

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 Sam J. Vetro by:

Case No. 2016-0280

HELENE A. AIWAZ,

OAH No. 2016080414

Respondent.

CHRISTINE FULLER,

Respondent,

DANIEL FULLER,

Respondent.

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of
Administrative Hearings, heard this matter on January 4, 2017, in Oakland, California.

Rory J. Coffey, Senior Staff Counsel, represented the complainant, Anthony Suine,
Chief Benefit Services Division, California Public Employees' Retirement System.

Respondent Helene A. Aiwaz was present and represented herself. Respondents
Christine Fuller and Daniel Fuller were also present and represented themselves.

CASE SUMMARY

Sam J. Vetro was an employee of the University of California who had vested in a
state pension, and named his wife as the beneficiary of his pension in the event he
pre-deceased her. She, however, preceded him in death, and because of her passing, and
pursuant to the terms of the retirement plan, he elected to increase his monthly pension
benefit. When he did so, he designated his stepson and stepdaughter, Daniel Fuller and
Christine Fuller, to receive, upon his death, a lump sum death benefit. The lump sum
payment was \$2,000. In addition, a one-time prorated monthly payment was made to the

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED Feb 8, 2017
C. Bodily

Fullers in the amount of \$383.09. Decedent Vetro's daughter, Helene A. Aiwaz, contests the validity of decedent's beneficiary designation and the payment to the Fullers of these benefits.

FACTUAL FINDINGS

Background

1. The California Public Employees' Retirement System (CalPERS) administers the Public Employees' Retirement Law and the California Public Employees' Pension Reform Act of 2013, which are found at Government Code section 20000, et seq.¹

2. Sam J. Vetro (decedent) was employed by the University of California, Lawrence Berkeley Laboratory, and classified as a state miscellaneous member of CalPERS. (Gov. Code, § 20380.) Upon his retirement, decedent was entitled to receive a retirement allowance from CalPERS. (Gov. Code, § 20061.)

3. On May 13, 1991, decedent signed an application for service retirement, and he retired for service on October 1, 1991. He elected the Option 2 Allowance and designated his wife, Bonnie Vetro, as his beneficiary for the Option 2 Allowance and the lump sum Retired Death Benefit (Death Benefit).²

4. Bonnie Vetro died on September 14, 2005. As a result of Bonnie Vetro's death, decedent was entitled to an increased monthly retirement allowance. On July 19, 2006, decedent claimed the additional amount by signing a "Request for Option 2 Pop-Up Increase" form. CalPERS accepted the request and decedent's monthly retirement allowance was increased by \$208.36. On the same date, decedent also signed a Post Retirement Lump Sum Beneficiary Designation form (Beneficiary Designation). The Beneficiary Designation named his stepdaughter, respondent Christine Fuller, and his stepson, respondent Daniel Fuller (collectively, the Fullers), as beneficiaries. This entitled the Fullers to receive the Death Benefit when Sam Vetro ultimately passed away.

5. Decedent died on September 3, 2015. The value of the Death Benefit was \$2,000. An additional benefit, referred to as a Prorated Allowance, in the amount of \$383.09, was also payable on this death.

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

² Section 21456 provides: "Optional settlement 2 consists of the right to have a retirement allowance paid a member until his or her death and thereafter to his or her beneficiary for life. If the beneficiary predeceases the member and the member elected this section to be effective on or after January 1, 1990, the member's allowance shall be adjusted effective the first of the month following the death of the beneficiary, to reflect the benefit that would have been paid had the member not selected an optional settlement."

6. Respondent Aiwaz is decedent's daughter. On October 6, 2015, she filed with CalPERS an Application for Retired Member/Payee Survivor Benefits, in which she requested that "any benefits" to which she is entitled be paid to her.

7. On November 2, 2015, Christine Fuller and Daniel Fuller also separately filed with CalPERS the Application for the Retired Member/Payee Survivor Benefits), in which each of them requested "any benefits" to which they were individually entitled.

8. The Survivor Benefits each respondent requested were the Death Benefit and the Prorated Allowance (collectively Survivor Benefits). Notwithstanding the fact that the Beneficiary Designation provided for the Fullers to receive these benefits, respondent Aiwaz advised CalPERS that based on the system of distribution contained in decedent's will, that she believed its terms superseded the Beneficiary Designation, and that any Survivor Benefits should be paid to her. By letter dated January 22, 2016, CalPERS advised respondent Aiwaz it had determined that the will did not supersede the express language of the Beneficiary Designation, and she was not entitled to the Survivor Benefits. Aiwaz appealed the determination and this hearing followed.

Respondents' Evidence

9. Aiwaz argues that the terms of decedent's last will, rather than the Beneficiary Designation, should control the distribution of decedent's Survivor Benefit. Decedent's will provides, in relevant part as follows:

3.1 Disposition of Residue

I give the residue of my estate to my step-daughter [redacted],³
my step-son Joseph S. Fuller and my daughter Helen [sic] A.
Vetro Aiwaz, in equal shares. [¶] . . . [¶]

The will was executed on April 4, 2012, which is approximately six years after decedent named the Fullers in the Beneficiary Designation. The Fullers are not named in the will.

10. Aiwaz testified at hearing that it was decedent's intention when he executed the will that only those individuals named in the will should receive financial benefits. She stated that decedent lacked the "mental capacity" to remember having executed the Beneficiary Designation, but that if he had remembered it, he would have changed the beneficiaries. Aiwaz testified that it was decedent's intent that the Fullers take nothing under the will and should not receive the Survivor Benefit.

11. Aiwaz testified that a monetary dispute existed between decedent and the Fullers at the time of his death. The Fullers had obtained a \$50,000 loan from decedent, but

³ The name of this beneficiary was redacted in the version of Sam Vetro's will, admitted as Exhibit 16. The name of this beneficiary is not an issue in this matter.

prior to his death they had only repaid \$14,000. Aiwaz testified that the unpaid amount created a financial hardship for decedent.

12. Aiwaz testified that when decedent's wife, who was the Fullers' mother, passed away, decedent was greatly distraught; according to Aiwaz, the Fullers took advantage of his mental state to coerce him to sign the Beneficiary Designation.

13. Neither Christine Fuller nor Daniel Fuller testified.

CalPERS Evidence

14. Nhung Dao, a Retirement Program Specialist in the CalPERS Exceptional Processing Unit, testified regarding the procedure CalPERS generally follows, and the actions it took in this case, regarding the payment of disputed survivor benefits.

15. In cases where there is a dispute regarding payment of benefits, CalPERS reviews all of the documentation it has on file regarding the plan participant including any notes entered in the CalPERS computer system. The Option 2 Pop-Up form, the Beneficiary Designation, and decedent's will were all reviewed and considered. There is no claim or evidence that any documents are missing from the CalPERS file.

16. Decedent's will made no specific reference to his CalPERS Death Benefit or to the Prorated Allowance. Dao determined that decedent's will did not expressly revoke the Beneficiary Designation, or otherwise supersede decedent's prior intent when he executed the Beneficiary Designation. Accordingly, the will was not accepted by CalPERS as a valid change to the Beneficiary Designation.

LEGAL CONCLUSIONS

1. Section 21490 provides in part:

(a) Except as provided in subdivision (b), a member may at any time, including, but not limited to, at any time after reaching retirement age, 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. [¶] . . . [¶]

(c) The designation, subject to conditions imposed by board rule, may be by class, in which case the members of the class at the time of the member's death shall be entitled as beneficiaries. The designation shall also be subject to the board's conclusive determination, upon evidence satisfactory to it, of the existence, identity or other facts relating to entitlement of any person designated as beneficiary, and payment made by the system in

reliance on any determination made in good faith, notwithstanding that it may not have discovered a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of this system for further liability for the benefit.

2. Section 21492 provides in part:

The designation of the beneficiary under the optional settlements . . . is irrevocable from the time of the first payment on account of any retirement allowance. Otherwise a designation of beneficiary under this system is revocable at the pleasure of the member who made it. . . . [¶] Upon revocation of any beneficiary designation, a member may designate the same or another beneficiary by writing filed with the board, except as otherwise provided in section 21490.

3. Section 21492 provides that a CalPERS plan member may, except in certain circumstances, change his or her beneficiary by revoking any previously filed beneficiary designation. Decedent filed the Beneficiary Designation naming the Fullers on July 9, 2006. Decedent did not revoke or file with CalPERS a subsequent beneficiary designation prior to his death on September 3, 2015.

4. Decedent executed his will on April 4, 2012, several years after he executed the Beneficiary Designation. When he did so, decedent could have revoked the Beneficiary Designation filed with CalPERS or otherwise named individuals other than the Fullers to receive the CalPERS Death Benefit and Prorated Allowance. Decedent did not do so. The provisions of decedent's will do not revoke decedent's Beneficiary Designation. CalPERS correctly determined that decedent's last will is not a valid change of decedent's Beneficiary Designation.

ORDER

The appeal of Helene A. Aiwaz is denied.

DATED: February 3, 2017

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Kirk Miller
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KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings