

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Decedent Reginald Van-Hook (Decedent) became a local miscellaneous member of CalPERS through employment with the Alameda County School District on July 1, 1993. On September 1, 2009, Decedent retired for disability and elected Option 1 Lifetime allowance. Option 1 is the highest retirement benefit allowed and does not provide for a monthly survivor's benefit. Decedent was not married when he retired.

On July 14, 2010, Decedent married Respondent Stacy Van Hook (Respondent). On December 10, 2010, CalPERS received a valid Post Retirement Lump Sum Beneficiary Designation form naming Respondent as Decedent's primary beneficiary for lump sum death benefits.

Over the years, both Decedent and Respondent called and met with CalPERS staff in person to discuss different types of benefits, the Option 1 benefit Decedent chose at retirement and continuing benefits. CalPERS consistently informed them in person and in writing that ongoing monthly benefits payable to Respondent were not available under the Option 1 formula.

CalPERS received a Modification of Election form which changed Decedent's Option 1 election to an Option 2 election on July 14, 2017.

On August 7, 2017 (about three weeks later), CalPERS received written cancellation of the Modification because Respondent did not understand Decedent's ongoing allowance would be reduced to pay for the Option 2 election. CalPERS canceled the Modification.

On January 3, 2017 and May 31, 2018, CalPERS mailed two death estimate of benefits letters to Decedent, outlining Decedent's Option 1 benefit, lump sum death benefits payable to Respondent upon his death, and informing him that ongoing lifetime survivor benefits were not payable to Respondent after he passed.

Thereafter, on September 25, 2018, Decedent passed away. Respondent contacted CalPERS requesting monthly surviving death benefits on November 16, 2018 and on December 17, 2018, CalPERS paid Respondent the lump sum death benefits due which included \$2,000.00 for the lump sum retired benefit; \$1,134.04 for the monthly allowance payable from the first of the month of the last payable warrant through date of death; and \$9,203.97 for payment of Option 1 balance of accumulated contributions.

CalPERS informed Respondent in writing on March 8, 2019, that Decedent did not elect a retirement option with a continuing allowance and that Decedent and Respondent were not married when he retired. Therefore, she is not eligible for a lifetime beneficiary allowance or survivor continuance allowance.

On May 6, 2019, Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on December 4, 2019. Respondent represented herself at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

Respondent testified on her own behalf. Respondent testified that several facts should make her eligible for continued death benefits. She testified that she would have married Decedent before he retired if she had known it would have made a difference. The ALJ found that to be pure speculation. Respondent testified that she could not afford to pay for Decedent's care if the amount of his retirement benefit was reduced. The ALJ found that to be a rational choice she made. The ALJ also found that CalPERS gave her all the facts. She did not make a correctable mistake. She did not establish that any misinformation was given to her. Respondent also submitted a letter from her sister in law, which was accepted as administrative hearsay. The letter reiterated Respondent's testimony.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Decedent elected Option 1, the highest retirement allowance he could receive. He was not married at the time he retired. The only Modification filed by Decedent allowed Respondent to receive lump sum death benefits, but not monthly benefits. Respondent is not eligible to receive continuing benefits. Similarly, Government Code section 20160 does not apply here because CalPERS did not make a correctable error. Respondent canceled the Modification which would have allowed her to receive monthly benefits because she could not afford to care for Decedent on the reduced amount.

In the Proposed Decision, the ALJ concludes that CalPERS' determination was correct. Respondent is not entitled to a lifetime monthly allowance.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

February 19, 2020

Elizabeth Yelland
Senior Attorney