to a pop-up increase upon the death or removal of his beneficiary.” The Modification of Original Election at Retirement Form, which Respondent signed on February 9, 2015, provides this warning in bold letters. Publication 98, which Respondent also received, included this warning. Respondent was provided all the information and yet elected Option 2W to provide for Holtz. As the ALJ noted, “Respondent’s dissolution of marriage was a change of circumstance and not a correctable mistake.”
For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

August 21, 2019

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PREET KAUR
Senior Attorney