

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

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

In the Matter of the Appeal of Death Benefits  
Payable Upon the Death of

Case No. 2015-0843

TYRONE SHARPE, SR., deceased, by

OAH No. 2015110897

TYRONE SHARPE, JR.,

Respondent,

and

SADIE SHARPE,

Respondent.

**PROPOSED DECISION**

Beth Faber Jacobs, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 14 and August 22, 2016, in San Diego, California.

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

Respondents Tyrone Sharpe, Jr., and Sadie Sharpe, represented themselves. By agreement of all parties, on August 22, 2016, Sadie Sharpe appeared by telephone.

The matter was submitted on August 22, 2016.

**ISSUE**

Should the October 9, 2009, letter, purportedly bearing the signature of member Tyrone Sharpe, Sr., indicating he is "leaving everything," to his mother, Sadie Sharpe, be

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED 9-22-2016  
*[Signature]*

accepted as a beneficiary designation for the payment of the member's CalPERS death benefits?

The answer is "no."

## FACTUAL FINDINGS

### *Introductory and Jurisdictional Matters*

1. Tyrone Sharpe, Sr., became a local miscellaneous member of CalPERS by virtue of his employment as a janitor with San Diego Unified School District. His employment ended on July 1, 1994. He died on December 5, 2010, at 60 years of age.

2. At the time of his death, Tyrone Sharpe, Sr., had not applied for retirement benefits from CalPERS, and he had not filed a beneficiary designation with CalPERS.

3. On August 8, 2011, Karen Pritchett, a family friend who once dated Tyrone Sharpe, Sr., called CalPERS and reported his death.

4. When Tyrone Sharpe, Sr., died, he was unmarried, and he had at least two adult children: Respondent Tyrone Sharpe, Jr., and Jermaine Sharpe.<sup>1</sup> His mother, respondent Sadie Sharpe, was alive, as were some of his twelve siblings, including Viola Wilson and Carol King.

5. Based on his contributions to CalPERS and interest on those contributions, Tyrone, Sr.<sup>2</sup>, had a limited death benefit of \$84,944.75. Unless he had a written beneficiary designation in effect on the date of his death, his limited death benefit would be payable to his children. (Gov. Code, § 21493, subd. (a)(2).)

6. CalPERS sent Mrs. Sharpe a death benefits packet – documents that needed to be completed following a member's death to help determine death benefit payees. She misplaced it. On January 20, 2012, her daughter, Viola Wilson, went to a local CalPERS office and requested a duplicate packet for her mother. Ms. Wilson again spoke with CalPERS representatives on February 8, 2012. When CalPERS representatives advised Ms.

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<sup>1</sup> There was conflicting evidence as to whether decedent had two or three children. According to Tyrone Sharpe, Jr., Tyrone Sharpe, Sr., may have had an older son, Eldridge Robeson, or a name similar to that, who was not a party, and whom Tyrone Sharpe, Jr., had not seen since he (Tyrone, Jr.) was three years old. CalPERS' internal notes (the Customer Touch Point Report) indicate that CalPERS was at times advised that Tyrone Sharpe, Sr., had three children and at other times was advised that he had two children.

<sup>2</sup> For ease of identification, this decision refers to respondent Sadie Sharpe as Mrs. Sharpe; Tyrone Sharpe, Sr., as Tyrone, Sr.; and respondent Tyrone Sharpe, Jr., as Tyrone, Jr.

Wilson that Tyrone, Sr., did not have a beneficiary designation on file and that statutorily, his death benefits would be payable to his children, Ms. Wilson stated that her mother, Mrs. Sharpe, was the beneficiary.

7. On March 12, 2012, Mrs. Sharpe and Ms. Pritchett went to a CalPERS office and asked about death benefits. CalPERS staff related that the packet had already been sent to Mrs. Sharpe and to her daughter, Ms. Wilson; that CalPERS had not received the completed packet; that there was no beneficiary designation on file; and that death benefits would be paid, according to statute, to Tyrone, Sr.'s, children. Mrs. Sharpe asked the CalPERS representative if it "would work" if she "found something" that indicated she was his beneficiary. The CalPERS representative advised Mrs. Sharpe that he did not think so, but that, if she found something, she should submit it "just in case."

8. On December 4, 2012, Mrs. Sharpe returned to the local CalPERS office. She brought a copy of Tyrone, Sr.'s, death certificate and a letter dated October 9, 2009. The letter was typewritten and was addressed to her. It purported to be signed by Tyrone, Sr., and stated, in part, that he was leaving "everything" he owned, including retirement benefits, to her.

9. On December 23, 2014, Mrs. Sharpe submitted an application to CalPERS for Tyrone, Sr.'s, survivor benefits. She checked the box indicating that Tyrone, Sr., had not left a will. She claimed rights as his beneficiary.

10. Sometime in 2015, CalPERS notified Tyrone, Jr., and Jermaine Sharpe that it intended to pay their father's death benefits to their grandmother, Mrs. Sharpe. On March 18, 2015, Tyrone, Jr., completed an application for survivor benefits. His application stated that his father had two adult children (himself and Jermaine). In answer to the question as to whether his father left a will, he checked the box marked "no."

11. By letter dated June 25, 2015, CalPERS notified Tyrone, Jr., that it had accepted the October 9, 2009, letter as his father's beneficiary designation of Mrs. Sharpe and that it intended to pay the lump sum \$84,944.75 limited death benefit to her. The letter advised Tyrone, Jr., of his right to appeal the decision. A similar letter was sent to Jermaine Sharpe.

12. By letter dated July 6, 2015, Tyrone, Jr., advised CalPERS that he wished to appeal its determination that the October 9, 2009, letter was a valid beneficiary designation. Jermaine Sharpe did not file an appeal.

13. On November 18, 2015, complainant signed the Statement of Issues to address the issue of whether the October 9, 2009, letter should be accepted as a beneficiary designation for Tyrone, Sr.'s, CalPERS death benefits. The Statement of Issues identified Tyrone, Jr., and Mrs. Sharpe as respondents. This hearing followed.

*Evidence Regarding the October 9, 2009, Letter (The Letter)*

14. The letter, which is the subject of this hearing, was typewritten, dated October 9, 2009, and addressed to "Sadie Sharpe." In part, it stated:

Dear Mama,

You know how much I love you and I don't want you to ever worry or be sad.

My health is not the best . . . .

If anything happens to me, or when I die, I'm leaving everything I own to you. I know it's not much. But I leave you my gold Volvo, bank account, insurance policies, social security, retirement, jewelry, furniture and you can have the tools if you want or give them away and anything else that belongs to me but not listed.

. . . .

If you should die before me, I want Tyrone Jr. and Jermaine to have everything.

. . . .

The words "Mr. Tyrone Sharpe" were hand written in cursive at the bottom of the letter in the space between the typewritten words "your loving son," and "Tyrone." There was no other handwriting on the letter.

15. Six people testified in this matter: Mrs. Sharpe; Tyrone, Jr.; Viola Wilson; Carol King; Karen Pritchett; and Daniel Schofield, a CalPERS retirement analyst.

The evidence established that Tyrone, Sr., did not give the letter to any of the witnesses. None of the witnesses saw the letter being prepared or signed. The letter was not notarized, and it did not have any written indication that the signature had been witnessed by another person. The letter was not found in Tyrone, Sr.'s, home; Viola Wilson obtained the letter from a family friend, Cornell Butler.

*Tyrone Sharpe, Jr.*

16. Respondent Tyrone Sharpe, Jr., age 43, is Tyrone, Sr.'s, son. Tyrone, Jr., filed this appeal because he does not believe the letter is authentic. As he stated, "[t]hey are not [my father's] words and not his writing."

17. Tyrone, Jr.'s, parents separated when he was about five years old. When he was 16 years old, Tyrone, Jr., began to live with his father in San Diego. Tyrone, Sr., helped him get into the local high school. When Tyrone, Jr., made the football team, Tyrone, Sr., came to every Friday night game. Tyrone, Jr., recalled family outings with his father in the "gold Volvo." In 1995, Tyrone, Jr., enlisted in the Navy. Whenever Tyrone, Jr., was on leave, he visited his father. Tyrone, Jr., moved back to San Diego in 2005, and he again lived with Tyrone, Sr. They would "hang out" and watch football. At some point, Tyrone, Jr., moved to an apartment about 15 minutes away. According to Tyrone, Jr., their relationship "blossomed" during this period. They spent a lot of time sharing a "six-pack" and talking. Tyrone, Jr., recalled how upsetting it was when his father broke the news that he had cancer.

18. According to Tyrone, Jr., he and his father were very close, and they had serious conversations. Tyrone, Sr., shared remorse about his divorce from Tyrone, Jr.'s, mother. Tyrone, Sr., spoke to his son about the importance of family and the pride he had in both Tyrone, Jr., and Jermaine. By this time, Tyrone, Jr., had become a massage therapist. When his father was in the hospital, Tyrone, Jr., would visit each day after his work shift. He continued to visit after Tyrone, Sr., was released from the hospital. They watched old movies together. Tyrone, Jr., took his father and his father's girlfriend to dinner. Tyrone, Jr., often brought groceries for his father with his cash tips. He felt they had a "tight relationship" and could talk about anything.

19. During some of these talks, Tyrone, Sr., told Tyrone, Jr., that there would be "money" coming to him and his grandmother (Mrs. Sharpe), or one of the "two of you," and that they "should take care of one another" when he passed. He never mentioned where the money would be coming from. He never mentioned insurance, Social Security, retirement, or CalPERS.

20. Before his father's death, Tyrone, Jr., considered his two favorite people to be his father and his grandmother, Mrs. Sharpe. During the hearing, Tyrone, Jr., spoke appreciatively about his grandmother, and how she took care of his father. He said that his grandmother was "there all the time," unless she was in Las Vegas, where she had another home and her daughter, Ms. Wilson, resided. He emphasized how she was with Tyrone, Sr., during his chemotherapy and how, even when hospice care was provided, Mrs. Sharpe remained devoted to his father's care until the end of his life. It was difficult and upsetting for Tyrone, Jr., to bring this appeal and testify against his grandmother.

21. In February 2011, a few months after his father died, Tyrone, Jr., moved back into his father's home<sup>3</sup>. His father's personal papers were gone. His grandmother told him he should pay a portion of rent to McRay Sharpe, his uncle, and he did so every month. During this period there were eight family members living in the home. Tyrone, Jr., was the

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<sup>3</sup> Although Tyrone, Jr., referred to the home as his "father's house," the evidence suggested that Tyrone, Sr., did not own the house; it was owned by Mrs. Sharpe or another family member; and Mrs. Sharpe may have owned more than one home in San Diego.

only one who was employed, and he paid many bills. Tyrone, Jr., lived in the home until March 2012.

22. In June 2011, Tyrone, Jr.'s, uncle, Clifford Sharpe, towed the gold Volvo from the property. It was non-operational and had not been registered.

23. Tyrone, Jr., first heard about "the letter" in February 2015, when his brother, Jermaine, told him he had been contacted by CalPERS and that CalPERS had a letter from their father designating Mrs. Sharpe as Tyrone, Sr.'s, beneficiary. Tyrone, Jr., contacted his grandmother, but she told him she did not know what he was talking about. She told him to call his Aunt Carol (King). His Aunt Carol told him she did not know anything about a letter. Eventually, in 2015, Tyrone, Jr., applied for benefits with CalPERS, and he received a copy of the October 9, 2009, letter and a copy of CalPERS' "Customer Touch Point Report," a report generated by CalPERS reflecting all staff contacts concerning Tyrone, Sr.

24. Tyrone, Jr., does not believe his father wrote the letter. He gave numerous reasons: His father never owned a computer and "was not one to sit and type letters." Tyrone, Jr., was skilled at using a computer and believed that, if his father wanted to write a letter or type anything, he would have asked Tyrone, Jr., to help him. Despite their spending many Sunday nights together watching football, Tyrone, Sr., never asked him to type a document for him. During all their conversations, Tyrone, Sr., never mentioned a letter, a will, CalPERS, or his retirement benefits.

25. Tyrone, Jr., attended his father's funeral. No one in the family mentioned the existence of a letter from his father about his assets. Tyrone, Jr., never heard about the letter until 2015, several years after his father died.

26. In Tyrone, Jr.'s, opinion, the signature on the letter did not look like his father's writing or signature. Tyrone, Jr., produced documents bearing his father's hand writing, including Tyrone, Sr.'s, printing on the back of a picture Tyrone, Sr., gave his son when Tyrone, Jr., entered the Navy; his signature on file with the Department of Motor Vehicles, and a copy of his father's marriage certificate. To Tyrone, Jr., the signature on the letter did not look like his father's writing or signature. In addition, the content of the letter was inconsistent with what Tyrone, Sr., had told him prior to his death about how he wanted his assets to be handled – that he and his grandmother should take care of each other.

27. Tyrone, Jr., was also bothered by what he read in the CalPERS Touch Point Report. He noted that Karen Pritchett, his Aunt Viola, and his grandmother had several contacts with CalPERS between 2011 and 2012, after his father's death, when he (Tyrone, Jr.,) was living with many other family members in his father's house. At the time, Tyrone, Jr., was unaware that his father had CalPERS benefits; that without a beneficiary designation, he would be entitled by statute to share in them; or that family members had been requesting the benefits be paid to his grandmother. No one in the family told him what was happening. He thought it odd that his aunt told CalPERS she had no contact with Tyrone, Sr.'s, children, even though she knew that Tyrone, Jr., was living in his father's house. His suspicions

increased when he read in the Touch Point Report that an otherwise unknown letter suddenly appeared over a year after his father's death, after CalPERS repeatedly told family members that Tyrone, Sr., died without a beneficiary designation on file and that his children would be paid by statute; and his grandmother asked if Mrs. Sharpe could get his benefits if she "found something other than" a CalPERS form designating her (Mrs. Sharpe) as his father's beneficiary. These facts added to his belief that his father did not write the letter. Tyrone, Jr., testified he was not against helping his grandmother, but he strongly believed the letter was not written or signed by his father.

### *Viola Wilson*

28. Viola Wilson, age 57, testified about her family and the letter. According to Ms. Wilson, her parents had 13 children, including herself; Tyrone, Sr.; and Carol King. At times, her mother, Mrs. Sharpe, has had more than one home in San Diego, and at times Mrs. Sharpe lived in Las Vegas. Starting about 1990, Tyrone, Sr., lived with their mother at one of the homes in San Diego. When Tyrone, Sr., developed cancer and became ill, Mrs. Sharpe stayed in San Diego to take care of him.

29. Ms. Wilson lives in Las Vegas. Before her brother's death, she regularly visited her brother and mother in San Diego. When she visited, she periodically saw Tyrone, Jr., visiting his father.

30. Tyrone, Sr.'s, birthday was September 17. Ms. Wilson recalled his birthday party in September 2009. According to Ms. Wilson, Tyrone, Sr., told her that he had given their mother and a family friend, Cornell Butler, "a letter." Ms. Wilson did not see the letter at the time, and she did not know what it said, but she assumed it had something to do with how Tyrone, Sr., wanted his assets distributed.

31. After her brother died, Ms. Wilson tried to find the letter Tyrone, Sr., had mentioned. She looked throughout the home where her brother lived and her mother cared for him, but she did not find it. She checked her mother's house or houses. Sometime thereafter, several family members, including Tyrone, Jr., moved into the house where Tyrone, Sr., lived prior to his death.

32. Since her brother's death, Ms. Wilson has provided significant assistance to her mother. According to Ms. Wilson, Mrs. Sharpe is 88 and frail; she has suffered a number of strokes, has difficulty seeing, and has a very bad memory.

33. On an unspecified date in 2011 or 2012, Ms. Wilson went to Cornell Butler's home. According to Ms. Wilson, Mr. Butler gave her an envelope containing the letter (or a copy of the letter.) Ms. Wilson never saw the letter before getting it from Mr. Butler. She has now read the letter. To her, the signature on the letter looks like her brother's signature. She believes her brother signed it and that he intended his retirement benefits be given to their mother.



34. Ms. Wilson was asked about the distribution of the other items listed in the letter, such as the gold Volvo, bank account, insurance policies, Social Security, and jewelry. According to Ms. Wilson, her brother did not receive Social Security. None of the items listed in the letter remain at the house, and no bank account or insurance policy proceeds have ever been identified or distributed. She was unaware of whether anyone was or is in charge of her brother's estate.

*Sadie Sharpe*

35. According to Mrs. Sharpe, her son Tyrone, Sr., lived with her "on and off, all his life." Mrs. Sharpe spoke lovingly of her son, and how she cared for him when he got sick and until he died. She acknowledged that her memory was very bad. However, she recalled that Tyrone, Sr., always spoke highly of his sons Tyrone, Jr., and Jermaine. She knew he loved them. She testified she wished they visited more often, but it was unclear from her testimony whether she was referring to the time before Tyrone, Sr., died; after his death, or both.

36. Mrs. Sharpe was physically present in the hearing room during the first day of hearing. She was sometimes confused and did not understand why the hearing was being held. At other times, she was overwhelmed with sadness because the family was involved in this dispute. She had difficulty following the proceeding and needed her daughter, Ms. Wilson, to help her throughout it.<sup>4</sup> Mrs. Sharpe did not recall any conversations that took place between her, her son Tyrone, Sr., or her grandson Tyrone, Jr., about helping each other when Tyrone, Sr. passed. During her testimony, she did not identify any statements her son made about providing for her after his death. She did not recall her visits to CalPERS. She had no personal knowledge of the letter, and she did not know where it came from.

37. Mrs. Sharpe was not shown the letter during the hearing, and no one asked her whether she recognized the signature.

38. Based on the loving care she provided to her son over the years, Mrs. Sharpe believed Tyrone, Sr., intended to give his retirement benefits to her.

39. In the two months between the first and second day of hearing, Mrs. Sharpe suffered another stroke. On the second day of hearing, she appeared by telephone from her home in Las Vegas, where she now lives near Ms. Wilson. When Mrs. Sharpe testified in rebuttal on the second day of hearing, she was angry at Tyrone, Jr. She accused him of never visiting his father or doing anything to help him when he was ill. It is found that, due to her memory loss, Mrs. Sharpe did not accurately recall Tyrone, Jr.'s, relationship and visits with his father prior to Tyrone, Sr.'s, death.

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<sup>4</sup>Ms. Wilson is not an attorney. Ms. Wilson provided emotional support and assistance to her mother throughout the proceeding, and her mother continued to represent herself.

*Carol King*

40. Carol King testified. She is Mrs. Sharpe's daughter and the sister of Tyrone, Sr., and Mrs. Wilson. Ms. King has known Cornell Butler for over 28 years. At times, including now, he has been her boyfriend.

41. Ms. King believed her brother would have wanted their mother to have "everything" because Sadie took care of him for "20 years."

42. Tyrone, Sr., never had a conversation with Ms. King about how he wanted his assets distributed after his death. He never mentioned writing a letter about his wishes, and he never told her that he had given a letter to her boyfriend for safekeeping. Carol King did not know who was in charge of taking care of his affairs after he died.

43. Ms. King made conflicting and confusing statements about the letter. She explained that Cornell Butler had the letter and gave it to her in an envelope "earlier today," - the first day of hearing, June 14, 2016. Then she stated that her sister, Viola Wilson, obtained the letter from Mr. Butler. She also testified that someone else (Gina) picked up the letter from Mr. Butler. Regardless, Ms. King, never read the letter until the hearing.

44. Ms. King assumed her brother wrote the letter and gave it to Mr. Butler because she believes her brother "trusted" Mr. Butler. However, Ms. King never saw Tyrone, Sr., type or use a computer. Although he sometimes sent her handwritten notes, she did not think she would be able to recognize his handwriting, even if she saw it. She offered no opinion about whether the signature on the letter was her brother's signature.

*Karen Pritchett*

45. Karen Pritchett met Tyrone, Sr., in 1972. They dated from 1981 to 1986. When their dating relationship ended, she remained "great friends" with him and friendly with his family. She met Mrs. Sharpe in 1991. When Tyrone, Sr., became ill, Ms. Pritchett visited him in the hospital. When he came home, she visited him a few times a week. According to Ms. Pritchett, Tyrone, Sr., "always talked about" his sons, Tyrone, Jr., and Jermaine. She saw Tyrone, Jr., visiting his father at the house about once a week.

46. Ms. Pritchett had no knowledge of the October 9, 2009, letter. She stated that Tyrone, Sr., was "not a writer." She never saw him use a computer. She would not recognize his signature even if she saw it. He never told her he had written any kind of a letter about what he intended after his death, and he never spoke with her about his retirement funds.

*Additional Information*

47. Cornell Butler did not testify.

48. Daniel Schofield, a CalPERS Death Benefit Section Retirement Analyst, testified about Tyrone, Sr.'s, retirement benefits and how CalPERS determined it would accept the October 9, 2009, letter as a valid beneficiary designation. CalPERS accepted Mrs. Sharpe's 2012 representation to CalPERS that Tyrone, Sr., wrote the letter. CalPERS did not take any steps to verify the authenticity of the letter because its staff had no reason to doubt it was written by Tyrone, Sr.

49. CalPERS has not paid the death benefit pending resolution of this case.

### *Evaluation*

50. The issue is whether the October 9, 2009, letter was a valid beneficiary designation. To be valid, a beneficiary designation does not need to be filed with CalPERS prior to the member's death or written on a specific CalPERS form, but it must be in writing and demonstrate the member's "clear manifestation of intent" to designate a beneficiary or change a previously designated beneficiary. (*Watenpaugh v. State Teachers' Retirement System* (1959) 51 Cal.2d 675, 681-682.) Without a written beneficiary designation, payments are made to family members based on the order outlined in the applicable statute, Government Code, section 21493, subdivision (a).

51. None of the witnesses authenticated the letter. Authentication occurs when a person offering a document provides sufficient evidence to find that it is genuine. (Evid. Code, § 1400.) There are various ways in which a document can be authenticated. It can be authenticated by a person who saw the writing being made or signed. (Evid. Code, § 1413.) That did not occur here. It may be authenticated if the party against whom it is offered admits that it is genuine or relies on it as being authentic. (Evid. Code, § 1414.) That did not occur here. There are some presumptions about authenticity for certain documents over 30 years old, but the letter was purportedly written less than ten years ago. (Evid. Code, § 643.)

A writing may be authenticated by handwriting evidence. (Evid. Code, § 1415.) But the handwriting evidence in this case did not authenticate the letter. Ms. Wilson testified that she recognized the signature on the letter as being her brother's signature. Tyrone, Jr., however, testified that it did not look like his father's signature. Writing exemplars were submitted. The signature on Tyrone, Sr.'s, marriage certificate was of poor quality and was insufficient to use as an exemplar. The printed hand writing on the back of the photograph was not in cursive. However, the signature on file with the Department of Motor Vehicles did not match the signature on the letter. Under Evidence Code, section 1417, a trier of fact may make a comparison between handwriting admitted as being genuine and the handwriting that is questioned. Based on a comparison of the signature on file with DMV and the signature on the letter, it is found that that the signature on the letter is not genuine.

52. There was insufficient evidence to establish the letter was genuine or to sustain a finding that Tyrone, Sr., signed it. None of the witnesses saw it being prepared or signed. None of the witnesses received the letter from Tyrone, Sr., prior to his death in December 2010. None of witnesses saw it until at least a year after his death. He never told his son

Tyrone, Jr.; his sister Carol King; his mother; or his long-time girlfriend Karen Pritchett, that he wrote a letter designating his mother as his beneficiary or that he intended to designate her as his beneficiary. Although Ms. Wilson testified that her brother told her he “wrote a letter,” he never showed it to her or told her what it said. The letter was supposedly held by Cornell Butler, Carol King’s long-term boyfriend; but she did not know about the letter, not even by 2015. The letter was not found in Tyrone, Sr.’s, home or with his property. The letter was typewritten, but no one knew of Tyrone, Sr.’s, ever using a computer. The letter was not notarized and did not purport to include a witness’s signature, and the signature on the letter was not genuine.

53. In addition, the date of the letter was inconsistent with other evidence. According to Ms. Wilson, Tyrone, Sr., told her that he “gave” their mother and “a friend” a letter and that this conversation occurred during his birthday party in September 2009. According to Ms. Wilson, Tyrone, Sr., did not show her a copy of the letter or tell her what it said. She assumed her brother was referencing the letter that is the subject of this hearing. But the letter Tyrone, Sr., referred to in his conversation with Ms. Wilson cannot be the letter at issue here. The letter that is the subject of this case is dated October 9, 2009, the month after Tyrone, Sr., supposedly told Ms. Wilson that he “gave” his mother and Mr. Butler “a letter.” No letters discussing the distribution of Tyrone, Sr.’s, assets were found at any family home. Mrs. Sharpe had no memory of receiving a letter from her son. Cornell Butler did not testify.

54. Moreover, the letter was not acted upon as if it was genuine. Despite the many years that have passed since Tyrone, Sr.’s, death, no one has acted in conformity with the letter. Another family member took the Volvo, and there was no evidence that the proceeds went to Mrs. Sharpe. No one knew, even in 2016, whether Tyrone, Sr., had life insurance. Witnesses stated he had not collected Social Security. No one knew about his bank accounts.

55. Because the letter lacked foundation and was never authenticated, it is insufficient to establish a clear manifestation of Tyrone, Sr.’s, intent to designate Mrs. Sharpe as his beneficiary. The letter dated October 9, 2009, is not a valid beneficiary designation.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. Each party has a burden of proof in this case – the obligation to establish certain facts. (Evid. Code, § 110.) “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. (Evid. Code § 500.)

2. Tyrone, Jr., appealed CalPERS’ determination that the October 9, 2009, letter submitted by Mrs. Sharpe was a valid beneficiary designation prepared by his father. As

such, Tyrone, Jr., bore the initial burden of proof. To establish his claim for relief, Tyrone, Jr., was required to provide sufficient evidence to establish a prima facie case that the October 9, 2009, letter was not a valid beneficiary designation.

Once Tyrone Sharpe, Jr., met that burden of proof, the burden switched to Mrs. Sharpe to establish that the letter was genuine, signed by Tyrone, Sr., and a clear manifestation of his intent to designate her as his beneficiary. CalPERS, which accepted the letter presented by Mrs. Sharpe, also bore this burden.

3. The standard of proof by which each party must meet his, her, or its burden is preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence is evidence that establishes that the existence of a fact is more likely than not. As one court explained:

“Preponderance of the evidence” means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

#### *Statutes and Case Law*

4. CalPERS is a “prefunded, defined benefit” retirement plan. (*Oden v. Bd. of Admin.* (1994) 23 Cal.App.4th 194, 198.) Members are afforded an opportunity to elect retirement payment options and to make beneficiary designations.

5. Under Government Code section 21490, subdivision (a), a member may “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.”<sup>5</sup> The designation may be made by filing a completed beneficiary form provided by CalPERS or by filing a valid instrument that demonstrates a clear manifestation of intent to designate a beneficiary. (*Lyles v. Teachers Retirement Bd.* (1963) 219 Cal.App.2d 524, 528; *Watenpaugh v. State Teachers’ Retirement System* (1959) 51 Cal.2d 675, 681-682.)

6. If a member has designated a beneficiary under Government Code section 21490, the basic death benefit and the limited death benefit shall be paid to that designated beneficiary. (Gov. Code, § 21531.)

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<sup>5</sup> There are some exceptions in the statute related to a designation that conflicts with community property laws for a married member (Government Code, section 21490, subdivision (b)), or failing to provide for an unmarried member’s minor, dependent children (Government Code, section 21490, subdivision (c).) Neither exception applies in this case.

7. Under Government Code section 21490, subdivision (c), the board may evaluate whether a member has made a written beneficiary designation; it may determine, “upon evidence satisfactory to it, of the existence, identity or other facts relating to entitlement of any person designated as beneficiary.”

8. There are instances when a member has not designated a beneficiary. Under Government Code, section 21493, subdivision (a), “[i]f a person had no beneficiary designation in effect on the date of death, any benefit payable shall be paid to the survivors of the person in the following order:

- (1) The decedent’s spouse.
- (2) The decedent’s natural or adopted children . . . .
- (3) The decedent’s parents.
- (4) The decedent’s brothers and sisters.

The remainder of section 21493 outlines how the board shall distribute benefits if a deceased member did not have an effective beneficiary designation or survivors in the groups listed above.

9. Case law also provides guidance regarding the statutes that authorize a member to designate a beneficiary and the public retirement system’s distribution of retirement benefits based on that designation:

The purpose of the provisions requiring the filing of a change of beneficiary [with a public retirement system] is largely to protect the retirement system against the possibility of being called upon to pay twice. A second purpose, no doubt, is to provide a method of ascertaining the desire and intent of the member with reference to the payment of death benefits. The statute should be construed to give effect to an executed designation when there is a clear manifestation of intent by the member to make the change and the designation is filed promptly after death so as to prevent any prejudice to the retirement system. (*Lyles v. Teachers Retirement Bd.* (1963) 219 Cal.App.2d 524, 528, quoting *Watenpaugh v. State Teachers’ Retirement System* (1959) 51 Cal.2d 675, 681-682.)

10. In *Watenpaugh, supra*, the member executed a beneficiary designation in 1944, named his former wife and children as beneficiaries, and filed it with the retirement board. In March 1955 he remarried. In June 1955, he obtained a beneficiary form from the retirement system; he named his new wife as the sole beneficiary, signed it, and had it witnessed. He left the completed form in a file on his desk but did not file it with the

retirement system. After he died in March 1956, his wife found the document and mailed it to the retirement system. The system refused to pay the benefits based on the 1955 designation because the 1955 designation had not been filed with the system prior to the member's death. The trial court disagreed; it found that the 1955 designation was a clear manifestation of the member's intent to change his beneficiary designation and that the completed, witnessed beneficiary designation form revoked the prior designation, even if it was not filed with the system until after the member's death. The court of appeal affirmed the conclusion that the 1955 designation should be honored.

11. In *Lyles v. Teachers Retirement Bd.* (1963) 219 Cal.App.2d 524, the court reviewed a beneficiary designation statutory scheme similar to that of CalPERS. It found that the holographic will, which reflected a change in beneficiary designation from that on file with the retirement system, should be followed, even though it was filed with the retirement system after the member's death. It emphasized the unique status of holographic wills and that the state has no interest in a member's beneficiary designation. It noted that the state's "prime interest is to be sure that it does not pay any retirement benefits to the wrong person or to pay the benefit twice, and to operate the system in an efficient and economical manner." (*Lyles, supra*, at 530.)

Each of these decisions rested on evidence that demonstrated the public retirement member's "clear manifestation of intent" to make a particular beneficiary designation.

#### *Application of the Facts to the Law*

12. CalPERS accepted the letter dated October 9, 2009, because family members stated that it had been written by Tyrone, Sr. CalPERS acted in good faith. Despite this, the letter lacked foundation and authentication. There was insufficient evidence to establish that the letter was actually prepared or signed by Tyrone, Sr. As such, the letter was not a "clear manifestation" of his intent to designate a beneficiary for his retirement benefits.

13. At the hearing, CalPERS requested that two of its decisions be given weight in support of its determination that the letter was a valid beneficiary designation. However, CalPERS never designated either decision as precedential. Thus, the decisions may be instructive, but they are not entitled to great weight.

But neither CalPERS decision supports the conclusion that CalPERS should have relied upon the letter dated October 9, 2009. In one of the decisions, *In the Matter of Application for Death Benefits Payable on Account of Catherine Atkinson*, CalPERS Case No. 2013-0458, OAH No. 2013070202, CalPERS properly concluded that it could rely on a holographic will as a valid beneficiary designation and manifestation of a member's intent, particularly when it was coupled with significant independent corroborating evidence. In this case, however, the October 2009 letter was not a holographic will, which by definition, is written completely in the drafter's own hand and involves the application of special laws. (See *Lyles v. Teachers Retirement Bd.*, *supra*, 219 Cal.App.2d 524.) Moreover, and unlike the holograph will in *Atkinson*, the letter in the instant case was never authenticated, lacked

foundation about its preparation, and was unsupported by corroborating non-hearsay evidence. The *Atkinson* decision does not support CalPERS' position that it properly considered the letter as a valid beneficiary designation.

The other decision that CalPERS cited, *In the Matter of the Statement of Issues (Appeal Regarding Death Benefits Payable Upon the Death of Thomas Lechuga)*, CalPERS Case No. 2013-0050, OAH No. 2015031130, also fails to support reliance on the letter as a valid beneficiary designation. In *Lechuga*, the decedent filed a beneficiary designation with CalPERS while he was alive, and he specifically designated his first wife and his then-current wife as his beneficiaries. By the time he died, he was divorced from his second wife. CalPERS affirmed the specific beneficiary designations and rejected the claim of decedent's children that decedent's failure to delete his second wife as a beneficiary was an error or omission. The decision cited *Hudson v. Posey* (1967) 225 Cal.App.2d 80, 93, for the proposition that a change in beneficiary designation requires "a clear manifestation in writing of intent by the member to make such a change" and that an oral statement that the member intended to change a beneficiary is not enough. (*Hudson, supra*, at 93.)

14. Neither agency decision supports the conclusion that the letter in this case was a valid beneficiary designation.

*The October 9, 2009, Letter is Not a Valid Beneficiary Designation*


15. The letter dated October 9, 2009, is insufficient to constitute a valid beneficiary designation. It was not authenticated. There was insufficient evidence to establish that Tyrone, Sr., prepared or signed it. Based on a preponderance of the evidence, the letter did not constitute a clear manifestation of Tyrone, Sr.'s, intent.

ORDER

1. The October 9, 2009, letter is not a valid beneficiary designation from Tyrone Sharpe, Sr., and CalPERS's determination that the October 9, 2009, letter should be accepted as a beneficiary designation is set aside.

2. CalPERS shall pay death benefits for Tyrone Sharpe, Sr., in accordance with Government Code section 21493, subdivision (a).

DATED: September 21, 2016

  
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BETH FABER JACOBS  
Administrative Law Judge  
Office of Administrative Hearings