

ATTACHMENT E

THE PROPOSED DECISION

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

**In the Matter of the Appeal of Lifetime Monthly Benefit
Payable Upon the Death of Michael A. Garcia by:**

ESTEBAN E. RAMIREZ, Respondent

Agency Case No. 2022-0990

OAH No. 2023030199

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 15, 2023, from Sacramento, California.

Nhung Dao, Staff Attorney, appeared on behalf of complainant Kimberlee Pulido, Chief, Retirement Benefit Services Division, California Public Employees' Retirement System (CalPERS).

Richard Paris, Esq., appeared on behalf of respondent Esteban E. Ramirez, who was also present.

Evidence was received, the record closed, and the parties submitted the matter for decision on June 15, 2023.

ISSUE

Whether CalPERS correctly determined that respondent is not an Option 4 lifetime beneficiary for deceased CalPERS member Michael A. Garcia.

FACTUAL FINDINGS

Background

1. Michael A. Garcia became a CalPERS member in March 1996. In November 2019, he submitted to CalPERS a Service Retirement Election Application (application). In his application, he elected "Flexible Beneficiary Option 4 – Specific Percentage" (Option 4) and named his two sisters, Katherine Garcia and Rebecca Insley, as lifetime beneficiaries to each receive 25 percent of the monthly retirement option payable upon his death. Mr. Garcia retired from service effective December 31, 2019. On January 2, 2020, CalPERS confirmed it had processed his application with his Option 4 election.

2. On September 17, 2020, Mr. Garcia notified CalPERS that Katherine Garcia died on March 17, 2020. He requested help to adjust his beneficiary designations. A few days later, CalPERS mailed Mr. Garcia its publication titled "Changing Your Beneficiary or Monthly Benefit After Retirement" (PUB 98). PUB 98 instructed that to name a new beneficiary for a lifetime option benefit, Mr. Garcia must complete and submit an Application to Modify Option and/or Life Option Beneficiary (MOLOB Application) form. It further identified the necessary documents to submit and advised that after CalPERS received the MOLOB application, it would send Mr. Garcia a Modification of Original Election Retirement form with recalculated retirement

allowance choices. Mr. Garcia would then need to return the Modification of Original Election Retirement form by a stated deadline or CalPERS would cancel the request.

3. On November 24, 2020, CalPERS received Mr. Garcia's MOLOB Application seeking to keep Ms. Insley as a 25 percent life option beneficiary, remove Ms. Garcia as a beneficiary due to her death, and add respondent, who he described as his "life partner/friend," as a 50 percent life option beneficiary.

4. On March 1, 2021, CalPERS mailed Mr. Garcia a packet that included the Modification of Original Election Retirement form. The packet included an estimate that stated, if Mr. Garcia proceeded with naming respondent as his new Option 4 beneficiary, respondent would receive \$1,092.01 per month. The packet also included a chart summarizing and describing Mr. Garcia's other retirement options, including a "100 Percent Beneficiary Option 2"; "100 Percent Beneficiary Option 2 with Benefit Allowance Increase"; "50 Percent Beneficiary Option 3 with Benefit Allowance Increase"; "50 Percent Beneficiary Option 3"; and "Flexible Beneficiary Option 4."

5. In addition, the packet included a letter that advised, in relevant part:

If you would like to proceed with changing your original retirement choice to name a new beneficiary, complete and return the enclosed Modification of Original Election at Retirement form by 04/30/2021. If we do not receive your completed form by the due date, we will assume you have decided not to elect to change your original retirement benefit and close your request.

You must complete all sections of the form. Your signature and spouse's or domestic partner's signature must be

notarized by a Notary Public or witnessed by a California Public Employees' Retirement System (CalPERS) representative at any CalPERS office.

6. In CalPERS's Customer Touch Point (CTP) Report for Mr. Garcia, which chronicles all communication between him and CalPERS personnel, there is no record that Mr. Garcia ever returned the completed Modification of Original Election Retirement form to CalPERS. On April 30, 2021, CalPERS sent Mr. Garcia a letter to notify him, "We have not received a completed Modification of Original Election at Retirement form, and as a result, we are cancelling your modification of option request." The letter advised Mr. Garcia to submit a new form in the future if he still wanted to change his beneficiary.

7. On May 27, 2021, Mr. Garcia contacted CalPERS via its online self-service portal and asked, in relevant part, "I recently requested a change of beneficiaries after the death of Kathy Garcia. I recieved [sic] the paperwork but did non [sic] fill it out correctily [sic]. Can we [do] the approval on line or will you need to send me another package." A CalPERS representative responded the same day to inform Mr. Garcia he would need to submit a new MOLOB Application because changing beneficiaries required special actuarial calculations. The representative sent Mr. Garcia a new PUB 98 packet. Mr. Garcia never submitted a new MOLOB Application.

8. On August 24, 2021, respondent notified CalPERS that Mr. Garcia died on August 6, 2021. On August 25, 2021, respondent completed and signed and thereafter submitted to CalPERS an Application for Retired Member/Payee Survivor Benefits (Survivor Benefits Application). On March 8, 2022, CalPERS sent respondent a letter to notify him, in relevant part, "Unfortunately, after careful review of the file, we have found that you are not the beneficiary."

9. On April 1, 2022, respondent sent a letter to CalPERS asking why it determined he was not Mr. Garcia's beneficiary. With his letter, respondent submitted several documents to CalPERS, including a Modification of Original Election Retirement form bearing Mr. Garcia's signature and dated April 4, 2021.

10. On April 7, 2022, CalPERS responded with a letter explaining, in relevant part, "On April 5, 2022, we received the copy of the election form that you mailed to us. However, this document is not valid as the signature was not notarized by a licensed notary public. We have determined that you are not entitled to a lifetime monthly benefit as Mr. Garcia did not return a notarized election to name you as his lifetime beneficiary."

11. Between May and December 2022, Mr. Paris and CalPERS corresponded about respondent's request for CalPERS to reconsider its decision. On December 6, 2022, CalPERS sent Mr. Paris a letter stating, in relevant part, "We respectfully deny your request to name [respondent] as a life option beneficiary and pay him a monthly lifetime benefit due to Mr. Garcia's passing." The letter further advised that respondent could appeal the decision within 30 days. Respondent did so on December 26, 2022. In response, complainant filed the Statement of Issues on March 7, 2023. This hearing followed.

CalPERS's Evidence

12. Tara Hench has worked for CalPERS for 12 years and has been an Associate Government Program Analyst for the past nine years. She works in the Retirement Benefits Services Division, where her duties include reviewing various applications for benefits. She is CalPERS's person most knowledgeable about Mr. Garcia's file and respondent's appeal.

13. At hearing, Ms. Hensch testified that CalPERS denied respondent's Survivor Benefits Application because it never received Mr. Garcia's Modification of Original Election at Retirement form. She acknowledged that respondent submitted the form to CalPERS after Mr. Garcia's death, but she noted it was not notarized. CalPERS insists that such forms either be notarized or signed in front of a CalPERS employee because it wants to be certain that the member truly completed the form. At hearing, she observed Mr. Garcia's signature on the Modification of Original Election at Retirement form and acknowledged it appeared to be his signature. However, she reiterated that CalPERS's policy is to require the signature either be notarized or accomplished live in front of a CalPERS representative. She also confirmed that CalPERS's CTP Report for Mr. Garcia was accurate and did not reflect that Mr. Garcia submitted a Modification of Original Election at Retirement form before his death.

Respondent's Evidence

14. Respondent and Mr. Garcia were in a committed relationship for 37 years. They lived together and shared expenses. They never married or registered as domestic partners because of their fear of homophobia, especially given Mr. Garcia's work for a school. They preferred to keep their relationship private.

15. In 2019, Mr. Garcia developed cancer. Respondent cared for him as his health declined. On December 11, 2020, Mr. Garcia appointed respondent with power of attorney and authorized him to manage his financial and legal affairs. Also on December 11, 2020, Mr. Garcia modified his will to name respondent as the sole beneficiary for all personal and real property. In Mr. Garcia's previous will, he had named several nieces and nephews as beneficiaries in addition to respondent.

16. From approximately February through August 2021, Mr. Garcia received chemotherapy. The treatment caused "chemo-brain," which made his thinking and communication unclear at times. Despite Mr. Garcia's health and respondent's power of attorney over Mr. Garcia's affairs, respondent did not assist Mr. Garcia with the CalPERS paperwork. Respondent knew Mr. Garcia corresponded with CalPERS about modifying his beneficiaries after his sister's death, but Mr. Garcia "didn't really share the full picture" with respondent. Respondent saw some of the paperwork and assumed Mr. Garcia completed and submitted it appropriately. He did not know CalPERS required the form to be notarized and he does not believe Mr. Garcia knew either. Respondent was surprised to learn it had to be notarized because Mr. Garcia's original application, in which he selected Option 4, did not require notarization.

17. Charles Prickett, Esq., also testified at hearing. He was Mr. Garcia's and respondent's friend and lawyer for many years. He prepared Mr. Garcia's original will in March 2011 and his amended will in December 2020. He believed Mr. Garcia was mentally competent during both interactions. He also observed Mr. Garcia's "chemo-brain" beginning in February 2021. He did not assist Mr. Garcia with his CalPERS paperwork.

Analysis

18. The parties agree about most of the facts in this case. Mr. Garcia properly selected Option 4 in his original application and named his two sisters as lifetime beneficiaries. After one of his sisters died, he submitted a MOLOB Application naming respondent as a 50 percent beneficiary. CalPERS sent him the Modification of Original Election Retirement form, which included estimates for five different options and instructed how and when to sign and return it. He did not return it, so CalPERS cancelled his application.

19. Through his appeal, respondent seeks to correct Mr. Garcia's error or omission of not having the Modification of Original Election Retirement form notarized. However, Mr. Garcia's actions went beyond not having the form notarized. In fact, he did not submit the form at all. Instead, he contacted CalPERS almost three months later and explained, "I recieved [sic] the paperwork but did non [sic] fill it out correctly [sic]."

20. Relief from an error or omission is available only if it was the result of mistake, inadvertence, surprise, or excusable neglect. (Gov. Code, § 20160, subd. (a)(2).) Respondent did not prove Mr. Garcia's actions were the result of mistake, inadvertence, surprise, or excusable neglect, as opposed to an intentional decision.

21. Respondent argued that near the end of Mr. Garcia's life, he had a change of heart about publicly acknowledging his relationship with respondent. He changed his will and named respondent as the sole beneficiary, which respondent argued is consistent with naming respondent as a beneficiary in his MOLOB Application. He reasoned that Mr. Garcia's changes to his will should guide CalPERS in deciding that Mr. Garcia intended to name respondent as his retirement beneficiary as well. That argument is unpersuasive. Indeed, Mr. Garcia identified respondent as a 50 percent beneficiary in the MOLOB Application. Then, when he received the Modification of Original Election Retirement packet from CalPERS, two of the listed options entailed naming a single beneficiary to receive 100 percent of the monthly benefit. By respondent's reasoning, either of those options would be more consistent with the changes Mr. Garcia made to his will.

22. Additionally, respondent argued Mr. Garcia's cancer and treatment confused his thinking. However, although Mr. Garcia granted respondent power of attorney with authority to handle his legal and financial affairs, he "didn't really share

the full picture” about his CalPERS paperwork with respondent. Respondent was aware of Mr. Garcia’s correspondence with CalPERS but did not participate. These circumstances render respondent’s argument unavailing, as he was able to help Mr. Garcia communicate his wishes to CalPERS during his life but did not do so.

23. Ultimately, Mr. Garcia’s true intentions regarding his CalPERS beneficiaries remain unknown. Although it is true Mr. Garcia may have intended to name respondent a 50 percent beneficiary, he might also have wanted to name him a 100 percent beneficiary, or no beneficiary at all. CalPERS is not required to speculate about what a member would have wanted. Mr. Garcia did not submit the required paperwork to change his beneficiary, and respondent did not prove his failure to do so was an error or omission resulting from mistake, inadvertence, surprise, or excusable neglect. Therefore, respondent’s appeal must be denied.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. CalPERS is governed by the Public Employees’ Retirement Law (PERL). (Gov. Code, § 20000 et seq.) Under the PERL, a party seeking to correct an error or omission has the burden of presenting documentation or other evidence to the Board establishing the right to correction. (Gov. Code, § 20160, subd. (d); *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) The burden of proof is a preponderance of the evidence (Evid. Code, § 115), which means “more likely than not.” (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1388.)

Applicable PERL Statutes

BENEFICIARY DESIGNATION

2. As of January 1, 2018, upon retirement, CalPERS members may choose an “unmodified allowance,” pursuant to which they have the right to receive the maximum retirement allowance until their death with no continuing allowance to a beneficiary and no return of unused accumulated contributions after their death. (Gov. Code, § 21471, subd. (a).) Alternatively, CalPERS members may choose a variety of “options” that entitle one or more beneficiaries to specified allowances even after the death of the member. (Gov. Code, § 21471.1.) One such option is Option 4 – Specific Percentage, which allows the member to specify that upon his death after retirement, a monthly allowance in an amount equivalent to a specified percentage of the member’s allowance be paid to one or more named beneficiaries for life. (Gov. Code, § 21477, subd. (a)(2).)

3. A member who chooses Option 4 may, if the beneficiary dies before the member, “elect to have the actuarial equivalent reflecting any selection against the fund resulting from the election as of the date of election of the allowance payable for the remainder of the member’s lifetime under the optional settlement previously chosen applied to a lesser allowance during the member’s remaining lifetime under one of the optional settlements specified in this article and name a different beneficiary.” (Gov. Code, § 21481, subd. (a)(1).)

CORRECTING ERRORS OR OMISSIONS

4. The Board is authorized, in its discretion and upon terms it deems just, to correct the errors or omissions of any retired member, if, among other things, “The error or omission was the result of mistake, inadvertence, surprise, or excusable

neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.”
“The mere recital of mistake, inadvertence, surprise or excusable neglect is not sufficient to warrant relief. Relief on grounds of mistake, inadvertence, surprise or excusable neglect is available only on a showing that the claimant’s failure . . . was reasonable when tested by the objective ‘reasonably prudent person’ standard.” (*Dept. of Water & Power v. Superior Ct.* (2000) 82 Cal.App.4th 1288, 1293.) “The only occasion for the application of section 473 is where a party is unexpectedly placed in a situation to his injury without fault or negligence of his own and against which ordinary prudence could not have guarded.” (*Elms v. Elms* (1946) 72 Cal.App.2d 508, 513.)

Conclusion

5. Respondent did not prove Mr. Garcia’s failure to return to CalPERS his completed Modification of Original Election Retirement form was an error or omission arising from his mistake, inadvertence, surprise, or excusable neglect. Respondent’s appeal must therefore be denied.

ORDER

Respondent’s appeal is DENIED.

DATE: July 17, 2023


[Sean Gavin \(Jul 17, 2023 13:41 PDT\)](#)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings