

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Aaron L. Foster (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated May 16, 2019. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Floristee Foster (Decedent) had identified her son, Respondent, to be her beneficiary, upon her death, when she submitted her application for service retirement in January, 2013. On August 28, 2017, Decedent signed a Beneficiary Designation form, changing her designated beneficiary from Respondent to her sister, Respondent Gloria O'Neal (Respondent O'Neal). Decedent also signed a Special Power of Attorney form, making her sister, Respondent O'Neal, her attorney-in-fact, including the power to designate herself to be the beneficiary of any CalPERS death benefits.

Decedent died on September 15, 2017. CalPERS determined that Respondent O'Neal was the named beneficiary and entitled to receive the Death Benefit amount of \$2,000.00 and the Option 1 balance of contributions of \$10,962.88. Respondent appealed this determination.

In his Petition for Reconsideration, Respondent has not provided any new evidence that would alter the analysis of the ALJ, after having considered all of the evidence presented at the hearing on April 24, 2019. The Proposed Decision that was adopted by the Board at the August 21, 2019, meeting was well reasoned and based on the credible evidence presented at hearing. The conclusion of the ALJ, as stated in the Proposed Decision, which has been adopted by the Board and is the Board's Decision, was as follows:

When all of the evidence is considered, CalPERS correctly determined decedent's Beneficiary Designation received by CalPERS on August 29, 2017, designating respondent O'Neal as the sole beneficiary is valid.

CalPERS also correctly determined respondents Foster and Davenport are not entitled to the Death Benefit or Option 1 balance of contributions payable by CalPERS.

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There was no credible evidence submitted to conclude that the Beneficiary Designation CalPERS received on August 29, 2017, is invalid.

In support of his Petition for Reconsideration, Respondent attached an unauthenticated, one page document, purportedly prepared by a physician who provided treatment or services to decedent. The document should not be considered by the Board, as it was

not offered and/or received into evidence at the time of the hearing. Additionally, even if the Board were to consider the contents of the document, it does not provide a basis to grant the Petition for Reconsideration. The document is dated July 11, 2017, which is more than 30 days before decedent signed the Beneficiary Designation form, so its relevance is limited, if non-existent. Further, the document is 100% silent with regard to the critical issue in the appeal; whether decedent was or was not mentally competent at the time that she signed the Beneficiary Designation form. The statements contained in the document relate exclusively to decedent's desires or intentions regarding end-of-life decisions (NOT designation of beneficiaries for CalPERS benefits). As such, again, the relevance of the contents of the document would be limited, if not non-existent.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The PD that was adopted by the Board at the June 19, 2019 meeting was well reasoned and based on the credible evidence presented at hearing.

September 18, 2019

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RORY J. COFFEY  
Senior Attorney