

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Dwain Moore (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated November 4, 2021. For reasons discussed below, staff argues the Board deny the Petition, and uphold its decision.

Respondent was employed by the Department of Social Services and separated from employment on August 1, 1997. On September 9, 1997, CalPERS mailed Respondent a letter notifying him of his option to request a refund of his contributions, as provided for by Government Code section 20735, which allows a CalPERS member to take a refund of their contributions upon the discontinuation of their state service or their membership.

On October 23, 1997, Respondent's brother and designated attorney-in-fact, Dathan Moore, sent a letter to CalPERS informing CalPERS that Respondent's whereabouts were unknown and seeking Respondent's retirement contributions. Dathan Moore enclosed a copy of the Uniform Statutory Power of Attorney Form (Uniform Power of Attorney) signed by Respondent and notarized on April 23, 1996. The Uniform Power of Attorney appointed Dathan Moore as Respondent's attorney-in-fact and permitted Dathan Moore to handle transactions on behalf of Respondent, including "Retirement plan transactions."

CalPERS requested that Dathan Moore provide the original Uniform Power of Attorney for review. On November 6, 1997, CalPERS sent a letter to Dathan Moore approving his request to elect a refund of Respondent's contributions as the designated attorney-in-fact on the Uniform Power of Attorney form and allowing Dathan Moore to submit the refund application for processing.

CalPERS received the refund election and justification for non-signature of spouse forms signed by Dathan Moore on November 12, 1997. On November 24, 1997, CalPERS issued a refund of contributions in Respondent's name to Dathan Moore.

Respondent wrote CalPERS on January 7, 2015, requesting a status of his CalPERS retirement account. In the letter, Respondent noted that he recently learned that CalPERS issued a refund of his contributions to Dathan Moore. The letter informed CalPERS that Respondent did not approve of Dathan Moore accessing his retirement account.

On January 28, 2015, Respondent again wrote to CalPERS and stated that although he designated his brother, Dathan Moore, as his attorney-in-fact, he did not authorize his brother to elect a refund of contributions on his behalf.

Over the next several months in 2015, and then in 2020, CalPERS wrote to Respondent regarding his CalPERS retirement account and providing him details regarding the refund of contributions. Ultimately, on July 8, 2020, CalPERS determined that a refund in Respondent's name was appropriately issued based on the signed, notarized Uniform Power of Attorney.

Respondent 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 18, 2021. Respondent represented himself at the hearing.

Respondent testified on his own behalf. Respondent testified that although he may have signed the Uniform Power of Attorney, he did not give his brother the authority to refund his pension contributions. Respondent also argued that CalPERS should have required Dathan Moore to present the CalPERS' Power of Attorney Form to allow the refund of contributions, rather than accepting the Uniform Power of Attorney.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to prove by a preponderance of the evidence that the Uniform Power of Attorney he signed and Dathan Moore presented to CalPERS was fraudulent, or that CalPERS should not have acted based on that form. The ALJ found that CalPERS correctly accepted the Uniform Power of Attorney because Respondent signed it and "a notary acknowledged he certified respondent's identity." The ALJ noted that although Respondent may have been a victim of his brother's fraud, CalPERS "acted reasonably when it issued a refund" of Respondent's contributions. As to Respondent's assertions that CalPERS should have required the CalPERS' Power of Attorney Form, the ALJ stated that under Probate Code section 4402, CalPERS was required to accept the Uniform Power of Attorney even though it has its own Power of Attorney Form. The ALJ thus concluded that CalPERS' reliance on the Uniform Power of Attorney was justified and the refund of Respondent's contributions was valid.

Respondent now argues that the ALJ's decision was incorrect because the Uniform Power of Attorney did not specifically give Dathan Moore the authority to handle transactions relating to Respondent's CalPERS retirement account. Based on this, Respondent argues that the "contents" of the Uniform Power of Attorney were defective. Respondent's argument is flawed. CalPERS is not specifically named in the Uniform Power of Attorney; however, there is no requirement under the law that CalPERS be specifically named. The Uniform Power of Attorney signed by Respondent clearly granted Dathan Moore the authority to handle "Retirement plan transactions" on Respondent's behalf, this included Respondent's CalPERS retirement account. Therefore, the ALJ correctly determined that Dathan Moore had authority to handle transactions relating to Respondent's CalPERS retirement account.

The Proposed Decision that was adopted by the Board at the January 18, 2022 meeting was well reasoned and based on the credible evidence presented at hearing. No new evidence has been presented by Respondent that would alter the analysis of the ALJ. For these reasons, the Petition for Reconsideration should be denied.

March 16, 2022

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PREET KAUR  
Staff Attorney