

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Anastasia (Stacey) Conley-Van Hook (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated January 9, 2020. For reasons discussed below, staff argues the Board deny the Petition and uphold its 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.

Thereafter, on July 14, 2010, Decedent married 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, including the Option 1 benefit Decedent chose at retirement and others that might continue 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 on July 14, 2017, which changed Decedent's Option 1 election to an Option 2 election.

About three weeks later, on August 7, 2017, 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.

Decedent passed away on September 25, 2018. 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 on March 8, 2019, in writing that Decedent did not elect a retirement option that provided a continuing allowance. 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 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 have made 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 also 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 and as such, Respondent 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 of benefit that would have been received had the modification taken effect.

The ALJ concluded that CalPERS' determination was correct and found that Respondent was not entitled to a lifetime monthly allowance.

In her Petition for Reconsideration, Respondent submits various documents, most of which were made exhibits at the hearing and already considered by the ALJ. She adds the written argument she presented to the Board on February 19, 2020.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the February 19, 2020, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the foregoing reasons, staff recommends that the Board deny the Petition for Reconsideration and uphold its decision.

April 22, 2020

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