

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 Juliana Wiard by**

GLORIA VILLALOBOS ALVARADO, Respondent

and

GLORIA WIARD, Respondent

Agency Case No. 2018-0835

OAH No. 2019010708

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 17, 2019, in Los Angeles, California.

Charles H. Glauberman, Senior Attorney, represented California Public Employees' Retirement System (CalPERS). Gloria Villalobos Alvarado (respondent Villalobos Alvarado) appeared at hearing and represented herself. No appearances were made by or on behalf of Gloria Wiard (respondent Wiard).

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED July 18, 2019
SMS

Oral and documentary evidence was received. The record was held open until July 1, 2019, for both parties to submit closing briefs, and until July 8, 2019, for both parties to submit reply briefs.

CalPERS's closing brief, dated June 27, 2019, was received on June 28, 2019, and marked as exhibit 23. Respondent Villalobos Alvarado's closing brief, dated June 29, 2019, was received on July 1, 2019, marked as exhibit A. An additional closing brief dated June 29, 2019, was submitted by Erika Martinez Villalobos on July 1, 2019, and marked as Exhibit B. However, Exhibit B was not considered as it was submitted without leave.

No reply brief was submitted by either party. The record was closed, and the matter was submitted for decision on July 8, 2019.

FACTUAL FINDINGS

1. Anthony Suine, Chief of the Benefits Services Division of CalPERS, filed the Statement of Issues while acting in his official capacity.

Background

2. On October 21, 2006, Juliana Wiard (decedent) became a member of CalPERS by virtue of her employment with the California Department of Corrections and Rehabilitation as a Correctional Sergeant under the classification of Peace Officer.

3. On June 18, 2017, decedent passed away as an active member, at the age of 32. Decedent's father, Thomas Wiard, had passed away in 1991. Decedent was not married and did not have any children. Decedent was survived by her mother, respondent Wiard, and her grandmother, respondent Villalobos Alvarado.

4. As a CalPERS member, decedent was entitled to certain death benefits (Basic Death Benefits). The decedent's Basic Death Benefits are governed by the Public Employees Retirement Law (PERL), set forth at Government Code section 20000 et seq. At the time of her death, however, decedent had not submitted to CalPERS a pre-retirement beneficiary designation form (Beneficiary Designation Form) which allows members to designate their CalPERS benefits to one or more beneficiaries.

CalPERS Determination

5. On September 26, 2017, respondent Villalobos Alvarado submitted to CalPERS an Application for Survivor Benefits, Statement of Citizenship/Federal Tax Withholding Election, and Tax Withholding Election for Survivor Benefits Including IRA Rollover (Application for Survivor Benefits), dated September 21, 2017. In section 5 of her Application for Survivor Benefits, respondent Villalobos Alvarado indicated that decedent did not leave a will. (Ex. 4, p. 5.)

6. In a letter dated October 19, 2017, CalPERS notified respondent Villalobos Alvarado that a valid beneficiary designation was not in effect at the time of decedent's death. Therefore, decedent's Basic Death Benefits will be payable to the statutory beneficiaries. Under Government Code section 21493, the order of the statutory beneficiaries is as follows: (1) spouse or registered domestic partner; or if none, (2) natural or adopted children; or if none, (3) parents, or if none, (4) brothers and sisters; or if none (5) estate, if probated.

7. On January 10, 2018, respondent Wiard submitted to CalPERS an Application for Survivor Benefits, dated January 9, 2018.

8. On February 23, 2018, respondent Villalobos Alvarado sent a letter to CalPERS, requesting decedent's lump-sum death benefits to be paid to respondent

Villalobos Alvarado rather than respondent Wiard. Respondent Villalobos Alvarado stated in this letter that decedent was not raised by respondent Wiard and that respondent Villalobos Alvarado had been appointed as decedent's legal guardian on or about January 9, 2002. Respondent Villalobos Alvarado also attached to this letter a copy of a report from the Superior Court of California, dated January 14, 2002, which indicated that respondent Villalobos Alvarado was granted legal guardianship of decedent. However, according to the same report, respondent Villalobos Alvarado did not adopt decedent.

9. In a letter dated April 26, 2018, CalPERS notified respondent Villalobos Alvarado of its determination that due to the lack of a Beneficiary Designation Form on file, decedent's lump sum Basic Death Benefit of \$147,583.56 was payable to respondent Wiard, decedent's the closest surviving next-of-kin, in accordance with Government Code section 21493.

10. By letter dated May 21, 2018, Respondent Villalobos Alvarado, filed a timely appeal and requested an administrative hearing.

11. The issue on appeal is whether respondent Wiard or respondent Villalobos Alvarado is the sole beneficiary of decedent's death benefits in the amount \$147,583.56.

Additional Documents Received by CalPERS

12. On May 25, 2018, CalPERS received a faxed copy of a Judges' Retirement System Survivor and Beneficiary Information form (Judges' Designation Form), which was purportedly signed by decedent. This Judges' Designation Form supposedly designated respondent Villalobos Alvarado as the beneficiary of any death benefits. However, decedent was never a member of the Judges' Retirement System. As

described above, decedent was not employed as a judge but as a Correctional Sergeant with the California Department of Corrections and Rehabilitation.

13. On June 15, 2018, CalPERS received a faxed copy of a typewritten document titled "My Last Will and Testament" (Will), dated May 10, 2017. A signature, purporting to be that of decedent, appears at the end of the Will. There are no witness signatures on the Will. The Will states, in pertinent part:

[¶] [¶]

. . . . I leave all my assets movable and not movable to my only two beneficiaries named [below]; whom I leave each one with 50% in the following proportions:

First beneficiary is Gloria Villalobos Alvarado (Grandmother)
50%

Second beneficiary is Erika Martinez Villalobos (Aunt) 50%

I leave all expenses in connection with the administration of my estate, the trusts and my accounts policies (houses, cars, money jewelry, collectibles, furniture, property etc.) created by my Will as soon as convenient after my death. . . .

[¶] [¶]

(Ex. 18)

The Will, nevertheless, does not mention or designate decedent's CalPERS account.

Respondent Villalobos Alvarado's Witnesses

14. At the administrative hearing, Bruce Frank (Frank), retired Correctional Lieutenant, testified on behalf of respondent Villalobos Alvarado. Frank was decedent's mentor, and he also became decedent's close friend and confidant. According to Frank, decedent had a contentious relationship with her biological mother, respondent Wiard, and decedent would not have wanted to designate respondent Wiard as a beneficiary for her Basic Death Benefits. Frank also asserted that decedent identified respondent Villalobos Alvarado as her mother and designated respondent Villalobos as a beneficiary of her bank account. Frank submitted a letter, dated March 21, 2018, the content of which was consistent with Frank's testimony at the administrative hearing. However, neither in his testimony nor in his letter did Frank make any mention of the Will that decedent purportedly left behind.

15. At the administrative hearing, Edrick Bruce Ross (Ross) testified on behalf of respondent Villalobos Alvarado. Ross had worked with decedent and eventually developed a personal relationship with her as well. Prior to decedent's death, Ross and decedent lived together for approximately four years. Ross testified that decedent had a turbulent relationship with respondent Wiard and considered respondent Villalobos Alvarado as her mother. Ross reported that decedent always designated respondent Villalobos Alvarado as her beneficiary on any employment forms. When questioned during cross-examination regarding the Will, Ross stated that the signature on the Will appears to be that of decedent's. However, Ross maintained that prior to the administrative hearing, he had never seen the Will.

16. At the administrative hearing, Erika Martinez Villalobos (Martinez Villalobos), decedent's aunt, testified on behalf of respondent Villalobos Alvarado. Martinez Villalobos testified that decedent was raised by respondent Villalobos

Alvarado because respondent Wiard was involved in drugs and alcohol. According to Martinez Villalobos, decedent had no relationship with respondent Wiard and never referred to respondent Wiard as her mother. Regarding the Will and the Judge's Designation Form, Martinez Villalobos claimed that she found these documents several months after decedent's death. Additionally, Martinez Villalobos admitted that she was not a witness to the Will.

CalPERS' Witness

17. At the hearing, Nhung Dao (Dao), Associate Governmental Analyst, testified on behalf of CalPERS. Dao stated that CalPERS could not ascertain the validity of the Will because it did not have any witness signatures. Additionally, the Will did not specifically disinherit respondent Wiard and did not specifically mention decedent's CalPERS death benefits. Therefore, according to Dao, decedent's death benefits must be paid to decedent's closest of kin, respondent Wiard, pursuant to Government Code section 21493.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an administrative hearing concerning retirement benefits, the party asserting the claim has the burden of proof, including the both the initial burden of going forward and the burden of persuasion, by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, note 5.) Thus, in challenging CalPERS determination that respondent Wiard is the sole beneficiary of decedent's Basic Death Benefits, respondent Villalobos Alvarado bears the burden of

proof by a preponderance of the evidence. As set forth in Factual Findings 1 through 17, and Legal Conclusions 1 through 11, that burden was not met.

Applicable Law

2. The CalPERS Board of Administration (Board) is vested with the right to determine beneficiaries entitled to receive benefits upon the death of a member. (Gov. Code, §§ 21490, 21492, and 21493.) Government Code section 21490, subdivision (c), provides, “[T]he determination 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”

3. The Board is also vested with the power and authority to determine and adjudicate rights to CalPERS benefits, subject to a claimant’s right to seek review in the Superior Court. (Gov. Code, §§ 21531, 11517, and 11523; Cal. Code Regs., tit. 2, §§ 555.1, 555.2, and 555.5.)

4. Government Code section 21490, subdivision (a), provides:

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.

The Effect of the Will on the Determination of Beneficiaries

5. For a writing filed after the death of a member to be properly considered by the Board under Government Code section 21490, there must be a clear manifestation of intent of the member to make a change of beneficiaries for

retirement benefits. (*Hudson v. Posey* (1967) 255 Cal.App.2d 89 (*Hudson*)). Oral expressions by a decedent of an intention to effect a change of beneficiary are insufficient to support a change without an affirmative act in writing. (*Hudson, supra*, 255 Cal.App.2d at p. 92; *Watenpaugh v. State Teachers' Retirement System* (1959) 51 Cal.2d 675, 681 (*Watenpaugh*)). In *Watenpaugh, ibid*, the court held that literal compliance with retirement regulations is not necessary to obtain a change of beneficiary where it is established that there was an "intention to change and there was some affirmative action evidencing the exercise of the right to change." Although a holographic will may serve as a "writing filed with the board," the will must specifically refer to the retirement benefits and designate the relevant beneficiaries. (*Lyles v. Teachers Retirement Board* (1963) 219 Cal.App.2d 523,527-528 (*Lyles*)).

6. Respondent Villalobos Alvarado offered the Will as a writing that manifests decedent's intent to designate respondent Villalobos Alvarado and Martinez Villalobos as the beneficiaries of decedent's death benefits. However, in this case, the Will does not qualify as "a writing filed with the board" within the meaning of Government Code section 21490.

7. To begin with unlike in *Lyles*, the Will in this case is not holographic, but typewritten. For a typewritten will to be valid, it must be witnessed by at least two persons during the testator's lifetime. (Prob. Code, § 6110; *Estate of Saueressig* (2006) 38 Cal.4th 1045, 1055-1056.) If the will is not witnessed by at least two persons, then the proponent of the will must "establish by clear and convincing evidence that, at the time that testator signed the will, testator intended the will to constitute the testator's will." (Prob. Code, § 6110.) Here, the Will does not have any witness signatures, and no evidence was presented to establish that decedent intended the Will to be her will.

8. The circumstances under which the Will was discovered was also highly suspect. Two months after decedent's death, respondent Villalobos Alavardo submitted her Application for Survivor Benefits, stating that decedent did not have a will. Frank, who was decedent's close confidant, did not make any mention of the Will in his testimony. Ross, who had a personal relationship with decedent, had never seen the Will until the day of the administrative hearing. Yet, approximately one year after decedent's death and after CalPERS had determined that respondent Wiard is the sole beneficiary of decedent's Basic Death Benefits, Martinez Villalobos, one of the purported beneficiaries of the Will, suddenly finds the Will and submits it to CalPERS. Additionally, just a few weeks prior to CalPERS' receipt of the Will, Martinez Villalobos also submitted to CalPERS a Judge's Designation Form that supposedly designates respondent Villalobos Alvarado as the beneficiary of decedent's death benefits, when decedent was never a member of the Judge's Retirement System. Under these circumstances, the Will is invalid.

9. Even assuming, arguendo, that the Will is valid, it does not specifically discuss decedent's CalPERS death benefits, but refers to decedent's assets including "houses, cars, money, jewelry, collectibles, furniture, property etc." (Ex. 18.) Thus, the Will does not clearly manifest decedent's intent to change beneficiaries for her CalPERS Basic Death Benefits and does not constitute "a writing filed with the board" within the meaning of Government Code section 21490.

Statutory Order for Payment of Decedent's Death Benefits

10. It is undisputed that decedent did not have a Beneficiary Designation Form on file with CalPERS. Furthermore, as discussed above, the Will is not a valid writing expressing decedent's intent with respect to her CalPERS Basic Death Benefits. Given that there is no beneficiary designation in effect, the statutory order for

payment of the death benefits under Government Code section 21493, subdivision (a) is as follows: (1) spouse, (2) children, (3) parents, and (4) brothers and sisters. (Gov. Code, § 21493, subd. (a).) If the deceased member had no effective beneficiary designation and there are no survivors in the groups specified in section 21493, subdivision (a), then CalPERS is required to pay the benefit to the estate, if the estate is either probated or subject to probate. (Gov. Code, § 21493, subd. (b).)

11. It is clear from the record in this case that decedent had a troubled relationship with respondent Wiard. However, although respondent Villalobos Alvarado was granted legal custody of decedent when decedent was a minor, respondent Villalobos Alvarado never adopted her granddaughter. Thus, respondent Wiard is decedent's sole surviving parent, and in accordance with Government Code section 21493, decedent's Basic Death Benefits must be paid solely to respondent Wiard.

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ORDER

1. Respondent Villalobos Alvarado's appeal of death benefits payable upon the death of Juliana Wiard is denied. CalPERS's determination that respondent Wiard is the sole beneficiary for Juliana Wiard's Basic Death Benefit of \$147,583.56 is upheld.

2. CalPERS shall distribute Juliana Wiard's Basic Death Benefit of \$147,583.56 entirely to respondent Wiard.

DATE: July 18, 2019

DocuSigned by:
Ji-Lan Zang
JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings