

ATTACHMENT A
THE PROPOSED DECISION

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

In the Matter of the Application of Survivor
Continuance Allowance Upon the Death of
JAMES W. HILTON by:

Case No. 2014-0798

OAH No. 2015070291

SHERRY HILTON-BARTON,

Respondent,

and

CITY OF ANAHEIM,

Respondent.

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 11, 2016, in San Diego, California.

Kevin Kreutz, Senior Staff Counsel, represented Petitioner Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System, State of California.

Sherry Hilton-Barton, respondent, represented herself and was present throughout the administrative proceeding.

No appearance was made by or on behalf of the City of Anaheim.

On February 11, 2016, the matter was submitted.

ISSUE

The issue to be determined is whether Sherry Hilton-Barton meets the requirements of a "surviving spouse" set forth under Government Code section 21624 to be eligible for survivor's continuance allowance after the death of James W. Hilton.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED March 11, 2016
Sherry Hilton-Barton

FACTUAL FINDINGS

Preliminary Matters

1. The California Public Employees' Retirement System (CalPERS) was created by the Public Employees' Retirement Law. (PERL, Gov. Code, § 20000 et seq.¹) The system provides retirement benefits for state employees and is authorized to enter into contracts with local public entities to provide retirement benefits for their employees. (Gov. Code, § 20460.) When a local public entity contracts with CalPERS, the entity and its employees become subject to the terms of the PERL. (Gov. Code, § 20506.)

2. James W. Hilton was employed by the City of Anaheim as a Fleet Support Supervisor. By reason of his employment, Mr. Hilton was a local miscellaneous member of CalPERS. The City of Anaheim is a public entity contracting with CalPERS for retirement benefits for eligible employees.

3. On October 19, 2010, Mr. Hilton signed an application for service retirement with CalPERS. In that application Mr. Hilton listed his children as beneficiaries of a lump sum death benefit. He also answered questions in this document affirming that he was not married and that he was not in a domestic partnership. In that document he also stated that he was a single man for tax withholding purposes. Mr. Hilton signed the document attesting to the truth of his answers under the penalty of perjury. Mr. Hilton retired from service on December 31, 2010.

4. On July 29, 2013, Mr. Hilton submitted a beneficiary designation naming respondent, Sherry Hilton-Barton, as the primary beneficiary of his death benefits.

5. On October 26, 2013, Mr. Hilton died.

On or about October 28, 2013, respondent submitted to CalPERS an application for survivor benefits for retired member Mr. Hilton. In that application respondent stated that she married Mr. Hilton on July 9, 2013, and she and Mr. Hilton lived together for 24 years prior to their marriage.

6. On October 30, 2013, CalPERS sent a letter to respondent informing her that in order to qualify for survivor continuance monthly allowance, she would have to have been married to Mr. Hilton for one year prior to his retirement date pursuant to PERL.

7. On January 9, 2014, respondent sent a letter to CalPERS along with a "marriage receipt" from Mexico dated January 13, 1989. Respondent asserted in the letter that she "was going through paperwork and found it" and that she hoped that the document would "prove I was married one year prior to James Hilton's retirement date."

¹ All statutory references are to the Government Code, unless otherwise noted.

8. After additional correspondence between CalPERS and respondent regarding CalPERS request for additional documentation providing evidence of a marriage on January 13, 1989, in Mexico, respondent provided a document entitled "Institucion Del Matrimonio Civil" purporting to be from Mexico and dated April 7, 1989.

9. The Board of Administration (board) is the trustee/administrator of CalPERS and has the jurisdiction and obligation to determine a variety of matters, including whether survivor continuance benefits are appropriate based upon the applicable law.

Testimony of Daniel Schofield

10. Daniel Schofield works in the death benefits and exceptional processing unit of the benefits services division of CalPERS. His responsibilities include administering benefits for retirement members both before and after their death, as well as handling any disputed legal matters related to such administration. He has held that position for over three years. Prior to that job, he worked for another state agency for one and a half years administering disability benefits for its members. Prior to that position he worked for four and a half years for the state compensation insurance fund in a similar capacity.

Mr. Schofield received training at CalPERS for his current position from one-on-one training with his supervisor. He stated that he typically becomes involved in a matter once a dispute arises regarding a CalPERS decision related to death benefits.

11. Mr. Schofield was assigned to review CalPERS's decisions regarding respondent's application for spousal survivor benefits after the death of Mr. Hilton. As part of his evaluation of respondent's application, he reviewed the entire member file for Mr. Hilton's service retirement; respondent's application for survivor benefits; all documents submitted by respondent; and all written communications with respondent. Additionally, Mr. Schofield had multiple telephone calls with respondent regarding her application. All of the telephone calls between CalPERS employees and respondent during the pendency of her application were documented in notes entered into an electronic call log named Touch Point. Mr. Schofield also reviewed all of the Touch Point notes related to her application as part of his evaluation.

Mr. Schofield testified that on July 29, 2013, Mr. Hilton designated respondent as the primary beneficiary of his death benefits. However, Mr. Schofield clarified that such a designation for death benefits are different than spousal survivor continuance benefits, and a member can't designate a person to received spousal survivor benefits because those benefits can only be paid by operation of the law under PERL. According to Mr. Schofield, upon the death of Mr. Hilton respondent was entitled to the lump sum death benefits payable to Mr. Hilton based on Mr. Hilton's designation of her, and those benefits were paid to her on November 27, 2013. However, the spousal survivor continuance benefits are not paid based upon Mr. Hilton's designation, but rather only by operation of law.

Mr. Schofield reviewed the January 9, 2014, letter from respondent as well as all the documents provided purporting to evidence the 1989 marriage in Mexico between

respondent and Mr. Hilton. Mr. Schofield testified that the documents provided by respondent were not typical of other marriage certificates issued from Mexico, they appeared to have insufficient information, and lacked signatures of the bride or groom. However, Mr. Schofield stated that as part of his duties he looks at the totality of the circumstances to determine if there was a valid marriage. Mr. Schofield then began to research information regarding the requirements of a valid marriage in Mexico. According to his research, Mexico requires that the couple take a blood test, a chest x-ray, and that there be four witnesses to the marriage. Additionally, in order for a foreign marriage in Mexico to be recognized in the United States, the marriage certificate must be legalized pursuant to the Apostille Treaty between the two countries by use of an Apostille seal issued by Mexico. None of the documents provided by respondent related to the 1989 Mexican marriage had an Apostille seal.

On April 4, 2014, CalPERS communicated the requirement to respondent that CalPERS needed an authenticated marriage certificate from Mexico to allow her to obtain the proper documents from the Mexican consulate authenticating the 1989 marriage. Mr. Schofield received a letter from respondent dated April 28, 2014, stating that she was not able to obtain the requested documents with an Apostille seal. On April 29, 2014, Mr. Schofield had a telephone conversation with respondent regarding his request that she provide authenticating documents for the 1989 Mexican marriage. Mr. Schofield recorded notes from that conversation in Touch Point and testified that respondent told him that she could not obtain an authenticated marriage certificate from the Mexican consulate and that the consulate told her that she was married by people who take money from tourists and that the marriage was not valid.

Mr. Schofield stated that CalPERS considered the fact that respondent and Mr. Hilton had lived together for 24 years prior to their marriage in 2013. Mr. Schofield testified that CalPERS has provided spousal survivor benefits in situations where there was a putative marriage, meaning that there was never a legally recognized marriage, but that the couple mistakenly believed that they were married and held themselves out to the public that they were married. In those situations CalPERS will provide spousal survivor benefits. However, respondent's situation does not qualify as a putative marriage because respondent and Mr. Hilton did not believe that they were married, as evidenced by his service retirement application where he responded to multiple questions that he was a single man, and as evidence by their 2013 legal marriage. Based on Mr. Hilton's retirement date in 2010 and his only legal marriage to respondent in 2013, respondent was not eligible to receive spousal survivor benefits.

The Testimony of Sherry Hilton-Barton

12. Sherry Hilton-Barton is 58 years old. She lived with Mr. Hilton for 24 years before they were married on July 9, 2013. She testified that she and Mr. Hilton got married on July 9, 2013, because they wanted to be married before his anticipated retirement in 2014. However, prior to his planned retirement date in 2014, Mr. Hilton was diagnosed with Amyotrophic Lateral Sclerosis (ALS or Lou Gehrig's Disease) and his health began to deteriorate to the point that he could no longer work. Accordingly, he retired in 2010. She

provided no explanation of why she and Mr. Hilton did not get married prior to his retirement date in 2010.

13. Respondent testified that she and Mr. Hilton went to Mexico in January 1989 and were married in the presence of her now deceased father and others. She stated that the marriage in Mexico was a “secret marriage” but provided no explanation regarding why the marriage would be a secret. After she learned from CalPERS that the documents she provided to them related to the 1989 Mexican marriage could not be authenticated and an Apostille would be needed from the Mexican consulate to authenticate the marriage, she attempted to obtain an Apostille from the Mexican consulate. She testified that she was informed from the Mexican consulate that the 1989 marriage was not valid, and was typical of fake marriage ceremonies conducted in Mexico by people taking money from tourists.

Additionally, she contacted a company she found on-line in an attempt to obtain an Apostille on a Mexican marriage certificate from the 1989 Mexican marriage. She completed an application on February 18, 2014, for that company and received a document back from them in the mail. That document did not have an Apostille seal and was the same document she submitted to CalPERS entitled “Institucion Del Matrimonio Civil” purporting to be from Mexico and dated April 7, 1989.

14. Respondent believes that because she lived with Mr. Hilton for 24 years prior to their marriage that she is entitled to receive spousal survival benefits. She is frustrated because she took care of Mr. Hilton during his illness until his death and feels that she is entitled to those spousal survival benefits.

Testimony of Sandra Davilla

15. Sandra Davilla is the daughter of respondent, but not the daughter of Mr. Hilton. She testified that she had known Mr. Hilton since 1986 when he began dating her mother. She remembered that he was “going through a divorce” during the time he was dating her mother, and that his children were often around and that his previous wife was “being difficult.” She had no knowledge of when Mr. Hilton was finally divorced from his previous wife. Ms. Davilla stated that she believed that in order to make her mother feel more secure in the relationship, respondent and Mr. Hilton went to Mexico to get married in 1989.

Ms. Davilla stated that she was aware that respondent and Mr. Hilton were married on July 9, 2013, and that Mr. Hilton had originally planned to retire in 2014 but became too ill to continue working so he retired in 2010.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Government Code section 20128 provides in part:

. . . [T]he board may require a member or beneficiary to provide information it deems necessary to determine this system's liability with respect to, and an individual's entitlement to, benefits prescribed by this part.

2. Respondent has the initial burden to establish that she was entitled to survivor benefits from Mr. Hilton's CalPERS service retirement. (Evid. Code, § 500; Evid. Code, § 550.) The standard of proof is a "preponderance of the evidence." (Evid. Code, § 115.)

Applicable Statutes and Case Law

3. Government Code section 21624 provides:

Upon the death of a patrol, state peace officer/firefighter, or state safety member whose retirement for service or disability is effective on or after April 1, 1973, a monthly allowance derived from employer contributions equal to a percentage of the amount of his or her retirement allowance as it was at his or her death based on service credited to him or her as a member subject to this section, but excluding any portion of the retirement allowance derived from additional contributions of the member, shall be paid to the surviving spouse throughout life. The percentage shall be 25 percent for an allowance based on service for which the allowance is reduced because the service was also covered under the federal system and 50 percent for an allowance based on any other service. If there is no surviving spouse, or upon the death of the surviving spouse, the allowance shall be paid collectively to every unmarried child of the deceased member who has not attained age 18, or who is disabled by a condition that disabled that child prior to attaining age 18 and that has continued without interruption after age 18, until the disability ceases. If, at the time of the retired member's death, there is no eligible surviving spouse or children, the allowance shall be paid to a parent, or collectively to parents, of the deceased member dependent upon him or her for support. If, on the effective date of his or her retirement, the member has no surviving spouse, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

"Surviving spouse," for purposes of service retirements subject to this section, means a husband or wife who was married to the member for a continuous period beginning at least one year prior to his or her retirement and ending on the date of his or her death and, for purposes of disability retirements subject to this section, means a husband or wife who was married to the

member on the date of his or her retirement and continuously to the date of his or her death.

4. Government Code section 21626 provides:

“Member” for purposes of Section 21624 also includes those local miscellaneous members and local safety members who on March 31, 1973 were subject to former Sections 21264, as amended by Chapter 249 of the Statutes of 1971 and 21264.1, as added by Chapter 150 of the Statutes of 1971, as those sections read prior to their repeal on April 1, 1973. “Member” shall not include any other local miscellaneous or local safety member or apply to any contracting agency employing the member until the agency elects to be subject to Section 21624 by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among employees shall not be required or, in the case of contracts made on or after April 1, 1973, by express provision of the contract. The election may be exercised separately with respect to local safety members who are firefighters, local safety members who are police officers, local safety members other than police officers or firefighters, and local miscellaneous members. The operative date of Section 21624 for purposes of application to that section to those local members shall be the effective date of the contract or contract amendment.

“Surviving spouse” shall mean, for a member subject to Section 21624, who retires for disability retirement on or after January 1, 1995, a husband or wife who was married to the member on the date of his or her retirement and continuously to the date of his or her death.

5. The putative spouse doctrine is an equitable doctrine that operates to protect innocent parties of invalid marriages from losing rights to what would have been community property acquired during the unions as the result of their joint efforts. (*Burnham v. California Public Employees' Retirement System* (2012) 208 Cal.App.4th 1576, 1587 (acknowledging the potential application of the putative spouse doctrine where parties enter into what is believed to be a valid union and then accumulate property, but holding that a woman who did not acquire assets during their seemingly valid domestic partnership could not use the doctrine “to look forward” in an attempt to collect survivor benefits from his CALPERS pension).) A party to a void or voidable (or other invalid) marriage has “putative spouse” status only if he or she believed in good faith the marriage was valid. (*Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.App. 4th 1113, 1116.)

//

Evaluation of the Evidence

6. Respondent admits that she was married to Mr. Hilton on July 9, 2013, and that her 1989 marriage in Mexico to Mr. Hilton was not considered to be valid by Mexico. She also testified that the 1989 marriage in Mexico was a “secret marriage,” but failed to explain what was meant by characterizing it as secret. In her application for survivor benefits submitted to CalPERS on October 28, 2013, respondent stated that her date of marriage was July 9, 2013. The documents submitted by Mr. Hilton in his application for retirement signed on October 19, 2010, clearly demonstrate that Mr. Hilton considered himself to be single and unmarried at that time. There is no evidence to demonstrate that respondent or Mr. Hilton believed that they were married prior to July 9, 2013, and accordingly, the putative spouse doctrine does not apply under these circumstances. Additionally, respondent failed to provide sufficient evidence to prove that the 1989 marriage in Mexico was valid. Accordingly, the evidence demonstrates that the first date of marriage for respondent and Mr. Hilton was July 9, 2013.

Additionally, pursuant to Government Code section 21624, because Mr. Hilton’s retirement date was December 31, 2010, and he was not married to respondent until July 9, 2013, respondent does not qualify as a surviving spouse because she was not married to him at least one year prior to December 31, 2010.

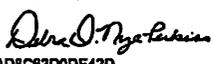
Cause Exists to Affirm CalPERS’s Denial of Survivor Benefits

7. Cause exists to affirm the denial of survivor continuance allowance by CalPERS to Mrs. Hilton-Barton based upon the death of retired member James W. Hilton. Based upon the evidence and the statutory requirements, Mrs. Hilton-Barton does not qualify as a surviving spouse because she was not married to Mr. Hilton at least one year before his retirement date of December 31, 2010.

ORDER

CalPERS’s determination that Sherry Hilton-Barton is not entitled to survivor continuance allowance upon the death of retired member James W. Hilton is affirmed.

DATED: March 10, 2016.

DocuSigned by:

73AD8C82D0DE42D...
DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearing