

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Kim A. Yarbrough (Decedent) became a member of CalPERS through his employment as a civil engineer with the California Department of Transportation (CalTrans), beginning on May 1, 1956.

Decedent married Linda Yarbrough (Linda) on July 29, 1987, which is reflected on a marriage certificate. Decedent applied for a service retirement on November 20, 1992. As part of the documents submitted with his service retirement, Decedent completed a Settlement and Beneficiary Designation Form, he elected the Option 3W Lifetime Monthly Benefit (Option 3W) and named Linda as the beneficiary. Decedent also named Linda as the beneficiary of his Lump Sum - Retired Death Benefit.

Decedent service retired effective December 31, 1992.

Decedent married his second wife, Respondent Pat Yarbrough (Respondent), on December 29, 1994. On February 23, 1995, Decedent contacted CalPERS by letter and telephone to add Respondent and remove his ex-spouse Linda, from his health and dental plans. Those changes were made to his account.

During the phone call with CalPERS, Decedent mentioned that he never actually married Linda, and that he was waiting for records from the county clerk regarding the invalid marriage. CalPERS never received any documents invalidating Decedent's marriage to Linda. Linda died on May 14, 2009.

Decedent signed and submitted a Special Power of Attorney Form to CalPERS, naming Respondent as his attorney-in-fact on December 27, 2015. Decedent grew ill in early 2016. A May 16, 2016 letter from Decedent to CalPERS stated that he wanted Respondent to receive his retirement after his death. Respondent signed the May 16, 2016 letter on Decedent's behalf because he was having problems writing. Decedent died on August 4, 2016.

CalPERS mailed two condolence letters to Respondent on August 29, 2016. The letters informed Respondent that she did not qualify for the Survivor Continuance. To be eligible for the Survivor Continuance, the beneficiary's marriage to the member has to occur at least one year prior to the member's (Decedent's) retirement date and be continuous until his death. The letter also indicated that Respondent's health coverage would stop because she was not eligible for a monthly allowance.

CalPERS sent two additional letters to Respondent on September 7, 2016. These letters notified Respondent that CalPERS was sending her two warrants: the first in the

amount of \$550.43 (pro-rata retirement allowance) and the second in the amount of \$1,600 (Death Benefit).

Respondent faxed a handwritten letter to CalPERS on September 8, 2016. Respondent sought “Decedent’s retirement benefits” and stated that Decedent wanted her to receive his retirement benefits after he died.

CalPERS replied to Respondent in writing by letter dated November 14, 2016. CalPERS informed Respondent that the Survivor Continuance requires the surviving spouse to be married to the member for a continuous period beginning at least one year prior to his retirement and the date of his death. Because Respondent married Decedent after his retirement, she was ineligible for the Survivor Continuance. The letter also informed Respondent that she was ineligible to receive the Option 3W.

CalPERS sent additional letters to Respondent on January 24, 2017, and April 25, 2017, indicating that she was ineligible to receive the Option 3W benefit. The letters informed Respondent that the Option 3W is irrevocable, and can only be modified after certain qualifying life events. Here, the change was made more than one year after the qualifying event, so it does not take effect for twelve months thereafter and the member must be living on the effective date of the change.

The letters further explained that when a former spouse is named as the Option 3W beneficiary, the dissolution documents must specifically award the member (Decedent) his full interest in his retirement account. CalPERS had no record that Decedent requested a modification of his Option 3W, or that Decedent received a judgment awarding him the full interest in his retirement after his marriage to Linda ended. The letters gave Respondent appeal rights.

Respondent appealed CalPERS’ 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 November 2, 2021. 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.

At the hearing, CalPERS provided testimony that the Survivor Continuance requires the surviving spouse to be a husband or wife who was married to the member for a continuous period beginning at least one year prior to retirement and to the date of death (Government Code section 21629). Because Respondent married Decedent after his retirement, she was ineligible for the Survivor Continuance.

CalPERS also provided testimony that the Option 3W benefit can only be changed or modified following qualifying life events (Gov. Code sections 21462 and 21492). One of those events is a marriage or death of the former beneficiary which is what happened here. However, when the former spouse is named as an Option 3W beneficiary, Decedent must have been awarded 100% interest in his retirement following dissolution (Government Code section 21454). Further, if the change is made more than one year after the qualifying event, it will not take effect for twelve months, and the member must be living at the end of those twelve months.

CalPERS never received a request from Decedent to change his Option 3W beneficiary from Linda to Respondent. Although Decedent submitted a letter dated May 16, 2016, which attempted to give “Decedent’s retirement” to Respondent, that letter did not effectuate a change because no elective forms and necessary documents were included. Further, Decedent died 11 weeks after the date of the letter, long before the required 12-month waiting period expired. Finally, CalPERS never received any dissolution documents invalidating Decedent’s marriage to Linda or awarding Decedent the requisite 100% interest in his retirement.

Respondent testified on her own behalf. Respondent testified that she sent “papers” to change the Option 3W beneficiary, but she does not know what CalPERS did with them. Respondent stated that Decedent signed the papers a year after their 1993 marriage, and that they went together to deliver the papers to the CalPERS Regional Office in San Diego. Respondent also explained that Decedent’s marriage to Linda was invalid because Linda was already married to someone else at the time.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. Respondent did not provide documentation to show that Decedent’s marriage to Linda was invalid or annulled. Respondent also failed to provide documentation to show that Decedent was awarded his full interest in his retirement benefit following his divorce from Linda. Plus, Decedent never completed any forms to change his Option 3W beneficiary to Respondent. So, the ALJ ruled that Respondent was not entitled to the Option 3W.

The ALJ also found that Respondent was not entitled to the Survivor Continuance because Respondent was not married to Decedent one year prior to his retirement, making her ineligible for the Survivor Continuance.

In the Proposed Decision, the ALJ concludes CalPERS correctly determined that Respondent was not eligible for the benefits in question. Accordingly, the ALJ denied the appeal.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” In order to avoid ambiguity, staff recommends that “Daniela” be changed to “Daniel” in the first line of paragraph 18 on page six, and that “Ms.” be changed to “Mr.” in paragraphs 18 and 19.

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

January 18, 2022

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