

ATTACHMENT A
THE PROPOSED DECISION

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

In the Matter of the Application for Death
Benefits Payable on Account of Jose D.
Torres by:

JUANA TORRES,

Respondent,

and

JOSE L. TORRES,

Respondent.

Case No. 2014-0391

OAH No. 2016040235

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on June 27, 2016, in Salinas, California.

John L. Shipley, Senior Staff Attorney, represented complainant Anthony Suine, Chief of the Benefit Services Division of CalPERS.

T. Bob Uemura, Attorney at Law, represented respondent Juana Torres, who was present.

Respondent Jose L. Torres appeared and represented himself.

The matter was submitted for decision on June 27, 2016.

FACTUAL FINDINGS

1. Anthony Suine, Chief of the Benefit Services Division of the California Public Employees' System (CalPERS), filed the statement of issues in his official capacity.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

July 21, 2016
Rachelle K. Schrey

2. Jose D. Torres (decedent) was employed by the County of Monterey as an agricultural inspector and was classified as a local miscellaneous member of CalPERS pursuant to Government Code section 21154. Decedent passed away on October 4, 2012 at age 46.

3. As of December 6, 2012, CalPERS calculated that \$105,445.31 in death benefits were payable to decedent's beneficiaries. CalPERS did not have a beneficiary designation form from decedent on file at the time of his death. Decedent never married and had no children. His mother is respondent Juana Galindo Torres, his father is respondent Jose L. Torres, and he had one brother, Fernando Torres. Juana Galindo Torres and Jose L. Torres divorced in 1987.

4. CalPERS reviewed documentation submitted by Fernando Torres in determining decedent's beneficiaries. The documentation included a will leaving all assets to Juana Galindo Torres (without mentioning CalPERS benefits specifically), a beneficiary designation purportedly signed by decedent on July 18, 2010, designating Juana Galindo Torres as the sole beneficiary, a letter from Union Bank advising that all bank accounts were held in the name of "Jose D. Torres, Payable on Death to Juana Galindo Torres," tax documents identifying Juana Torres as a dependent of decedent, and a probate judgment awarding the home owned by decedent to Juana Galindo Torres as his sole beneficiary.

5. CalPERS accepts beneficiary designation forms after the member dies if there is sufficient indication that the form is valid. CalPERS compared the signature on the beneficiary designation form submitted by Fernando Torres to documents signed by decedent in 1990 and 1993, and considered the signatures to be inconsistent. CalPERS therefore rejected the beneficiary designation form as invalid.

6. Pursuant to Government Code section 21493, if a member dies without a beneficiary designation form in effect on the date of death, any benefit payable is paid to the survivors in the following order: 1) the decedent's spouse; 2) the decedent's children; 3) the decedent's parents; and, 4) the decedent's brothers and sisters. Because decedent had no spouse or children, CalPERS determined that the benefits should be paid in equal amounts to Juana Torres and Jose L. Torres. Juana Torres appealed the decision and this hearing followed.

7. The parties stipulated that the issue on appeal is limited to whether the CalPERS benefits, payable upon decedent's death, should be paid to Juana Galindo Torres and Jose L. Torres in equal amounts, or to Juana Galindo Torres as the sole recipient.

Evidence of Decedent's Intent

8. Fernando Torres and Juana Torres testified with candor at hearing and much of their testimony was corroborated by documents. Juana Torres and Jose L. Torres divorced while decedent and his brother were in high school. They continued to reside with their mother in the family home. Decedent purchased a house as an adult and his mother moved

to that residence with him. Decedent and his mother were lifelong companions and lived together until he died. Decedent and his mother were very close; he took her to all of her medical appointments and cared for her on a daily basis. Decedent identified his mother as his dependent on his 2010 and 2011 tax returns and she has received his social security income and Medicare under decedent's social security number based on her dependent status.

9. Decedent suffered from a heart condition and was not in good health the last few years of his life. Decedent told his brother and his mother that his intention was to leave his assets to his mother. Fernando Torres specifically recalls his brother telling him that he intended his CalPERS benefits to support his mother upon his death. Decedent showed Fernando Torres and his mother the annual CalPERS statements when stating that the CalPERS benefits would help to support her.

10. Decedent had several bank accounts and certificates of deposit (CD's) at Union Bank in Salinas. Diana A. Martinez, Branch Manager of the North Salinas office of Union Bank, submitted a letter stating that decedent's funds and CD's were held under the name of "Jose D. Torres, Payable on Death (POD) to Juana Galindo Torres." The funds and certificates of deposit were transferred to Juana Galindo Torres after the bank received confirmation of his death. Martinez recalls speaking with decedent; he advised Martinez that his mother was the sole beneficiary of his estate.

11. Fernando Torres graduated with a degree in business administration and assisted his brother with financial affairs, including the purchase of life insurance naming Juana Torres as decedent's beneficiary. After his brother's death, Fernando Torres examined the documents kept in a file cabinet in his brother's home. He located a will dated July 30, 2010, naming him as executor and designating his mother as the sole beneficiary of the estate. The will does not mention decedent's CalPERS benefits specifically. Fernando Torres also located what appeared to be a copy of a CalPERS beneficiary designation form dated July 18, 2010, identifying Juana Torres as the sole beneficiary. The signatures on the will and the beneficiary designation form, both dated in July 2010, appear similar.

12. On February 19, 2013, Fernando Torres filed a petition for the probate of his brother's estate in Superior Court of the State of California, County of Monterey. In the petition, Fernando Torres alleged that Juana Galindo Torres was the sole beneficiary of all assets in decedent's estate.

13. On March 25, 2013, Fernando Torres contacted CalPERS to request that a claim packet be sent to his mother. CalPERS sent the documents on April 6, 2013.

14. On April 17, 2013, Fernando Torres called CalPERS to ask whether there was a beneficiary designated, and informed CalPERS that the probate court had designated Juana Torres as the beneficiary of all of his brother's assets. On June 20, 2013, CalPERS informed Fernando Torres that no beneficiary designation form was on file.

15. On July 3, 2013, a CalPERS representative spoke with Fernando Torres who stated that his brother had completed a beneficiary designation form naming Juana Torres as his beneficiary, and he believed decedent had submitted it to his employer; Fernando Torres stated that he had a copy of the form.

16. On July 23, 2013, CalPERS received a copy of a beneficiary designation form purportedly signed by decedent on July 18, 2010. The form identifies Juana Torres as the sole beneficiary of decedent's CalPERS benefits.

17. On August 21, 2013, a CalPERS representative spoke with Fernando Torres regarding his brother's beneficiary designation form. Fernando Torres advised the representative that he had located the copy of his brother's designation form among his things after he passed away.

18. On September 13, 2013, Fernando Torres submitted to CalPERS Juana Torres's completed claim form. On September 24, 2013, Fernando Torres spoke with a CalPERS representative who advised him that both parents needed to submit claim forms. Fernando Torres reiterated to the representative that his mother should be the sole beneficiary.

19. On September 25, 2013, CalPERS received a letter from Fernando Torres enclosing documentation in support of his claim that Juana Torres was decedent's sole beneficiary. He advised CalPERS that his mother and brother were best friends, lifelong living companions, and that decedent cared for his mother in every way. Fernando Torres also advised CalPERS that his brother had left his mother his entire estate, including his home, IRA account, life insurance policy, certificates of deposit, and checking account proceeds. Fernando Torres informed CalPERS that his brother intended to leave his CalPERS retirement benefits to his mother as well.

20. On October 16, 2013, CalPERS received a call from decedent's father Jose L. Torres, who requested a claim package. Jose L. Torres submitted a claim for his son's benefits to CalPERS on February 26, 2014. At hearing, Jose L. Torres offered no evidence to establish that decedent intended that his father would be the beneficiary of any of decedent's assets, including the CalPERS benefits.

21. On October 23, 2013, the superior court issued a judgment in the probate of decedent's estate. The judgment states in pertinent part that: 1) all of the allegations in the petition are true; 2) decedent died testate on October 4, 2012; 3) Fernando Torres was appointed executor of the estate; 4) Juana Galindo Torres is the sole beneficiary of the estate; and 5) the only asset in the estate, decedent's real property located in Salinas, will be distributed to her. Neither the petition for probate nor the judgment mentions decedent's CalPERS benefits.

LEGAL CONCLUSIONS

1. Government Code section 21490, subdivision (a), provides that a member may designate a beneficiary to receive the benefits payable upon his or her death. Pursuant to Government Code section 21493, if no beneficiary designation is in effect on the date of death, any benefit payable is paid to the survivors according to the statutory order.

2. A writing filed after the death of a member is properly considered by the retirement body. (*Watenpaugh v. State Teachers' Retirement System* (1959) 51 Cal.2d 675.) Therefore, the fact that the beneficiary designation was submitted after decedent's death does not make it invalid. CalPERS concedes as much. (Factual Finding 5.) However, CalPERS rejected the beneficiary designation because in comparing the signature on the designation form to decedent's signature on documents he had signed 20 years earlier, CalPERS was unable to confirm that it was signed by decedent. As a result, CalPERS argues that the benefits should be split between decedent's mother and father pursuant to Government Code section 21493. Even assuming, however, that the signature on the beneficiary designation cannot be confirmed, the inquiry should not end there. Case law establishes that the intent of the CalPERS member may be taken into account to determine the beneficiary if there is no effective beneficiary designation.

3. In *Watenpaugh, supra*, a teacher had an earlier designation on file with the Teacher's Retirement Board, naming his late wife and children. He had subsequently remarried and completed a new beneficiary designation form naming his new wife. He brought the form home where it remained in a file until after his death. His wife offered evidence of the member's statements to her that he desired for her to receive his retirement benefits. The California Supreme Court ruled that the retirement statute should be construed to give effect to an executed designation form when there is a clear manifestation of intent to make the change and the designation is filed promptly after death so as to prevent prejudice to the retirement system. (*Watenpaugh, supra*, at p. 681.) The court also held that literal compliance with retirement regulations is not necessary to identify a beneficiary where there was some affirmative action evidencing the decedent's intent. (*Ibid.*)

4. In 1970, the Legislature enacted former sections 21205 and 21211 (reorganized without substantive change in 1995 as current sections 21492 and 21493, respectively) to ensure that an employee's death benefits would be awarded "to those persons whom the employee would most likely intend to be his [or her] beneficiaries." (*Coughlin v. Board of Administration* (1984) 152 Cal.App.3d 70, 73.) The *Coughlin* court found "nothing in the 1970 enactments to indicate that the Legislature meant to avoid the uncertainties inherent in the *Watenpaugh* mandate of liberal construction of pension legislation to effectuate employee intent." The Court of Appeal concluded that by designating his mother as beneficiary after initiating divorce proceedings, the CalPERS member "manifested a clear intention to name a beneficiary of his own choosing in response to his change in family composition, in lieu of allowing the automatic provisions of sections 21204 and 21211 to select a different beneficiary for him." (*Id.*, at p. 75.)

5. A will may also serve as a writing manifesting intent. In *Lyles v. Teachers' Retirement Board* (1963) 219 Cal.App.2d, 523, the member had earlier filed a beneficiary designation with the Teachers' Retirement Board. One year before her death, she created a holographic will purporting to change aspects of her earlier designation. The court gave effect to the member's holographic will filed after her death. Though the will contained some inaccuracies, the court found that the member's intent as to where she wanted her benefits to go was clear. The court stated that the primary purpose of the retirement system is to enable a member to protect herself during her retirement years and to nominate "anyone she so desires or her estate as her beneficiaries upon her death." (*Lyles, supra*, at p. 530.) "The State of California has no interest in whom such a [member] may so designate, in spite of its own contributions. Its prime interest is to be sure that it does not pay any retirement benefits to the wrong person or to pay the benefit twice." (*Ibid.*)

6. Here, there is ample evidence of decedent's intent that his mother be his sole beneficiary. Decedent and his mother were lifelong companions and decedent took care of his mother financially throughout his life. (Factual Finding 8.) Decedent made his checking accounts and CD's payable to his mother upon his death. (Factual Finding 10.) The beneficiary of decedent's life insurance was his mother. (Factual Findings 11 and 19.) Decedent told his mother, brother and bank manager that he intended that his mother be the sole beneficiary of his estate. (Factual Findings 9 and 10.) The probate court accepted his will designating decedent's mother as the sole beneficiary of his estate. (Factual Findings 12 and 21.) Under these circumstances, even setting aside the beneficiary designation filed after decedent's passing, there is overwhelming evidence clearly establishing decedent's intent that his mother be his sole beneficiary. Jose L. Torres offered no evidence to the contrary. (Factual Finding 20.) As a result, the appeal of Juana Galindo Torres is granted.

ORDER

The appeal of Juana Galindo Torres is granted.

DATED: July 14, 2016

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings