

**ATTACHMENT A**

**RESPONDENT'S PETITION FOR RECONSIDERATION**

## Attachment A

**From:** [Kunis, Lissa](#)  
**To:** [Hutchins, Tonya](#)  
**Subject:** FW: Petition for Reconsideration - OAH No. 2022030869  
**Date:** Wednesday, October 19, 2022 10:15:45 AM  
**Attachments:** [Petition for Reconsideration Email draft October 6.docx](#)

---

### Lissa R. Kunis

Staff Services Manager I

CalPERS Legal Office  
(916) 795-2249

---

**From:** Anderson, Kayla <Kayla.Anderson@calpers.ca.gov>  
**Sent:** Tuesday, October 11, 2022 9:49 AM  
**To:** Cooper, Tawana <Tawana.Cooper@calpers.ca.gov>; Harding, Jamie <Jamie.Harding@calpers.ca.gov>; Kunis, Lissa <Lissa.Kunis@calpers.ca.gov>; Mercer, Heather <Heather.Mercer@calpers.ca.gov>; Savala, Sabrina <Sabrina.Savala@calpers.ca.gov>  
**Cc:** Ortega, Christina <Christina.Ortega@calpers.ca.gov>; Tran, Tuan <Tuan.Tran@calpers.ca.gov>  
**Subject:** Petition for Reconsideration - OAH No. 2022030869

Good Morning,

Please see attached the Petition for Reconsideration.

Thank you,

*Kayla Anderson*

Board Travel Coordinator | CalPERS Board Services Unit |  
Office: 916-795-0809 Cell: 916-330-0675 Fax: 916-795-3972

Follow us on [Twitter](#) | Like us on [Facebook](#) | View Videos on [YouTube](#)

Petition for Reconsideration

October 6, 2022

Subject: In the matter of the appeal of lifetime monthly benefit payable upon the deaths of Kim M Gardner and Hayley M Gardner by Robert J Gardner, respondent, and Ryan E Gardner, respondent.

OAH No. 2022030869

To the Board of Administration:

I am deeply dissatisfied with the decision by the board of administration. I believe the board has rendered a seriously flawed decision in this case. I truly believed that if the board members actually took the time to read my letter, that they would find in our favor. I believed that the board would use discretion, compassion and the legal arguments which I put forth to allow them to find in our favor. I was wrong with that thinking, and now believe it could only be because they did not actually spend time to read the letter or possibly missed it because it was very cleverly put at the very back of the legal documentation, which was prepared and put together by Calpers for the hearing. Perhaps this letter will also get put at the very back, so that by the time the board members have read the 20 - 30 pages of verbiage put forth by Calpers they will weary of reading, and not pay attention to my comments.

Of course, if the Board wishes to deny again this time, it can always fall back on the standard legal arguments as put forward in your denial. Arguments which have no room for compassion or discretion. I would ask you to look higher for your final decision this time, and correct a wrong conclusion.

At this time, with the belief that my first letter must have been overlooked completely, I will insert it again here. Then, if the board has shown the courtesy of reading it and contemplating it, I have inserted a few closing thoughts new to this appeal at the very end of this letter. Thank you in advance for your time and consideration.

### **Respondents argument**

I would like to thank the Board of Administration for this opportunity to appeal the determination of the administrative judge in this rare case. As your letter states, the decision “has no force or effect until the board... takes formal action to either adopt it, remand it, or decline to adopt it in favor of its own decision. “

As the board must know from letters, documents and testimony, our family has been devastated by two recent events. My wife Kim, who I was married to for over 40 years, passed away from cancer October 11, 2020. I needed to retire early to care for Kim for her last six months as she courageously fought her nemesis.

Kim worked for almost 20 years at Tesoro high school in the attendance office. Indeed, she worked there from the start of the school in temporary trailers before the campus was complete, and she was much loved by all of her co-workers and superiors.

It was only three months after Kim passed away before our wonderful daughter Hayley was taken from us, on January 15, 2021. Hayley took what she thought was an OxyContin pill. This was actually a tiny pill which had been laced with fentanyl. This was confirmed by the Orange County coroner.

This left my son Ryan and myself in the family. We have both supported each other in these painful and trying times. We are a family of faith, however, and we know Kim and Hayley are waiting for us in heaven.

No family should have these circumstances occur. But they did. So here we are in this benefits situation.

First, let me state that during the hearing before the administrative law judge, and even now, we do not dispute the information regarding any sequence of events. We do contend that the circumstances of this case are unique. We do believe they justify the board to make an exception.

Kim paid into her retirement fund for almost 20 years. This trust fund was hopefully to assure a legacy for her children. Her intentions were always noble. We ask the board to consider honoring Kim's intent.

Hayley, at age 26 and being a female, would have a much longer payout than her brother Ryan, 12 years her senior. Therefore, allowing payments to forward to Ryan would still be much less than had this tragedy not occurred. Surely, calculations and payouts based on actuarial tables do not count on or depend on the double tragedies which have befallen our family to balance the budget. It certainly does not seem fair or moral for Kim's 20 years of work to be used to invest or to pay for other people's payouts. This would be contrary to any sense of justice.

One section of the administrative hearing papers states "To make exceptions to our laws to pay lifetime monthly benefits that are not accounted for in our actuarial calculations.... would be a considerable expense to both Calpers members and employers...". In truth this statement is not correct in its conclusion. This can be backed up by testimony from Calper's own witness, Ms. Shayne Day-Bolar, staff services manager 1 in the disability and survivor benefits division of Calpers. Ms. Day-Bolar has been employed by Calpers for 27 years and has worked in the disability and survivor benefits division for 19 years.

I was able to question Ms. Day-Bolar, and one question I asked her was if she had extensive experience in testimony in a case such as ours. She answered that in all of her years, she had testified perhaps only a handful of times, less than 10. Ms. Day-Bolar's own words gives true testimony that this occasion to make an exception would not be "a considerable expense to both

Calpers members and employers...”.

Imagine. A handful of times in 27 years.

In the report issued, it states “we have a fiduciary responsibility to all Calpers members and their beneficiaries.” What could be more morally and ethically dutiful in the Board’s responsibilities than to make a very rare exception to honor the duty to Kim and her son Ryan. Kim was a good and longtime Calpers member.

Certainly to dispense compassion and open-minded judgment in rare and meritorious cases, Calpers would not be violating any fiduciary duty. In fact, the discretion to dispense fairness and compassion when warranted would only enhance and solidify any fiduciary duty for all members in the future, on each individual basis, and case by case. This is once again in alignment with the testimony of Ms. Day-Bolar when she verified the infinitesimal number of occurrences which were in any way similar to what occurred to our family, in the last 27 years.

The letter states the board “May, in its discretion and upon any terms it deems just, correct the errors or omissions... if, among other requirements, the error or omission was the result of mistake, inadvertence, surprise...”. In our family, our daughter Hayley’s passing was indeed a terrible surprise which no one could see coming.

In every aspect of life and law, there must be exceptions to every rule when it comes for the sake of righteousness. Surely this rare and family crippling chain of events deserves an exception. Our family has been wounded. Please help us to heal.

This decision will not strike a blow to Calpers or their budget. Ultimately, however, this decision could constitute a life-changing budgetary amount for my son Ryan.

As far as precedent, I do not believe the board should designate a decision in our favor as precedent. As the letter I have received which allows me to appeal to the Board states. “Does the decision contain a significant legal or policy determination of general application that is likely to recur? “

In general application, the circumstances are not likely to recur. Only in very rare occasions will the board need to address any cases. This is fact, and is borne out by Calper’s own employee, Ms. Day-Bolar, and her testimony regarding the rarity of such similar requests.

The board should therefore be free to judge any cases, as rare as they may be, which may occur in the future, each according to the particular circumstances.

The administrative law judge has put this decision in the Board’s hands. It is within your power, to honor Kim Gardner, and her intent. I ask the Board to do the honorable thing. Please render a decision in our favor.

If indeed the board once again finds it impossible to use the legal justification which I included in my letter and which I know the board possesses, I will not be able to afford to hire an attorney to file for a petition for writ of mandate. I am retired, and I do believe it important however, and will devote time and effort to begin a campaign to contact any and all state lawmakers who might be sympathetic to our circumstances to attempt to enact laws or a way which would establish some equitable timelines for tragic circumstances. This loss of benefits based on flawed and biased actuarial tables and rules set up to keep distributions because of a special circumstance are wrong, and I will do this to honor the memory of my wonderful wife Kim and my daughter Hayley. And I will ask them to make the law retroactive to include our case and will certainly spotlight the actual circumstances.

If CalPERS continues its position that existing laws are in place which permit it to hold onto these payments, then I will attempt in every way possible to try to amend what is definitely a gross injustice.

I will also do my best to enlist and contact television and newspaper reporters to study and report on this practice. These rules or legal statutes being used to keep people's legacy from their children are definitely overly harsh. The only correct word to use is draconian.

Even if our own situation does not change, perhaps I can make sure this does not happen to others in the future.

It is disturbing to go on the Internet and inquire about the practices of Calpers and find out about certain irregularities or even illegalities by certain members in the past. For instance, reading an article by Pacific Research Institute, the mindset of risky future and past positions in the investing of your multi-billion dollar portfolio, and your propensity for acting (perhaps very unwisely) when it may work (or not work). These kinds of actions when compared to your lack of compassion and discretion for a minuscule amount, but a life-changing amount for the son of one of your most hard-working and wonderful employees, my wife Kim, are not to be understood.

It is my sincere hope, and I would like to think, that the members of the board at this moment are honest people of the highest integrity. If that is so, I firmly believe that the reasoning in my letter, if read and applied, will allow the board to change my son's life for the better.

Please reconsider your decision, not using every excuse in the book to not find in our favor, but using the rationale which I have set out in my reasoning which does allow the Board to act with generosity and kindness.

Sincerely,

Robert Gardner