

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Bonnie J. Murphy, who is now deceased, was a member of CalPERS through her employment as a Head Coach of the women's golf team for California State University Northridge (CSUN.)

Ms. Murphy was diagnosed with cancer in November 2013.

Ms. Murphy and Respondent Steven P. Mulcahy (Respondent Mulcahy) got engaged to be married in 2015, but the marriage never occurred.

On May 29, 2015, while engaged to Respondent Mulcahy, Ms. Murphy submitted a Pre-Retirement Beneficiary Designation form to CalPERS. In the form, Ms. Murphy designated Respondent Mulcahy as her primary beneficiary with Tracey Bowers as her secondary beneficiary. CalPERS confirmed Ms. Murphy's pre-retirement designations in writing on that same day.

Ms. Murphy submitted a Retirement Allowance Estimate Request to CalPERS on July 26, 2016. On the form, Ms. Murphy identified Respondent Mulcahy, her fiancé, as her individual lifetime beneficiary.

Ms. Murphy submitted her application for service retirement to CalPERS on July 26, 2016. On her application, Ms. Murphy designated her fiancé, Respondent Mulcahy, as her lifetime beneficiary for the Option 4 2W & 1 benefit. She designated Tracey Bowers, her sister, as secondary beneficiary. Ms. Murphy did not include her mother, Jane Murphy, as a beneficiary.

CalPERS approved Ms. Murphy's application for service retirement and informed Ms. Murphy of the approval by letter dated October 24, 2016.

The letter also stated that upon her death, benefits would be paid to her beneficiary. The letter further stated, "Upon a qualifying life event after retirement, you may modify [your beneficiary designation] and name a new beneficiary. For more information on modification of election, refer to our publication, Changing Your Beneficiary or Monthly Benefit After Retirement."

Ms. Murphy received her first retirement check in December 2016.

Several years later, Ms. Murphy executed a Special Power of Attorney which named her brother, Respondent Dave Murphy (Respondent Murphy), as her Attorney-In-Fact. The effective date of the Power of Attorney was June 14, 2018.

Respondent Murphy, acting as the Attorney- In-Fact, contacted CalPERS on June 14, 2018, seeking to modify Ms. Murphy's lifetime beneficiary designation. In his request to change the beneficiary designation, Respondent Murphy stated that the change was based, in part, on Ms. Murphy's decision not to marry Respondent Mulcahy.

CalPERS denied the request to change Ms. Murphy's beneficiary designation and informed Respondents Murphy and Mulcahy of its determination by letter dated July 19, 2018. In its determination letter, CalPERS explained that Ms. Murphy's beneficiary designation became irrevocable 30 days after she was first paid retirement benefits. The letter further explained that there had been no qualifying event that would have allowed Ms. Murphy to change her beneficiary designation. CalPERS also determined that there had been no correctable mistake made by Ms. Murphy under Government Code section 20160.

Respondent Murphy appealed 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 October 23, 2019. Respondent Murphy represented himself at the hearing. Respondent Mulcahy did not appear 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 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.

At the hearing, Respondent Murphy testified about Ms. Murphy's relationship with Respondent Mulcahy, her cancer and his request to change Ms. Murphy's beneficiary designation. Respondent Murphy testified that in the last year of her life, Ms. Murphy expressed the desire to change her retirement beneficiary from Respondent Mulcahy to her mother. He testified that she expressed this to him and constructed a writing to that effect in early June 2018. Respondent Murphy claimed that Ms. Murphy wanted to change the beneficiary from Respondent Mulcahy so that her mother would receive the benefits. Despite that indication of intent to change the beneficiary designation, Ms. Murphy did not take any steps to change the beneficiary until days before she passed away. Respondent Murphy argued that Ms. Murphy's cancer, and her decision not to go forward with her marriage, were life-changing events that would allow for a change of beneficiary designation.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent Murphy's appeal. The ALJ found that Ms. Murphy intended to designate her fiancé, Respondent Mulcahy, as her beneficiary prior to her actual application for retirement benefits. Ms. Murphy did not have her mother in mind as a beneficiary as indicated by the fact that the secondary beneficiary in her initial submissions to CalPERS was Tracey Bowers. Ms. Murphy was on notice that her designation could be changed only in limited circumstances, and she nevertheless

designated Respondent Mulcahy in the retirement application. Ms. Murphy maintained her relationship with him for many months after her retirement. That Ms. Murphy's health declined, or that she did not marry Respondent Mulcahy, does not establish a mistake on her part. She was afflicted with cancer when she designated Respondent Mulcahy as her beneficiary, so it does not appear that some mistake was driven by her illness. No mistake was established on this record.

In the Proposed Decision, the ALJ concludes that grounds did not exist to change the beneficiary designation due to some mistake by Ms. Murphy. The ALJ further determined that waiver of benefits by Respondent Mulcahy, if he chooses to do so, does not constitute a qualifying event that would permit the naming of a new beneficiary. The ALJ upheld CalPERS' determination and denied Respondent Murphy's appeal.

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

February 19, 2020

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