

ATTACHMENT A
THE PROPOSED DECISION

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

In the Matter of the Appeal Regarding Death
Benefits Payable Upon the Death of JAMES
L. DAVEY, by:

DENISE HUNT BANGOLI,

Respondent.

CalPERS No. 2014-0075

OAH No. 2015020183

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 3, 2015, in Oakland, California.

John L. Shipley, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Denise Hunt Bangoli appeared and represented herself.

The matter was submitted on December 3, 2015.

FACTUAL FINDINGS

1. James L. Davey was a retired CalPERS member when he died. Respondent is Davey's widow. After Davey's death, respondent sought payment from CalPERS of a monthly allowance for the rest of her own life, as Davey's life option beneficiary. CalPERS denied this claim.

2. Respondent notified CalPERS that she would appeal CalPERS's decision, and requested a hearing. On November 18, 2015, CalPERS served respondent with an Amended Statement of Issues setting forth CalPERS's reasons for denying respondent's claim. The Statement of Issues alleges that Davey's designation of respondent as his life option beneficiary did not become effective before the date of his death, and that no ground exists for advancing the designation's effective date due to an error within CalPERS's power to correct.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED *December 17, 2015*

Ruthie E. Schreyer

Background Information Regarding the CalPERS Life Option

3. After retiring, a CalPERS member receives a monthly retirement allowance for the rest of his or her life. This retirement allowance terminates at the member's death. The member may choose a person to receive certain benefits after the member's death.

4. At retirement, a CalPERS member may elect a life option, under which the member's designated beneficiary receives a monthly allowance for the remainder of the beneficiary's own life after the CalPERS member's death. While a CalPERS member's life option election is effective, the CalPERS member receives a smaller monthly retirement allowance than the member would have received if he or she had not elected a life option. The amount of the reduction in the member's monthly retirement allowance depends in part on the member's and beneficiary's ages when the life option becomes effective. Through this system, the member sets aside part of his or her own monthly retirement allowance to pay for the monthly allowance the life option beneficiary will receive after the member's death.

5. Several life option plans are available. Under some of those plans, the life option beneficiary's death while the CalPERS member is still alive causes the member's monthly retirement allowance to increase, or "pop up," to the amount it would have been if the member had not elected a life option.

6. A retired CalPERS member may designate a new life option beneficiary, and may change the member's life option plan, if the original life option beneficiary dies. If the member designates a new life option beneficiary within 12 months after the former life option beneficiary's death, the designation and any new life option plan election may become effective immediately. If the member waits more than 12 months after the death date to designate the new life option beneficiary, that designation and any new plan election will not take effect until 12 months have passed since the designation.

7. If a CalPERS member marries after retiring, the member may designate the new spouse as his or her life option beneficiary and may elect or change a life option plan, unless the member previously had elected a life option to which a former spouse retains a right. If the member makes his or her new spouse the life option beneficiary within 12 months after the date of the marriage, the designation and any new life option plan election may become effective immediately. If the member waits more than 12 months after the marriage date to designate the spouse as the new life option beneficiary, that designation and any new plan election will not take effect until 12 months have passed since the designation.

8. To elect or change a life option, a member must submit a written request to CalPERS identifying the member's choice of life option plan and the beneficiary.

Basis for CalPERS Decision

9. Davey was married when he retired. This wife, whose name was not in evidence, died in 1998. The evidence did not establish whether or not Davey elected a life option when he retired.

10. Davey remarried in November 2001. His new wife's given name was Sharon; the evidence did not establish her surname.

11. In November 2001, Davey submitted a written designation to CalPERS identifying Sharon as the person who should receive lump sum death benefits that would be available after Davey's death. Davey believed incorrectly at that time that this application would result in his electing a life option with Sharon as the life option beneficiary.

12. Between November 2001 and February 2003, Davey learned that the lump sum death beneficiary designation he had submitted in November 2001 had not resulted in Sharon's becoming his life option beneficiary. In February 2003, Davey submitted a written request to CalPERS to make Sharon his life option beneficiary. CalPERS staff members advised Davey that the election would become effective on the first day of the first month after 12 months had passed, which would be on March 1, 2004. The election became effective on that date.

13. Davey elected a life option plan effective March 1, 2004, that would pop up his monthly retirement allowance if Sharon predeceased him.

14. Sharon died in July 2005. CalPERS staff members responsible for administering Davey's CalPERS benefit did not receive notice of Sharon's death at that time.

15. Davey married respondent on either January 20 or January 23, 2009.

16. Several times between September and December 2011, Davey contacted CalPERS by telephone to arrange respondent's addition to his CalPERS benefits. Davey did not tell CalPERS staff members in any of these conversations that his former life option beneficiary had died, or that he wanted respondent to receive a monthly allowance after his death for the rest of her life.

17. CalPERS staff understood in late 2011 that Davey wished to enroll himself and respondent in health insurance coverage, and asked him to provide a copy of his and respondent's marriage certificate. Davey provided that certificate not later than January 9, 2012, and health coverage began that month. Just a few months later, in April 2012, Davey cancelled that health insurance coverage in favor of coverage available to him as a veteran.

18. On May 15, 2012, Davey and respondent visited the CalPERS office in Sacramento in person and submitted a written request to make respondent Davey's life option beneficiary. The request identified Davey's January 2009 marriage to respondent, not

Sharon's July 2005 death, as the event permitting Davey to change his life option election. The request elected a life option plan identified as "Option 3W & Option 1 Combined." CalPERS staff members advised Davey and respondent that the life option election and beneficiary designation would become effective on the first day of the first month after 12 months had passed.

19. On March 5, 2013, Davey contacted CalPERS to change his life option election for respondent from "Option 3W & Option 1 Combined" to "Option 2." Davey would not have been able to change his life option election for respondent if that life option election already had become effective.

20. When CalPERS staff members reviewed Davey's records to calculate what his monthly retirement allowance would be after the effective date of his election to make respondent his life option beneficiary, they realized that Davey previously had designated Sharon as his life option beneficiary. Because CalPERS never had received a request from Davey to cancel Sharon's life option and pop up Davey's monthly retirement allowance, CalPERS had continued after Sharon's death to pay Davey the lower monthly retirement allowance reflecting Sharon's life option. CalPERS staff told Davey on March 13, 2013, that they needed to correct Davey's monthly retirement allowance to account for Sharon's death before they would be able to calculate his monthly retirement allowance, and respondent's allowance as Davey's life option beneficiary, under his new election.

21. Not later than April 5, 2013, CalPERS staff members received a copy of Sharon's death certificate. They calculated that CalPERS owed Davey \$39,245.44 to compensate him for the monthly retirement allowance pop up he should have received between August 1, 2005, and March 31, 2013. They also arranged for Davey's monthly retirement allowance on and after April 1, 2013, to reflect his pop up, because his new life option election, with respondent as beneficiary, was not yet effective.

22. In April 2013, CalPERS staff members sent Davey and respondent a confirmation form for Davey's election to make respondent his new life option beneficiary. This form stated that the election would be effective June 1, 2013, and stated the reduced monthly retirement allowance that Davey would begin to receive on that date. Davey and respondent signed this form on April 22, 2013.

23. Davey died on April 29, 2013.

24. On May 1, 2013, before receiving notice from respondent of Davey's death, CalPERS issued payment to Davey for the accrued pop up of \$39,245.44, and for his popped-up April 2013 monthly retirement allowance. Because the pop up payment and the April 2013 monthly retirement allowance, prorated through April 29, 2013, were due from CalPERS to Davey before Davey's death, CalPERS has confirmed in writing to respondent that she may keep this money.

Respondent's Evidence

25. Respondent was in her mid-50's when she married Davey, who was approximately 20 years older than respondent. Respondent stopped working when they married, so that she and Davey could travel. After respondent stopped working, she and Davey were nearly always together.

26. Davey told respondent repeatedly between the time they married and the time he died that he intended to provide for respondent both before and after his death. Respondent overheard many telephone conversations between Davey and CalPERS staff members in which Davey asked CalPERS staff members to make respondent Davey's beneficiary.

27. Davey attempted on multiple occasions, the first within two months after Sharon's death, to send CalPERS a copy of Sharon's death certificate by facsimile.

28. Davey was careful with money. He paid his bills on time and managed his expenses prudently.

29. Davey was in good health until February 2013. That month, he fell and suffered a head injury that required hospitalization. He was considerably weaker after his discharge from the hospital, and died less than three months later of a heart attack.

Analysis

30. Although Davey attempted repeatedly to send a copy of Sharon's death certificate to CalPERS, Davey never sent, or attempted to send, a written request before May 15, 2012, for CalPERS to designate anyone to replace Sharon as Davey's life option beneficiary.

31. Although Davey sent CalPERS a copy of the certificate evidencing his marriage to respondent, Davey made no oral or written request to CalPERS to designate respondent as his life option beneficiary before May 15, 2012.

32. The effective date for Davey's election of a new life option for respondent did not depend on the date Davey submitted, or CalPERS received, Sharon's death certificate. Instead, the effective date of the new life option (June 1, 2013) depended on the date Davey submitted the written request for a new life option (May 15, 2012). Any delay by Davey in sending Sharon's death certificate to CalPERS, or by CalPERS in receiving and acting on that certificate, did not delay the effective date of Davey's election of a new life option for respondent.

33. Davey assumed that sending CalPERS a copy of Sharon's death certificate and a copy of Davey and respondent's marriage certificate would result in respondent's becoming Davey's new life option beneficiary. This assumption was incorrect, and no

CalPERS member ever told Davey that it was correct. Davey did not confirm that CalPERS had received both certificates, or that CalPERS had acted or would act on the two certificates in accordance with Davey's erroneous assumption. Although Davey wished to arrange for life option benefits to respondent, Davey first failed to make the inquiry that a reasonable person would have made about exactly how to make that arrangement, and then failed to make a reasonable inquiry to confirm whether or not his efforts to make that arrangement had succeeded.

34. Davey had elected a life option with Sharon as the beneficiary in 2003. Because he made that election more than 12 months after marrying Sharon, he waited another 12 months after making the election for it to become effective. Davey should have known that he had to submit a written request to CalPERS to elect a life option and designate respondent as the life option beneficiary, and that if he did not submit that written request within a year of his marriage to respondent the election would not become effective for 12 months. Davey's failure to act sooner to submit a formal written request to make respondent his new life option beneficiary arose from Davey's assumption that the death and marriage certificates would suffice, but that unreasonable assumption was not excusable neglect.

35. As a result of CalPERS's payments to Davey through the date of his death, including payment of the accrued pop up resulting from Sharon's death, Davey's total retirement allowance payments from CalPERS after August 2005 reflected no deduction for any life option benefit.

LEGAL CONCLUSIONS

1. Davey's marriage to respondent after Sharon's death entitled Davey to make a new life option election and to name respondent as the beneficiary of the life option. (Gov. Code, § 21462.) As set forth in Findings 16, 17, 18, and 31, Davey did not attempt to make that election before January 22, 2010, which would have been within one year of his marriage to respondent. For this reason, Davey's later election of a new life option with respondent as the beneficiary could not have become effective sooner than 12 months after Davey had made that election in writing, and then only if both Davey and respondent had been alive on the election's effective date. (*Id.*)

2. As set forth in Findings 16, 18, 30, and 31, Davey's first written request to CalPERS, after Sharon's death, to elect a new life option and to designate respondent as the beneficiary occurred on May 15, 2012. As set forth in Finding 22, Davey later signed a document confirming that this election would become effective on June 1, 2013. As set forth in Finding 23, Davey was no longer alive on June 1, 2013. Because Davey died before his life option for respondent's benefit became effective, respondent has no right to receive a life option benefit after Davey's death.

3. CalPERS may correct a member's error, if that error results from the member's "mistake, inadvertence, surprise, or excusable neglect." (Gov. Code, § 20160,

subd. (a)(2).) CalPERS may not correct a member's error, however, if the error is the member's failure "to make the inquiry that would be made by a reasonable person in like or similar circumstances." (*Id.*, subd. (a).) Respondent bears the burden of presenting evidence establishing her right to the correction. (*Id.*, § 20160, subd. (d).)

4. As set forth in Findings 16, 18, 30, and 31, no evidence showed that Davey attempted on any particular date before May 15, 2012, to elect a new life option with respondent as the beneficiary. As set forth in Findings 16, 33, and 34, even if Davey did intend before May 15, 2012, to elect a new life option with respondent as the beneficiary, he failed to make the inquiry about how to complete the election that a reasonable person who wished to provide a CalPERS life option benefit for his new wife, and who had elected a life option after a previous post-retirement marriage, would have made. Cause does not exist to relieve Davey or respondent from the effect of Davey's delay in electing a life option benefit for respondent.

ORDER

The application by respondent Denise Hunt Bangoli for life option benefits following the death of James L. Davey is denied.

DATED: December 14, 2015

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Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings