

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal Regarding Benefits  
Payable Upon the Death of Felida Icabalceta  
by:

DORIS ESTRADA AND ROSARIO J.  
LOPEZ

Respondents.

Case No. 2012-0965

OAH No. 2013070835

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on October 23, 2013, in Oakland, California.

Preet Kaur, Staff Attorney, represented Petitioner Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS).

Respondent Doris Estrada represented herself.

Respondent Rosario J. Lopez represented herself.

The record closed on October 23, 2013.

**ISSUE**

Whether the CalPERS Post Retirement Lump Sum Beneficiary Designation form executed by Felida Icabalceta on June 21, 2012, is valid.

**FACTUAL FINDINGS**

1. Petitioner Anthony Suine, Chief, Benefit Services Division, CalPERS, filed the Statement of Issues in his official capacity.

2. On May 1, 1982, Felida Icabalceta began working for the California Department of General Services. By virtue of this employment, she became a state

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM

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miscellaneous member of CalPERS. On February 10, 2006, Icabalceta signed a Service Retirement Election Application in which she selected Option 1, and designated her niece, Respondent Rosario J. Lopez, as the beneficiary of any Balance of Contributions and Retired Death Benefit available upon her death. Effective April 30, 2006, Icabalceta retired for service.

3. On June 25, 2012, CalPERS received a Post Retirement Lump Sum Beneficiary Designation signed by Icabalceta on June 21, 2012, while she was hospitalized. The form revealed a change of her designated beneficiary from Respondent Lopez to Respondent Doris Estrada, her sister.

4. On June 26, 2012, Icabalceta was transferred from the hospital to a hospice. She passed away On July 1, 2012.

5. On July 26, 2012, Respondent Lopez signed and submitted an Application for Retired Member/Payee Survivor Benefits to CalPERS, claiming Icabalceta's death benefit.

6. On August 13, 2013, Respondent Estrada signed an Application for Retired Member/Payee Survivor Benefits, claiming Icabalceta's death benefit. It was received by CalPERS on August 14, 2012.

7. Icabalceta was hospitalized from June 19 through June 26, 2012, and Alison Cooke, M.D., was her attending hospitalist. On October 15, 2012, Dr. Cooke completed a CalPERS Medical Questionnaire and certified that Icabalceta was medically capable of handling her financial affairs. Dr. Cooke wrote: "I was the attending hospitalist physician for [Icabalceta] between 6/19/12 – 6/24/12. Though she had a terminal illness, she was cognitively intact, and capable of independent financial and medical decision-making. These documents should be regarded as relevant and complete."

8. By letter dated October 30, 2012, CalPERS notified Respondent Lopez that it had decided to issue the retired death benefit and prorated retirement allowance to Respondent Estrada. Respondent Lopez appealed the decision and this hearing followed.

#### *Respondents' contentions*

9. By letter to CalPERS dated January 2, 2013, and in her testimony at hearing, Respondent Estrada explained why Icabalceta decided to change her beneficiary. Previously, Icabalceta had been very close to Respondent Lopez and Respondent Lopez's children. She became very upset, however, by the behavior of one of her nephews. She was diagnosed with cancer in March of 2012, and subsequently shared with Respondent Estrada that she wanted to make changes regarding the distribution of her estate, and asked for her help. The two women went together to the bank, where she updated the beneficiaries on her account. Because of the cancer treatment and other business that needed attention, Respondent Estrada was not able to help Icabalceta make the CalPERS changes prior to Icabalceta's hospitalization. But she arranged for a Spanish-speaking notary public to come to the

hospital to witness Icabalceta's execution of the change of beneficiary form. Respondent Estrada was credible in every respect, and presented documents that corroborated her testimony.

10. Respondent Lopez testified that she was unaware that Icabalceta wished to make any changes. Her side of the family visited Icabalceta prior to her death, at the hospital and at the hospice, but Icabalceta did not tell Respondent Lopez or any of her family members of these plans. Accordingly, Respondent Lopez was suspicious that Icabalceta was pressured into signing the form, or that her signature was forged. She also surmised that Icabalceta was not mentally competent at the time the form was signed, due to her illness and the amount of medication she was taking. Other witnesses, however, testified that Icabalceta was conscious and aware even at the hospice right before she passed away. Respondent Lopez did not present any significant evidence addressing the issue in this case. There was no evidence that Icabalceta was not mentally competent to make the change, that she was forced or pressured to do so, or that her signature was forged.

#### LEGAL CONCLUSIONS

1. Government Code section 21490, subdivision (a), provides:

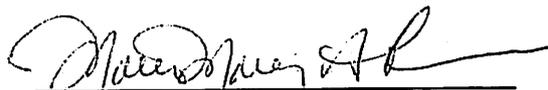
Except as provided in subdivision (b), a member may at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board.

2. The burden of proof in this appeal from the denial of benefits rests with Respondent Lopez, and she has not met that burden. Icabalceta was entitled to designate anyone she chose as the beneficiary of any CalPERS survivor benefits. The weight of the evidence supports CalPERS's determination that Icabalceta was competent when she signed the form changing her beneficiary from Respondent Lopez to Respondent Estrada, and there was no evidence that it was not her choice to do so. Accordingly, the appeal will be denied.

ORDER

The appeal of Respondent Rosario J. Lopez is denied. Respondent Doris Estrada is the eligible beneficiary for the account of Felida Icabalceta.

DATED: November 19, 2013



MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings