

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
(Appeal Regarding Death Benefits Payable
Upon the Death of DAVID E. MARTIN),
by:

DIANE E. MARTIN,

Respondent.

Case No. 2014-0356

OAH No. 2014090046

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on July 8, 2015.

John A. Mikita, Senior Staff Attorney, represented complainant Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS).

Respondent Diane E. Martin appeared and represented herself.

Evidence was received and matter was submitted on July 8, 2015.

ISSUE PRESENTED

Whether respondent Diane E. Martin is eligible for an Option 2 monthly allowance as the beneficiary of deceased CalPERS member David E. Martin.

FACTUAL FINDINGS

1. Complainant Anthony Suine filed the Statement of Issues solely in his official capacity as Chief of the CalPERS Benefits Services Division.
2. David E. Martin was employed by the California Highway Patrol as a Traffic Officer. By virtue of his employment, David E. Martin was a state safety member of

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

August 11, 2015
Ruthie E. Schrey

CalPERS subject to government code section 21154. He retired for service on March 8, 1991, and died on April 11, 2013, in a traffic accident in Mississippi.

3. David E. Martin's first wife was Maureen W. Martin. They were divorced in 1985. As part of the dissolution agreement, Maureen W. Martin received the right to 23.92 percent of David E. Martin's retirement monthly allowance until his death and the same percentage of his Lump Sum Death Benefit.

4. David E. Martin's second wife was Patricia A. Martin (nee Braziel). On or about February 28, 1991, David E. Martin elected retirement benefit Option 2 and designated his then-wife Patricia A. Martin as his beneficiary of the monthly allowance and Lump Sum Death Benefit. David E. Martin and Patricia A. Martin were separated in or about 1993, and divorced on June 30, 1995. As part of the dissolution, David E. Martin retained complete control of his CalPERS benefits. David E. Martin contacted CalPERS and asked that his former wife Patricia A. Braziel be deleted from his health coverage and this was done.

5. Respondent married his third wife, respondent Diane E. Martin, on October 7, 1995. Their marriage was intact at the time of David E. Martin's death.

6. On or about October 13, 1995, David E. Martin wrote CalPERS asking that Diane E. Martin and his stepdaughter Samantha Marie Andres, then 17 years old, be added to his health service plan. He later added them to his dental plan. Although David E. Martin's retention of control of his CalPERS retirement benefits and his marriage to Diane E. Martin entitled him to change his designated beneficiary for monthly allowance payments and the Lump Sum Death Benefit from Patricia A. Martin (then Patricia A. Braziel) to his new wife Diane E. Martin, he did not contact CalPERS to make any changes prior to his death.

7. Had David E. Martin contacted CalPERS to change his beneficiary, he would have been presented with a recalculation of benefits and given 90 days to approve the change. His monthly retirement allowance would have been reduced.

8. CalPERS notified respondent that she was not entitled to receive a monthly allowance based on her husband's retirement following his death because he had never changed his designated beneficiary from Patricia A. Braziel to respondent. Respondent filed a timely appeal of CalPERS's determination.

9. Respondent contends that David E. Martin had intended to change his designated beneficiary to respondent shortly after their marriage in October of 1995, and either CalPERS lost the paperwork to effect the change or David E. Martin's failure to change his beneficiary was an error or omission resulting from mistake, surprise, inadvertence or excusable neglect.

10. Respondent, her daughter, and another witness familiar with the events at issue all testified that David E. Martin's divorce from Patricia A. Braziel was acrimonious and that David E. Martin harbored such enmity towards Ms. Braziel that he would never have

intended to leave her a share of his CalPERS pension. The witnesses also testified and established that David E. Martin was very concerned about respondent's chronic health issues that arose after their marriage and wanted to make sure that she would have health coverage for treatment of the conditions that included diabetes and knee injuries. He expressed to others that respondent would never have to worry. David E. Martin told respondent that he wanted to provide money for her to live on, because he believed her children would not take care of her. Respondent remembered discussing with her husband changes to his retirement and health benefits in the fall of 1995. David E. Martin understood that his pension would be reduced with the changes, but both respondent and her husband were working at the time and a reduction of several hundred dollars would not be, in respondent's words, "a big deal." Respondent recalls filling out and signing documents relating to changes during the same time frame. David E. Martin kept a journal and in his entries for Thursday, October 19, 1995, he wrote, "To PERS-Paperwork Pension/Benefits/Medical." A January of 1996 entry appears to summarize the events of the preceding year and includes: "I'm at peace with myself and Pat Braziel can kiss my ass/done w/Pat-all pension etc. for D."¹

11. The process for changing an option 2 beneficiary following a divorce or other qualifying event is initiated by the member contacting CalPERS by phone, in person or by letter. CalPERS has no record of any such contact. Had David E. Martin contacted CalPERS to make such a change, CalPERS staff would have undertaken a recalculation of David E. Martin's retirement benefits. Had that been done here, his pension would have been reduced by \$470. An estimate of the new pension would have been provided to David E. Martin, and he would have been given 90 days to agree to the change in beneficiary. CalPERS has no record that a recalculation was performed or sent to David E. Martin. They do have records reflecting the requested changes in health coverage for David E. Martin's dependents, including adding respondent and her daughter to his health plan, and the later addition of them to his dental plan.

12. The evidence does not establish any error or mistake on the part of CalPERS. There is no evidence establishing that David E. Martin contacted CalPERS to change his beneficiary, and thus no reason to infer that CalPERS lost his paperwork or otherwise failed to heed his wishes. While he did speak to his wife about changes involving CalPERS benefits necessitated by their marriage, these conversations coincided with his addition of his wife and stepdaughter to his health plan and dental plan. He acted upon his clearly expressed intention to provide health coverage for his wife. His expression of intent about his retirement benefits was less clear, and there was no evidence suggesting that he took action to alter his designated beneficiary. Respondent suggests that because of his strong feelings of hostility toward Patricia A. Braziel and his concern that respondent have money to live on, he would not have wished that Patricia A. Braziel receive survivor benefits instead of respondent. However, David A. Martin also knew that a change in designated beneficiaries would have reduced his pension. In sum, one can only speculate about his state of mind regarding a change of designated beneficiary. Moreover, without clear evidence of his intent

¹ Other entries in the journal establish that "D" refers to respondent.

to make the change, his failure to do so cannot reasonably be characterized as an “omission” resulting from inadvertence or excusable neglect. Respondent testified that during their almost 18 years of marriage, her husband and she never discussed any change in monthly pension benefits which strongly suggests that her husband knew that he had not altered his designated beneficiary. This also reinforces the inference that this was not the result of inadvertence or excusable neglect on his part.

LEGAL CONCLUSIONS

1. Government Code section 20160 reads:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) 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.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an “error or omission” correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the

error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

2. The terms “mistake, inadvertence, surprise, or excusable neglect” are found in Code of Civil Procedure section 473, subdivision (b), which reads:

(b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. However, in the case of a judgment, dismissal, order, or other proceeding determining the ownership or right to

possession of real or personal property, without extending the six-month period, when a notice in writing is personally served within the State of California both upon the party against whom the judgment, dismissal, order, or other proceeding has been taken, and upon his or her attorney of record, if any, notifying that party and his or her attorney of record, if any, that the order, judgment, dismissal, or other proceeding was taken against him or her and that any rights the party has to apply for relief under the provisions of Section 473 of the Code of Civil Procedure shall expire 90 days after service of the notice, then the application shall be made within 90 days after service of the notice upon the defaulting party or his or her attorney of record, if any, whichever service shall be later. No affidavit or declaration of merits shall be required of the moving party. Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. However, this section shall not lengthen the time within which an action shall be brought to trial pursuant to Section 583.310.

3. The cases interpreting Government Code section 20160's language regarding the sort of errors or omissions that may be corrected are of minimal assistance in the resolution of this matter. In the two most relevant decisions, members were permitted to change the type of retirements they sought (service or disability) based on mistaken factual assumptions. In one case, the member did not appreciate that his chosen disability retirement would be reduced by his later receipt of federal Social Security benefits whereas a service retirement would not have been reduced. (*Rodie v. Board of Administration* (1981) 115 Cal.App.3d 559.) In the other case, neither the member nor CalPERS realized that the member was in fact disabled when he elected to take a less financially advantageous service retirement. (*Button v. Board of Administration of Public Emp. Retirement System* (1981) 122 Cal.App.3d 730.) The common theme in these cases was the judicial approval of changes that provided the maximum benefits to which the members were entitled from the retirement system. This matter is more focused on the member's intent regarding changes in his

designated beneficiary, as there was no evidence that his conduct was guided by mistaken factual assumptions.

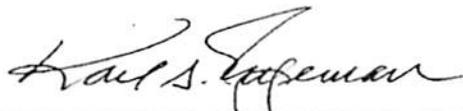
4. There are a great many cases interpreting the language of Code of Civil Procedure section 473 providing relief from adverse judgments that resulted from mistake, inadvertence, surprise or neglect. However, these holdings are also not particularly helpful in the resolution of this matter because the courts in such decisions emphasized the overriding goal of adjudicating controversies on their merits. (*Zamora v Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 254, citing *Benjamin v. Dalmo Mfg.* (1948) 31 Cal.2d 523, 525.) In discussing the mandatory relief provision relating to an attorney's error or omission, the California Supreme Court in the *Zamora* decision stated that the proper inquiry to determine if an attorney's mistake or inadvertence was excusable is whether a reasonably prudent person under the same or similar circumstances might have made the same error. (*Zamora supra*, at p. 258, citing *Bettincourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.)

5. Here, as noted in the Factual Findings, respondent failed to establish by a preponderance of the evidence that David E. Martin's failure to change his designated beneficiary from Patricia A. Braziel to respondent was an error or omission. Therefore, there is no reason to resolve whether his error or omission resulted from mistake, inadvertence, surprise or excusable neglect and no reason to apply the "reasonably prudent person" standard recited in the *Zamora* decision.

ORDER

Respondent Diane E. Martin's appeal from CalPERS' determination that she is not entitled to an Option 2 monthly allowance attributable to deceased member David E. Martin is denied.

Dated: August 3, 2015



KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings