

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Trinity Justice Olson-Garcia (Respondent Olson), through her attorney and guardian, Karen D. Olson, petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated December 23, 2022. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

Joseph Garcia (Decedent) became a local safety member of CalPERS on January 8, 2002, when he began working as a Deputy Sheriff for the County of Del Norte.

On April 29, 2011, Decedent signed a Uniform Statutory Form for Power of Attorney (POA) and a California General Durable POA, naming his then fiancé, Marian Davis (Respondent Davis), as his attorney-in-fact. In both POA forms, Decedent granted Respondent Davis "all powers listed" in the form including "**retirement plan transactions**" (emphasis added). In addition to granting Respondent Davis the power to act on his behalf relating to his retirement plan, Decedent extended her power by including the following handwritten note on each POA:

"I, Joseph Garcia, grant Marian Davis, who is my power of attorney the extended powers to accept and/or receive any of my property, in trust or otherwise, as a gift."

Respondent Davis signed both POA forms in the presence of a notary, acknowledging her appointment and responsibilities.

On May 9, 2011, Decedent completed an application for Industrial Disability Retirement (IDR). Decedent designated Respondent Davis as the individual lifetime beneficiary and retired death beneficiary. He listed two of his three children, including his minor daughter, Respondent Olson as the beneficiary of the Survivor Continuance. Decedent and Respondent Davis signed the IDR Application before a notary. Shortly after signing the IDR Application, Decedent was incarcerated.

Respondent Davis submitted the application to CalPERS. In reviewing the application, CalPERS noted that there was no retirement payment option selected. CalPERS sent Decedent a letter on May 19, 2011, requesting that he select a retirement payment option.

On June 22, 2011, Respondent Davis completed a Supplemental Retirement Information (SRI) form which included a retirement payment selection – Option 2. The SRI form identified Respondent Davis as the individual lifetime beneficiary and the retired death beneficiary. Respondent Davis signed Decedent's name, as well as her

own, writing “power of attorney” after each signature and attached a notary certification for her signatures. Respondent Davis submitted the form to CalPERS.

On June 29, 2011, CalPERS notified Decedent that his IDR was approved and confirmed that he selected the Option 2 monthly retirement allowance. Decedent was placed on retirement and received his monthly allowance beginning in August 2011.

In October 2011, Decedent and Respondent Davis broke off their engagement and ended their relationship. Decedent was released from jail in November 2011.

In March 2015, Decedent sought to modify his individual lifetime beneficiary designation from Respondent Davis to his daughter Respondent Olson. CalPERS informed Decedent that the individual lifetime beneficiary designation is **irrevocable** and can only be modified following a qualifying event. Because Decedent did not identify any qualifying event, CalPERS notified him that it was rejecting his request to change the lifetime beneficiary designation from Respondent Davis to Respondent Olson. In her Petition for Reconsideration, Respondent Olson erroneously refers to this request for modification as a valid designation.

CalPERS never received a further request from Decedent to change the individual lifetime beneficiary designation.

On January 6, 2016, Decedent changed the lump-sum retired death benefit designation from Respondent Davis to Respondent Olson through his online account.

On November 11, 2017, Decedent passed away. CalPERS sent letters to Respondent Davis and Respondent Olson identifying them as beneficiaries of his retirement and death benefits. Both Respondent Davis and Respondent Olson applied for retired member benefits. After reviewing Decedent’s file and the information provided by Respondent Davis and Respondent Olson, CalPERS determined that Respondent Davis is Decedent’s lifetime beneficiary, entitled to a monthly allowance of \$2,564. CalPERS paid the retired death benefit of \$500 to Respondent Olson.

Respondent Olson 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 20 and 21, 2022. Respondent Olson was represented by counsel at the hearing. Respondent Davis represented herself.

Respondent Olson appealed on the following grounds: (1) CalPERS should correct the beneficiary designation pursuant to Government Code section 20160 to effectuate Decedent’s true intention to name Respondent Olson as his lifetime beneficiary; (2) Respondent Davis fraudulently changed the IDR Application by replacing Respondent Olson’s name as the individual lifetime beneficiary with her own; (3) Respondent Davis did not have authority to designate herself as the beneficiary under the Probate Code; (4) the IDR Application is void because Respondent Davis

misrepresented herself as Decedent's spouse or registered domestic partner in the IDR Application; and (5) the IDR Application is void because two sections were not signed by Diane Bonilla, Decedent's legal spouse.

At the hearing Respondent Olson presented witnesses who testified that they spoke with Decedent and heard him say he never wanted Respondent Davis to be his individual lifetime beneficiary, but always intended to leave his retirement benefits to Respondent Olson. Respondent Olson also offered several writings she attributes to Decedent stating his desire for her to be his individual lifetime beneficiary and not Respondent Davis.

Respondent Olson also called Diane Bonilla as a witness. Ms. Bonilla testified that she was married to Decedent when he signed the IDR Application; however, Ms. Bonilla did not allege that she had any community property interest in his retirement or retired death benefits.

Respondent Davis made no objection to the CalPERS determination naming her the individual lifetime beneficiary of Decedent's retirement. Respondent Davis testified that she was engaged to Decedent in 2011 and believed she would marry him when he was released from jail. At the time, Respondent Davis had no knowledge of Ms. Bonilla or her relationship with Decedent.

Respondent Davis authenticated her and Decedent's signatures on the IDR Application and the two POA forms. She denied making any changes to Decedent's documents without his express permission and specifically denied removing Respondent Olson's name from any document. Even after Decedent was incarcerated, Respondent Davis explained she would bring all issues to him, so he could make the final decision. For example, Respondent Davis brought Decedent the letter from CalPERS regarding the SRI form required to select a retirement payment option. Respondent Davis testified that she read the letter to Decedent, then completed and submitted the form as he directed her to.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent Olson's appeal. The ALJ found that CalPERS correctly determined Respondent Davis was Decedent's individual lifetime beneficiary. Respondent Olson offered writings and testimony allegedly recounting Decedent's intentions, but the writings were not authenticated and constitute hearsay. Even if the writings reflected Decedent's intentions, they are irrelevant when a valid legal document exists. In this case, Decedent's IDR Application is valid. Decedent and Respondent Davis both signed the IDR Application with a notary certification; he named Respondent Davis as his individual lifetime beneficiary; and he selected Respondent Davis as his POA authorizing her to submit the IDR Application and SRI form with Option 2 selected for his retirement payment.

The ALJ held that the IDR Application remained valid no matter how Respondent Davis was characterized: spouse, domestic partner, fiancée, or friend as the lifetime beneficiary need not be related to the decedent. Further, the ALJ found no evidence to

show that Decedent was married to Ms. Bonilla when he signed the IDR Application and no evidence that Ms. Bonilla ever filed a claim with CalPERS seeking a portion of his retirement as community property or under a dissolution of marriage agreement. The ALJ held that Respondent Olson did not have standing to void the IDR Application on Ms. Bonilla's behalf, and Respondent Olson offered no evidence to support a finding of fraud by Respondent Davis. The evidence showed that Decedent signed and notarized two POA certifications, providing Respondent Davis with authority to act for Decedent on all things, including his retirement plan transactions.

The ALJ concluded that Respondent Olson failed to meet her burden of proving that CalPERS' determination was incorrect and denied her appeal.

The Petition for Reconsideration repeats the same arguments that were considered and rejected by the ALJ and this Board. The Petition for Reconsideration does not include new evidence or arguments. Accordingly, staff argues that the Petition for Reconsideration should be denied.

April 18, 2023

AUSTA WAKILY
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