

ATTACHMENT A

THE PROPOSED DECISION

**BEFORE THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Lifetime Monthly Benefit
Payable Upon the Death of Reginald Vanhook by:**

ANASTACIA (STACEY) CONLEY-VANHOOK, Respondent.

Case No. 2019-0562

OAH No. 2019080227

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on December 4, 2019, in Oakland, California.

Elizabeth Yelland, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Applicant Anastacia (Stacey) Conley-Vanhook was present and represented herself.

Submission of the matter was deferred to December 20, 2019, for receipt of a letter from Marie Sally Theard, sister of the deceased, on behalf of the respondent. The letter was received, marked as Exhibit "A", and considered. CalPERS was granted until December 20, 2019, to file its closing brief and any objection to the letter. CalPERS

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED January 9 20 20

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filed a Closing Brief in Support of Determination, which was marked as Exhibit "39", and a letter objecting to the letter from Marie Sally Theard as hearsay, which was marked as Exhibit "40", and both were reviewed. Exhibit "40" was entered as administrative hearsay, and considered. The record was closed and the matter was submitted for decision on December 20, 2019.

ISSUE

This appeal is limited to the issue of whether CalPERS correctly determined that respondent Conley-Vanhook is not eligible for the Option 2 lifetime beneficiary allowance or Survivor Continuance Allowance.

FACTUAL FINDINGS

1. CalPERS filed the Statement of Issues in its official capacity through Keith Riddle, Chief Disability & Survivor Benefits Division.
2. Reginald Vanhook (decedent) became a member of CalPERS through employment with Alameda County Schools-Berkeley Unified School District on July 1, 1993, and classified as a local miscellaneous member of CalPERS.
3. On September 1, 2009, decedent retired for disability and elected Option 1 Lifetime allowance naming his sister, Sally Marie Theard, as beneficiary for the Option 1 balance and Retired Death Benefit. Decedent was not married at the time of his retirement.

4. On March 29, 2010, CalPERS received Post Retirement Lump Sum Beneficiary Designation Form from decedent naming respondent Anastacia (Stacey) Conley-Vanhook (respondent Conley-Vanhook) as his primary beneficiary.

5. On July 14, 2010, decedent married respondent Conely-Vanhook. On September 27, 2010, CalPERS received a new Post Retirement Lump Sum Beneficiary Designation Form from decedent naming respondent Conley Vanhook as his primary beneficiary. On November 23, 2010, CalPERS mailed a letter to decedent informing him that his Beneficiary Designation Form could not be processed because it was unclear. There were too many boxes selected.

6. On December 10, 2010, CalPERS received a new Post Retirement Lump Sum Beneficiary Designation Form naming respondent Conley-Vanhook as his primary beneficiary. On February 25, 2011, CalPERS sent a letter to decedent informing him that his Post Retirement Lump Sum Beneficiary Designation Form had been accepted.

7. On July 9, 2013, decedent contacted CalPERS and authorized them to speak with respondent Conley-Vanhook. As a result of that conversation, CalPERS mailed to decedent an official publication entitled Changing Your Beneficiary or Monthly Benefit After Retirement.

8. On July 10, 2013, decedent contacted CalPERS again and authorized them to speak with respondent about the different types of benefits, the option decedent chose at retirement, and the continuing benefits available to her. CalPERS mailed a publication entitled Power of Attorney to decedent.

9. On September 26, 2016, decedent contacted CalPERS and requested a death estimate of benefits. On October 4, 2016, CalPERS received decedent's Durable Unlimited Power of Attorney Effective Only Upon Disability naming respondent

Conley-Vanhook as his Attorney in Fact, signed and notarized on May 29, 2014. On November 28, 2016, CalPERS incorrectly approved the Durable Unlimited Power of Attorney. This Power of Attorney did not specifically reference CalPERS benefit designations.

10. On January 3, 2017, CalPERS mailed the death estimate letter to decedent outlining his retirement option elected at the time of retirement and what benefits would be payable at the time of death.

11. On January 12, 2017, respondent Conley-Vanhook contacted CalPERS to obtain information on modification for lifetime option beneficiary. CalPERS informed respondent that the change can be made, but it would reduce the amount of decedent's current retirement allowance; and that since it had been more than 12 months since the qualifying event (respondent's marriage to the decedent), the would have to wait 12 months after the final election of option change is received before the new lifetime option beneficiary would be in effect.

12. On January 25, 2017, CalPERS received an Application to Modify Option and/or Life Option Beneficiary naming respondent as his beneficiary. On March 9, 2017, CalPERS mailed a letter and Modification of Original Election at Retirement Form to decedent. The letter stated that decedent's monthly retirement allowance of \$1,314.27 would be reduced by \$345 per month if Option 2W was chosen or by \$198 per month if Option 3W was chosen. The letter further states that the completed election document should be returned by April 30, 2017 for processing. If the completed form was not returned by the due date, it would be assumed that decedent had decided not to elect to change his option and the request would be closed.

13. On June 8, 2017, CalPERS mailed a letter to decedent informing him that since they had not received a completed modification form, his application was cancelled; and that if he would like to make the same request in the future he need a to submit a new application.

14. On June 20, 2017, CalPERS received a new modification form from respondent that was missing page 2 of 2.

15. On July 6, 2017, CalPERS mailed a letter with a new modification form to decedent. The letter stated that the completed election document should be returned to CalPERS by August 31, 2017 for processing. If the completed election form was not returned by the due date, CalPERS would assume that decedent decided not to elect to change the option and the request would be closed. On July 14, 2017, CalPERS received the election form with an election of Option 2 signed by respondent Conley-Vanhook and notarized.

16. On July 31, 2017, CalPERS mailed a letter to decedent informing him that his modification form had been processed; that his election was to be effective September 1, 2018; that his benefit will be reduced on his October 1, 2018 warrant; and that his new gross retirement benefit would be \$951.91.

17. On August 7, 2017, respondent contacted CalPERS to cancel decedent's modification because she did not understand decedent's allowance would be reduced due to the new election. On August 8, 2017, CalPERS mailed a letter to decedent confirming cancellation of the modification.

18. On May 10, 2018, and May 23, 2018, respondent contacted CalPERS and requested a death estimate of benefits letter. On May 31, 2018, CalPERS mailed the death estimate of benefits letter to decedent outlining his retirement option elected at

the time of retirement, and what benefits would be payable at the time of death. There was a call on June 5, 2018, from respondent to CalPERS' asking about the amount of death benefits she would receive. There was another call on June 7, 2018, discussing her concerns about her death benefits. On June 13, 2018, CalPERS mailed a letter to respondent indicating that the power of attorney respondent had on file did not give her the right to designate or change a beneficiary.

19. On September 25, 2018, decedent passed away.

20. On November 16, 2018, respondent contacted CalPERS regarding death benefits and was informed that she did not qualify for a monthly allowance. On November 28, 2018, respondent disputed CalPERS determination that she was not entitled to lifetime monthly benefit. On December 17, 2018, CalPERS issued a warrant for \$2000 for the lump sum retired benefit; \$1,134.04 for the monthly allowance payable from the first of the month of the last payable warrant through date of death; and \$9,203.97 for payment of Option 1 balance of accumulated contributions. These amounts were correct.

21. Respondent claims several matters that she believes makes her eligible for continued death benefit. She states that she would have married decedent before he retired if she had known it would have made a difference. That is pure speculation. She states that she could not afford to pay for decedent's care if the amount of the retirement payment had been reduced. That is a rational choice she made. CalPERS gave her all the facts. This was not a correctable mistake. It was not established that any misinformation was given to respondent. The only "misinformation" was that CalPERS accepted respondent's power of attorney. They should not have accepted it because it was not specific enough. However, since respondent canceled any change based on this power of attorney, the mistake had no consequences.

22. CalPERS determined that decedent did not elect a retirement option with continuing allowance and respondent was not married to decedent at retirement. Consequently, respondent is not eligible for the Option 2 lifetime beneficiary allowance or survivor continuance allowance. By letter dated March 8, 2019, respondent was notified of this determination and was advised of her appeal rights. On May 6, 2019, respondent filed an appeal.

LEGAL CONCLUSIONS

1. CalPERS is a creation of statutes codified in the Public Employees' Retirement Law which grant it certain powers. It has authority to pay benefits to a member only when the statutes authorize it, and then only in the amount authorized. See *Hudson v. Posey* (1967) 255 Cal.App. 2d 89. Respondent must establish she is entitled to receive death benefit payments, and the standard of proof is a preponderance of the evidence. See *McCoy v. Board of Retirement* (1986) 183 Cal.App. 3d 1044, 1051. The Public Employees' Retirement Law, Government Code section 20120, subdivision (d) provides that the party seeking correction of an error has the burden of presenting evidence establishing the right to correction.

2. At the time of his retirement, decedent elected Option 1, which gave him the highest retirement allowance he could get. He was not married at the time of his retirement. Government Code section 21464 provides that a retired member who is not married at the time of retirement may modify his retirement election to designate the new spouse as a beneficiary. This must be done within 12 months of marriage. Decedent did not modify his election within 12 months of his marriage. If the election is not made within 12 months of marriage, the retired member can still make an election, but it will not go into effect for 12 months and will only go into effect if both the

member and beneficiary are still alive. Decedent did change his beneficiary to respondent, however, the modification allowed respondent to receive any lump sum death benefits payable. He never changed his Option 1 benefit regarding monthly benefits. Decedent never elected to receive a lower monthly benefit during his lifetime, so respondent is not eligible to receive continuing benefits. (Factual Finding 3 through 22, above.)

3. Government Code section 20160 concerning criteria for correction does not apply to this matter. CalPERS did not make a correctable error. Respondent knew the reduced amount would have to be paid out for a year in advance of decedent's death in order for any modification to be valid. This never occurred. Respondent cancelled the modification because she could not afford to care for the decedent on the reduced amount. (Factual Findings 16 and 17.)

4. There is no evidence that any correctable mistake was made by CalPERS. Further equitable estoppel does not apply to this matter. This argument cannot be used to enlarge the powers of CalPERS. (See for example *CalPERS v. Ames* (1963) 215 Cal.App. 215, 230.)

5. Decedent never modified his Option 1 benefit election to provide a lifetime monthly allowance payable to respondent. The requirements of Government Code section 21464 were not met. There is no correctable error under Government Code section 20160. The determination of CalPERS in this matter is correct. Respondent Conley-Vanhook is not entitled to a lifetime monthly allowance.

ORDER

The appeal of lifetime monthly benefit payable upon the death of Reginald Vanhook is denied. The determination of CalPERS in this matter is correct.

DATE: January 9, 2020

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Ruth S. Astle
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RUTH S. ASTLE

Administrative Law Judge

Office of Administrative Hearings