

ATTACHMENT A
PROPOSED DECISION

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Post-Retirement Survivor
Allowance Payable Upon the Death of Leslie H. Zoeller by:**

LISA I. FRANTZ,

Respondent.

Statement of Issues

Agency Case No. 2022-0563

OAH No. 2023020206

PROPOSED DECISION

Administrative Law Judge Cindy F. Forman (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 6, 2025.

Mehron Assadi, Attorney at Law, represented complainant California Public Employees' Retirement System (CalPERS).

Jeffrey A. Slott, Attorney at Law, represented respondent Lisa Frantz, who was present during the hearing.

The ALJ heard testimony and received documentary evidence. The ALJ kept the record open until April 10, 2025, to allow the parties to file closing briefs. The parties timely filed their closing briefs. Respondent's initial brief and the accompanying case of *Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.4th 1113, were marked for identification as Exhibits DD and EE, respectively. CalPERS's brief was marked for identification as Exhibit 28. Respondent's closing brief was marked for identification as Exhibit FF.

The record closed and the matter was submitted for decision on April 10, 2025.

SUMMARY

CalPERS denied respondent's application for post-retirement survivor allowance (PRSA) benefits after her husband, a retired local safety CalPERS member, passed away. Respondent contends she is eligible to receive these benefits because prior to marrying her now-deceased husband, she was in a domestic partnership with him for more than a year before he retired.

The Public Employers Relations Law (PERL) sets forth specific criteria under which a domestic partner can become eligible for retirement benefits earned by his or her partner. Respondent failed to demonstrate by a preponderance of evidence she satisfies these criteria. Consequently, respondent does not qualify for her deceased husband's post-retirement survivor benefits, and CalPERS's denial of respondent's request for those benefits is affirmed.

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EVIDENTIARY ISSUE

At the hearing, the ALJ reserved her decision on the admissibility of Exhibit 27. Exhibit 27 consists of the following filings and decisions of the Superior Court, County of Los Angeles: (a) Verified Request for Orders to Establish a Domestic Partnership, filed by respondent on August 9, 2023, in case number 23CHFL01379 (Family Division); (b) Court Order, dated November 9, 2023 in case number 23CHFLO1379 (Family Division), denying respondent's request without prejudice; (c) Notice of Ruling on Request for Orders to Establish a Domestic Partnership, dated November 10, 2023, in case number 23CHFLO1379 (Family Division); (d) Order, dated August 5, 2024, in case number 24STPB00907 (Probate Division), denying respondent's petition; and (e) Notice of Default for Designation (Unlimited Civil Appeals), filed October 2, 2024. The decisions in the Family Division and the Probate Division both denied respondent's request to enter a judgment ordering the California Secretary of State to retroactively register respondent's domestic partnership with her deceased husband as of January 3, 2000. Respondent did not appeal the Family Division decision; she appealed the Probate Division decision, and that decision remains pending.

CalPERS requests the ALJ to take official notice of Exhibit 27, and further contends the Superior Court's rulings preclude respondent from asserting the California Secretary of State should allow for a retroactively dated partnership between her and decedent. Respondent opposes the request.

Government Code section 11515 authorizes an ALJ to take official notice of "any generally accepted technical or scientific matter within the agency's special field and of any fact which may be judicially noticed by the courts of this State." Evidence Code section 452, subdivision (d), permits courts to take notice of records of any courts of

this state and any court of record of the United States or any state of the United States. Judicial notice may be taken of relevant evidence only. (*Malek Media Group LLC v. AXQG Corp.* (2020) 58 Cal.App.5th 817, 825.)

The issue preclusion doctrine precludes relitigating issues argued and decided in a previous case, even if the second action raises different causes of action. The prior judgment must conclusively resolve an issue actually litigated and determined in the first action. Issue preclusion can be asserted only against a party to the first action. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) The doctrine applies to all types of final judgments on the merits. A judgment subject to appeal or on appeal is not considered a final judgment. (7 Witkin, Cal. Procedure (6th ed. 2025) Judgment § 391.)

Upon review of the applicable law, the ALJ denies complainant's request. While Exhibit 27 consists of records subject to official notice under Government Code section 11515 and Evidence Code section 452, the documents are not relevant here. The rulings made by the Family Division and the Probate Division are not subject to issue preclusion. The Family Division's ruling denying respondent's request for a retroactive domestic partnership order was made without prejudice, the court's decision does not indicate what issues were actually argued, and the court does not make clear the basis for its decision. The decision of the Probate Court is under appeal and is therefore not final. Accordingly, Exhibit 27 is excluded.

FACTUAL FINDINGS

1. Keith Riddle filed the Statement of Issues in this matter in his official capacity as Chief of the CalPERS Disability and Survivor Benefits Division.

2. Respondent is the widow of decedent Leslie H. Zoeller (decedent) who became a local safety member of CalPERS through his employment with the City of Gardena and the City of Beverly Hills.

3. On August 29, 2021, respondent submitted an Application for Retired Member/Payee Survivor Benefits to CalPERS. On the application, respondent stated she was decedent's spouse, decedent and respondent were married on the date of his death, and decedent and respondent's marriage date was December 1, 2017.

4. By letters dated September 1, 2021, CalPERS informed respondent of its determination that respondent is decedent's beneficiary for the monthly 100 Percent Beneficiary Option 2 with Benefit Allowance Increase (Option 2W) allowance, the lump sum Retired Death Benefit, and the payment of the monthly allowance payable from the first of the month of the last payable warrant through the date of decedent's death. CalPERS determined that decedent had no survivors eligible to receive decedent's PRSA, and therefore respondent was not eligible to receive the PRSA benefit.

5. Respondent disputes her ineligibility to receive the PRSA benefit. On May 23, 2022, respondent filed a timely appeal by letter dated May 23, 2022, and requested an administrative hearing. This hearing followed.

6. The appeal is limited to the issue of whether respondent is eligible for the PRSA benefit as decedent's surviving domestic partner.

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Relevant Facts

7. The facts underlying the Statement of Issues are undisputed. The factual findings are based on the testimony of respondent and CalPERS Staff Services Manager Shayne Day-Bolar and the admitted exhibits.

8. Decedent was formally employed by the City of Gardena and the City of Beverly Hills as a police officer from 1973 to 2002. Because of the nature of his employment, respondent was a CalPERS local safety member.

9. Decedent and Audrey Zoeller married on August 23, 1980. Judgment for Dissolution of their marriage was entered on May 18, 1999.

10. In 1997, respondent and decedent became romantically involved, and they began cohabiting in early 1998.

11. On January 11, 2000, respondent and decedent attempted to register their domestic partnership with the California Secretary of State. (Exhibit G.) However, they were unable to do so because they were opposite sex partners and were under the age of 62 years. At the time, under Family Code section 297, California only recognized domestic partners who were members of the same sex or where one partner was over the age of 62. The age restriction remained in effect until the legislature amended the law in 2020.

12. On November 2, 2001, decedent applied for service retirement. In the application, decedent elected the Option 2W retirement payment option. Decedent designated respondent as the beneficiary for the Option 2W lifetime allowance and the Retired Death Benefit.

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13. Decedent retired from service effective January 4, 2002. He began receiving his retirement allowance on February 5, 2002. Because decedent listed an eligible survivor on his application, his retirement calculation included his PRSA benefit, and he received the PRSA benefit in his monthly allowance.

14. On May 18, 2009, decedent and respondent filed a County of Los Angeles Statement of Domestic Partnership (LA Registration) under Los Angeles County Code Chapter 2.210 with the County of Los Angeles' Registrar – Recorder/County Clerk's Office, thereby registering their domestic partnership with the County of Los Angeles. (Exhibit E.) In the LA Registration, respondent and decedent stated they considered themselves to be domestic partners since January 1998.

15. Respondent and decedent remained domestic partners until their marriage on December 1, 2017. Respondent submitted 19 affidavits from decedent's friends and colleagues, many of whom were aware of respondent and decedent's relationship as early as 1997, attesting that respondent and decedent were in a full-time, exclusive, committed relationship until through the date of their marriage. (Exhibit CC.)

16. On August 4, 2021, decedent passed away. Respondent and decedent remained married through the date of decedent's death.

17. On September 1, 2021, CalPERS informed respondent that, as decedent's beneficiary, she was eligible to receive decedent's monthly Option 2W allowance, a pro-rata Option 2W allowance until decedent's death, and the lump sum Retired Death Benefit. (Exhibits 15, 16, 17.) CalPERS mailed these benefits to respondent on September 7, 2021.

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18. On September 8 and September 9, 2021, respondent called CalPERS and disputed the amount of her Option 2W allowance. (Exhibit 23, p. A125.) CalPERS informed respondent that she was ineligible for the PRSA benefit because respondent and decedent did not marry until after decedent's retirement and therefore were not married at least one year before decedent's retirement.

19. On September 22, 2021, respondent contacted CalPERS and requested CalPERS review her eligibility for the PRSA benefit as decedent's domestic partner. Subsequently, respondent and CalPERS engaged in numerous communications regarding the nature and timing of the domestic partnership between respondent and decedent.

20. By letter dated May 6, 2022, CalPERS informed respondent of her ineligibility to receive the PRSA benefit as decedent's surviving domestic partner based on its review of decedent's file in addition to information and documents provided by respondent. CalPERS determined respondent and decedent's domestic partnership was neither registered for one year before decedent's service retirement and continuously until the date of decedent's death nor a state-registered domestic partnership, as required by Government Code section 21626.5, subdivision (a). CalPERS also informed respondent of her appeal rights.

21. On a date not made clear in the record but before October 28, 2024, respondent attempted to file the Declaration of Domestic Partnership she and decedent signed on January 11, 2000, with the California Secretary of State. The California Secretary of State rejected the application on October 28, 2024. Subsequently, and through February 4, 2025, respondent made several additional attempts to file the Declaration of Domestic Partnership, all of which were unsuccessful. (Exhibits F, G.)

22. CalPERS provides the following information regarding domestic partnerships:

In order for the Survivor Continuance benefit to be payable to your domestic partner after retirement, you and your domestic partner must have registered your partnership at least one year prior to your retirement date. If you retired before it was legally possible to register your partnership but have since registered, your partner may still be considered an eligible survivor. If this is your situation, contact us as soon as possible to request and Affidavit of Domestic Partnership for Survivor Continuance form. CalPERS will determine if your domestic partner is an eligible survivor.

(Exhibit J.)

LEGAL CONCLUSIONS

1. In an administrative hearing concerning retirement benefits, the party asserting a claim for benefits has the burden of proof by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; *Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) A preponderance of the evidence means evidence that has more convincing force than opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) As the party seeking payment of benefits, respondent must prove she is eligible for such payments by a preponderance of the evidence.

Applicable Law

2. CalPERS is governed by the California Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.)

3. The PERL provides that upon the death of a state safety member whose service retirement became effective after April 1, 1973, the member's surviving spouse will receive throughout life will receive a PRSA benefit of either 25 or 50 percent of the member's retirement allowance as it was at his or her death based on the member's service credits, excluding any portion of the retirement allowance derived from the member's additional contributions. The percentage received by the surviving spouse is based on whether the member's service was also covered by the federal system or on any other service. (Gov. Code, § 21624.)

4. For purposes of determining eligibility for the PRSA benefit, Government Code section 21624 defines a "surviving spouse," for purposes of service retirements, as a husband or wife who was married to the member for a continuous period beginning at least one year prior to the member's retirement and ending on the date of the member's death.

5. Under the PERL, all references to "spouse," "surviving spouse," or "marriage" apply equally to a domestic partner or domestic partnership, as defined by Family Code section 297. (Gov. Code, § 20065.5.)

6. Family Code section 297, subdivision (a), defines "domestic partners" as two adults "who have chosen to share one another's lives in an intimate and committed relationship of mutual caring." Under section 297, a domestic partnership is established when both adults file a Declaration of Domestic Partnership with the California Secretary of State and, at the time of filing, meet the following requirements:

(a) neither partner is married to someone else or a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity; (b) the two persons are not related by blood in a way that would prevent them from marrying in California; (c) both persons are at least 18 years of age; and, (d) both persons are capable of consenting to the domestic partnership.

7. The PERL further provides that all rights and responsibilities granted to a spouse or surviving spouse are to be granted equally to a domestic partner to the extent provided by Family Code section 297.5. (Gov. Code, § 20065.5.) Family Code section 297.5 provides that registered domestic partners shall have the same rights, protections, and benefits and are subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses.

8. The PERL provides a domestic partner may receive a PRSA benefit equivalent to the benefit received by a surviving spouse under Government Code section 21624 if the domestic partner meets alternative criteria set forth in section 21626.5. The alternative criteria are as follows: (a) the domestic partnership was registered for one year prior to the member's service retirement date and continuously until the date of the member's death or (b) the member retired before January 1, 2006, and "both the member and his or her domestic partner, who are currently in a state-registered domestic partnership, sign an affidavit stating that at the time prescribed by the retirement system for married spouses to qualify for survivor continuance, the member and the domestic partner would have qualified to be registered as domestic partners pursuant to Section 297 of the Family Code."

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The Parties' Positions

RESPONDENT'S POSITION

9. Respondent contends she is eligible to receive the PRSA benefit under subdivision (a) of Government Code section 21626.5 because she and decedent were domestic partners from at least January 11, 2000, when they attempted to register their relationship with the California Secretary of State. Respondent asserts she and decedent were unable to register their partnership with the Secretary of State at that time because of age restrictions subsequently deemed unconstitutional by the United States Supreme Court in *Obergefell v. Hodges* (2015) 576 U.S. 644. (Exhibit 31, pp. B204, B208.)

10. Respondent further contends that because the California Secretary of State's age requirements were unconstitutional, CalPERS should accept other evidence of respondent's domestic partnership with decedent. Respondent cites her own and decedent's attestations of their domestic partnership as well as the attestations of judges, law enforcement personnel, and government officials as evidence that she and decedent were in a domestic partnership as early as 2000. Respondent also asserts the County of Los Angeles Statement of Domestic Partnership filed in May 2009, which states respondent and decedent's domestic partnership started as early as 1998, is additional evidence that they were domestic partners long before decedent retired. According to respondent, the "putative" domestic partnership respondent and decedent formed at least one year prior to decedent's retirement is sufficient to meet the requirements of Government Code section 21626.5. In further support of her position, respondent asserts the Supreme Court and California courts recognize putative domestic partnerships, and domestic partners and spouses are considered "one and the same" under Family Code section 297.5.

COMPLAINANT'S POSITION

11. CalPERS asserts that it correctly denied respondent PRSA benefits earned by decedent based on subdivision (a) of Government Code section 21626.5. According to CalPERS, respondent fails to meet the requirements of either prong of subdivision (a). Respondent did not demonstrate she registered her domestic partnership one year prior to decedent's service retirement date, as required by subdivision (a)(1). Decedent retired on November 2, 2001, and respondent and decedent did not register their domestic partnership with Los Angeles County until May 19, 2009. Respondent also could not demonstrate she would have qualified under subdivision (a)(2), as she and decedent were never in a state-registered domestic partnership, and they could not have registered with the California Secretary of State a year before decedent's retirement given the California Secretary of State's age restrictions at the time.

12. CalPERS further contends that respondent's contention that she was the putative spouse or putative domestic partner of decedent is irrelevant. CalPERS maintains Government Code section 21626.5 makes no provision for putative spouses. CalPERS asserts it can only pay benefits to a member only when the statutes authorize it, and then only in the amount authorized. (*Hudson v. Posey* (1967) 255 Cal.App.2d 89.) Thus, absent any authorization, CalPERS contends it cannot treat a putative spouse as eligible for the PRSA benefit. (Exhibit 28, p. A180.)

13. CalPERS also asserts OAH lacks the authority to find any law to be unconstitutional, and therefore cannot assess the constitutionality of either the California Secretary of State's age requirements in 2000 or the requirements of Government Code section 21626.5. (Exhibit 28, p. A185.) CalPERS further argues respondent litigated the constitutionality of the California Secretary of State's actions

in other forums, and therefore respondent is barred by the issue preclusion doctrine from relitigating the issues here.

Analysis and Disposition

14. Based on a review of the evidence, the applicable statutes, and case law cited by the parties, respondent failed to prove by a preponderance of the evidence she is entitled to the PRSA benefit. The statutes governing the rights of a spouse or a domestic partner to spousal benefits are clear and therefore must be applied as written. (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38 [courts must follow the plain meaning of a statute where language is clear].) Based on the criteria set forth in those statutes, CalPERS correctly denied respondent's request for a PRSA benefit.

15. Under Government Code section 21624, a surviving spouse is eligible to receive a PRSA benefit if he or she was married to the deceased member at least one year before the member's retirement and ending on the date of the member's death. Here, decedent retired in 2002. Respondent was not married to decedent until 2017, 15 years after decedent's retirement. Thus, respondent is not eligible to receive a PRSA benefit based on her marriage to decedent.

16. As with spouses, not every domestic partner of a CalPERS member is eligible for the PRSA benefit. Government Code section 21626.5, subdivision (a), similarly restricts a domestic partner's ability to obtain PRSA benefits. Respondent does not satisfy those restrictions. Respondent does not meet the criteria of subdivision (a)(1) because she did not prove she and decedent were in a registered domestic partnership at least a year before decedent retired in 2002. Respondent and decedent were unable to register their domestic partnership with the California Secretary of State before 2002 because they did not satisfy the law's then applicable

age requirements. Respondent and decedent did not register their domestic partnership with Los Angeles County until 2009.

17. Respondent also did meet the criteria of subdivision (a)(2) of section 21626.5 of the Government Code. Respondent did not establish she was ever in a state-registered domestic partnership, and never registered with the California Secretary of State. Nor did respondent show that she and decedent could have registered with the California Secretary of State one year before decedent's retirement, as the subsection requires. Consideration of respondent's claim that the California Secretary of State's refusal to register her domestic partnership in 2001 or earlier was unconstitutional is outside the scope of this administrative proceeding. (Cal. Const., art. III, §§ 3, 3.5 [precluding an administrative agency from hearing constitutional arguments or finding a statute unenforceable].)

18. Respondent's contention that the United States Supreme Court's *Obergefell* decision somehow impacts her rights to a survivor benefit under the PERL is unpersuasive. The *Obergefell* decision found the 14th Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. The decision did not address domestic partnerships, the registration of domestic partnerships, or retroactively apply to state laws regulating domestic partnership registrations. Thus, *Obergefell* has no bearing on the circumstances presented here.

19. Respondent's assertion that CalPERS has unfairly discriminated against her as a "putative domestic partner" is likewise unconvincing. According to respondent, the law requires CalPERS to treat surviving putative domestic partners in the same manner it treats surviving registered domestic partners and surviving

spouses for purposes of determining PRSA eligibility, and CalPERS's failure to do so is discriminatory. However, the PERL provides no PRSA benefits to either putative domestic partners or putative spouses. Government Code sections 216224 and 21626.5 require the applicant to be a surviving spouse and a registered domestic partner, respectively, one year prior to the deceased member's retirement. An applicant's putative status and the length of their romantic involvement with a CalPERS member is irrelevant to determining the applicant's eligibility for the PRSA benefit. Otherwise, the registration requirements found in both subdivisions of section 21626.5 would serve no purpose.

20. In short, respondent is ineligible for a PRSA benefit in the absence of evidence she was in a registered domestic partnership one year before decedent retired. Except as set forth in this Decision, all other arguments and contentions have been considered and are either surplusage or lack merit.

ORDER

The determination by CalPERS that respondent Lisa Frantz is not entitled to a Post-Retirement Survivor Allowance is AFFIRMED.

DATE: 05/12/2025

A handwritten signature in black ink, appearing to read 'Cindy F. Forman', with a stylized, flowing script.

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings