

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Philip Ryan (Decedent) was a state miscellaneous member of CalPERS, having been employed as an attorney by the California Unemployment Insurance Appeals Board. Decedent service retired in March 1999. Decedent elected to receive the Unmodified Allowance, which does not provide for the payment of benefits to a survivor or beneficiary upon death. Decedent and Respondent Dina Bitton (Respondent) were married in January 2002. Decedent could have changed his retirement and named Respondent to be his beneficiary, but Decedent did not do so and continued to receive the maximum service retirement allowance until his death on July 20, 2018.

Respondent believed that Decedent had changed his retirement benefits to include her as a beneficiary, which would have made her eligible to receive a monthly benefit and to have continued health care coverage through CalPERS after Decedent's death. CalPERS staff determined that Decedent had not properly made a change in his retirement benefits to include Respondent. CalPERS notified Respondent of its determination by letter dated November 27, 2018.

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 September 24, 2019. Respondent was represented by counsel at all times during the hearing.

Government Code section 21462 provides that a retired member who was not married at the time of retirement may change his or her retirement option to designate a new or post-retirement spouse as a beneficiary. The election to change retirement options is irrevocable and must be made within 12 months of marriage. If not made within 12 months of marriage, the retired member can still make the election, but it will not go into effect for 12, months, and only if both the member and beneficiary do not die.

Decedent and Respondent were married in January 2002. Pursuant to Government Code section 21462, Decedent could have elected to change his retirement option from the Unmodified Allowance to another option, designating Respondent as his beneficiary. Decedent did not modify his retirement benefit and continued to receive the maximum amount for the next 16 years. In the summer of 2002, Decedent did add Respondent to his health care coverage through CalPERS.

In January 2016, Decedent went to the CalPERS Sacramento Regional Office (SRO). Decedent was accompanied by his daughter, who was also an attorney. The Customer Touch Point (CTP) Note generated for that meeting document that CalPERS staff explained what steps Decedent should take in order to change his retirement option and add Respondent as a beneficiary. The CTP Note reads as follows:

Member came into SRO to inquire about death benefits. Educated on unmodified allowance and RD [Retired Death] benefit and pro-rata check. Educated on marriage being a qualifying event to modify option. Will need copy of marriage certificate and proof of spouse birthdate. Provided Changing Bene pub and both spouse and member needing to be alive for 12 months after submission of election form. Educated on health after member passes for spouse if member elects to leave spouse a monthly benefit.

The “Changing Bene pub” referred to in the CTP Note is the CalPERS brochure which contains information and forms regarding how to go about modifying retirement benefits, including adding a spouse as a beneficiary. The publication explains that when the request is not submitted within 12 months of marriage, the request to modify retirement benefits must be made in writing. Further, there is a statutory 12-month waiting period, following submission of the form, for the modification to become effective, and both the retired member and the added spouse/beneficiary must survive during that 12-month period.

For over one year following his January 2016 meeting with CalPERS staff, Decedent took no action to modify his retirement benefit. On March 27, 2017, Decedent called CalPERS. The CTP Note for that call reads as follows:

Member called to inquire what spouse will receive when he passes away. Specifically, he wants to make sure she’s eligible to receive a monthly benefit so he’s assured the health care coverage will continue for spouse as a survivor.

The CTP Note for March 27, 2017 was forwarded to the Benefit Services Division (BNSD), so that a Death Estimate Letter would be generated and sent to Decedent. CalPERS’ Death Estimate Letter, dated October 17, 2017, repeated information that staff had shared with Decedent at the January 2016 meeting and which was set forth in the “Changing Bene pub” given to Decedent. The Letter again informed Decedent that he needed to submit a modification of retirement option form, designating Respondent as his beneficiary. The form was and is available online. Decedent was reminded that there was a 12-month waiting period before the modification would become effective.

On October 27, 2017, Decedent went online and filled out a modification request form. In a letter on the same date, CalPERS acknowledged receipt of the modification request form and sent Decedent another form which needed to be signed by Respondent and notarized. That form was completed and returned. On November 6, 2017, CalPERS sent Decedent a letter advising that the request for modification of his retirement benefit had been processed and that it would become effective 12 months after the first day of the following month, or on December 1, 2018.

Decedent did not survive the one-year statutory waiting period. Decedent died on July 20, 2018.

At hearing, the Respondent testified on her own behalf. Respondent testified that Decedent did not involve her in, nor speak to her about his retirement benefits, or his efforts to change his retirement option. Respondent said that, because she had been added to Decedent's health plan coverage in 2002, she assumed that she would be covered following Decedent's death. Respondent argued that she should be granted relief based on Government Code section 20160, the "Mistake Statute."

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ concluded as follows:

[Decedent] could have added respondent as a beneficiary at any time after they married in January 2002. [Decedent] (and respondent) enjoyed the benefit of the unmodified allowance for many years. In January 2016, [Decedent] met with a CalPERS representative who explained to him the process of adding a beneficiary. He failed to act for over a year, at which point he made a telephone inquiry. It is regrettable that CalPERS did not send the Death Estimate letter earlier, but [Decedent] could have submitted the modification form without waiting for receipt of the letter. It cannot be found that [Decedent's] failure to designate respondent as his beneficiary more than a year before his death was the result of mistake, inadvertence, surprise, or excusable neglect. Nor can it be found that [Decedent] made the inquiries that a reasonable person in his circumstances would have made. Respondent is not entitled to relief based on Government Code section 20160.

The ALJ also found that Respondent had not demonstrated the existence of the elements necessary for application of equitable estoppel.

Respondent now petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated October 31, 2019. No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision adopted by the Board at the December 18, 2019 meeting was well reasoned and based on the credible evidence presented at hearing.

For all the foregoing reasons, staff argues the Board deny the Petition and uphold its decision.

February 19, 2020

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