

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Request to Change the Lifetime
Beneficiary Election of Bonnie Murphy,**

DAVE MURPHY, STEVEN P. MULCAHY, Respondents

Agency Case No. 2018-1084

OAH No. 2019040168

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on October 23, 2019, in Glendale, California.

Austa Wakily, Senior Attorney with the California Public Employees' Retirement System (CalPERS), represented complainant. Respondent Dave Murphy appeared and represented himself. There was no appearance by Respondent Steven P. Mulcahy, despite notice of the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 23, 2019.

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Thereafter, on November 22, 2019, the ALJ reopened the record to obtain briefing on a legal issue raised by the language of Government Code section 21456.¹ The briefs were due on December 9, 2019. Complainant's brief was received on December 10, 2019, and is identified as exhibit 17 despite the late filing. No brief was received from Respondents.

The record was again closed, on December 10, 2019, and the matter submitted for decision on that date. The ALJ hereby makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

Jurisdictional Matters

1. Bonnie J. Murphy, who is now deceased, was a member of CalPERS due to her employment by California State University Northridge (CSUN), as a head coach of the school's women's golf team. She service retired on October 24, 2016.

2. When Ms. Murphy applied for service retirement, she designated Respondent Steven Mulcahy (Mulcahy), who was then her fiancé, as her lifetime beneficiary, for the Option 4 2W & 1 benefit.

3. Several years later, Ms. Murphy executed a special power of attorney, which named her brother, Respondent Dave Murphy (Respondent Murphy), as her Attorney-In-Fact. The effective date of the power of attorney was June 14, 2018.

¹ All statutory references are to the Government Code.

4. On June 14, 2018, Respondent Murphy, acting under the power of attorney, contacted CalPERS, seeking to change Ms. Murphy's lifetime beneficiary from Mulcahy, in part because she had decided not to marry him. CalPERS staff took the position that a change in beneficiary could only occur in narrow circumstances, known as a qualifying life event, and that Ms. Murphy's declining health and decision not to marry Mulcahy did not qualify. Respondent Murphy documented the request in a letter faxed to CalPERS on June 14, 2018; because one page did not transmit, Murphy faxed that page to CalPERS on June 20, 2018.

5. On July 19, 2018, CalPERS wrote Respondent Murphy and stated it could not change the beneficiary, asserting that the designation of Mulcahy had become irrevocable 30 days after Ms. Murphy was first paid retirement benefits. The letter discussed whether the request to change beneficiary might be allowed on the grounds that Ms. Murphy made a correctable mistake, and the letter stated the determination that the facts did not support a finding of a correctable mistake. The July 19, 2018 letter gave notice of Respondent Murphy's appeal rights.

6. On September 19, 2018, Respondent Murphy wrote CalPERS and reiterated his contentions that the beneficiary change should be granted, and he requested an appeal. This proceeding ensued.

7. CalPERS filed this action through a Statement of Issues. It served both Respondents, and it served both Respondents with a Notice of Hearing. Despite service of the pleading and notice of the hearing, Mulcahy did not file a notice of defense or appear at the hearing. All jurisdictional requirements have been met.

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Ms. Murphy's Background, Retirement, and Attempt to Change her Beneficiary

8. Ms. Murphy was an outstanding golfer such that she played on the LPGA tour. She was very successful as a coach at CSUN, twice named as coach of the year.

9. While coaching, Ms. Murphy became involved with Mulcahy, and at some point she named him assistant coach. Later, she was terminated from her coaching position, as was Mulcahy.

10. Prior to her retirement, Ms. Murphy contracted cancer; it was diagnosed in November 2013. In 2015 Ms. Murphy and Mulcahy became engaged to be married. The marriage never occurred.

11. (A) On May 29, 2015, while engaged to marry Mulcahy, Ms. Murphy submitted a beneficiary designation form to CalPERS. CalPERS confirmed, in writing on that same day, that Ms. Murphy had designated Mulcahy as her primary beneficiary, with Tracy Bowers as secondary beneficiary. Bowers' relationship to Ms. Murphy is not disclosed by the record; Ms. Murphy's mother is named Jane Murphy.

(B) The confirmation letter stated that in certain circumstances the beneficiary designation would be automatically revoked. The circumstances included marriage or dissolution of marriage, birth or adoption of a child, or termination of employment that resulted in a refund of her contributions.

12. On July 26, 2016, Ms. Murphy submitted a Retirement Allowance Estimate Request (RAER) to CalPERS, on a standard CalPERS form. The RAER identified Steve Mulcahy as Ms. Murphy's Individual Lifetime Beneficiary, and she identified

Mulcahy as her fiancé. She also chose an Option 4 option of 100 percent payment to her beneficiary.

13. As noted in Factual Finding 2, Ms. Murphy's retirement application identified Mulcahy as her lifetime beneficiary and she identified him as her fiancé. After she replied for retirement, CalPERS wrote her and stated that her first benefit check would arrive on or shortly after December 1, 2016. That letter, dated October 24, 2016, also stated that upon her death, benefits would be paid to her beneficiary. The letter further stated "upon a qualifying life event after retirement, you may modify [your beneficiary designation] and name a new beneficiary. For more information on modification of election, refer to our publication **Changing Your Beneficiary or Monthly Benefit After Retirement.**" (Ex. 8, p.1, bold in original.)

14. Ms. Murphy received her monthly benefits after December 2016. Meanwhile, her medical condition deteriorated. Her aged mother took great care of Ms. Murphy, despite her mother's limited resources.

15. In the last year of her life, Ms. Murphy expressed the desire to change her retirement beneficiary from Mulcahy to her mother. She expressed this to her brother, and made a writing to that effect in early June 2018. There is evidence that as early as March 2017, Ms. Murphy expressed the desire to change the beneficiary from Mulcahy so that her mother would receive the benefits. Despite that indication of intent to change the beneficiary, Ms. Murphy did not take any steps to change the beneficiary until days before she passed away.

16. On June 4, 2018, Mulcahy signed a document, before a Notary Public, stating that "effective immediately . . . [I] fully disclaim all rights, titles, benefits and other interests including beneficiary status to all of Bonnie Jane Murphy's accounts,

earnings, and holdings.” (Ex. B.) The disclaimer document was submitted to CalPERS along with Respondent Murphy’s June 14, 2018 letter requesting the change of beneficiary. At the hearing, CalPERS staff took the position that the beneficiary could not disclaim the benefits that Ms. Murphy had bestowed upon him.

17. The correspondence from Respondent Murphy to CalPERS in June 2018, including the request for a hearing, asserted that Ms. Murphy’s cancer, and her decision not to go forward with her marriage, were life changing events that would allow for a change of beneficiary designation.

LEGAL CONCLUSIONS

1. Under Code section 21453, Ms. Murphy’s designation of Mulcahy as her retirement beneficiary became irrevocable 30 days after the making of the first retirement benefit. That deadline passed in 2016, more than two years before the attempted change of beneficiary. (Factual Findings 13 through 15.) At the same time, there have been no statutorily-recognized events that would allow for a new designation of beneficiary.

2. There are some “qualifying events” that would have allowed Ms. Murphy to change the beneficiary, including if Mulcahy died, or if they had married and divorced. (Factual Finding 11(B); § 21453.) However, such an event did not occur.

3. (A) Under Code section 20160, CalPERS may, in its discretion, correct the errors or omissions of a member or beneficiary, on a showing that the error or omission was the result of mistake, inadvertence, surprise or excusable neglect. Other requirements to obtain this relief are set out in the statute, such as the requirement that the request to correct the error is made in a reasonable time after discovery of the

need for correction. The failure of a member to make reasonable inquiry does not establish an error or omission correctable under section 20160.

(B) CalPERS is correct in its assertion that grounds do not exist to change the beneficiary designation due to some mistake by Ms. Murphy. She made it clear she intended Mulcahy to be the designation prior to her actual application for retirement benefits. (Factual Findings 11 and 12.) She did not have her mother in mind as a beneficiary, as indicated by the fact that the secondary beneficiary in her initial submissions to CalPERS was Terry Bowers. (Factual Finding 11(A).) She was on notice that the designation could be changed only in limited circumstances, and she designated Mulcahy in the retirement application. (Factual Finding 13.) She maintained her relationship with him for many months after her retirement.

(C) That the member's health declined, and that she did not marry Mulcahy, does not establish a mistake on the member's part. She was afflicted with cancer when she designated him as her beneficiary, so it does not appear that some mistake was driven by her illness. No mistake was established on this record.

4. (A) During preparation of this proposed decision, the ALJ noted that section 21456 referenced a beneficiary's right to disclaim benefits, which appeared contrary to the testimony at the hearing. Complainant's brief speaks to the issue.

(B) Section 21456, at the second paragraph, provides that if a nonspouse beneficiary waives entitlement to the beneficiary's allowance, then the member's allowance shall be adjusted effective the first month after receipt of the waiver. While this recognizes a beneficiary's power to waive or disclaim benefits, it does not authorize the member to designate a new beneficiary. And here, Ms. Murphy is deceased, and not receiving a monthly benefit that could be adjusted.

5. Based on the entire record, the appeal of Dave Murphy must be denied.

ORDER

The Appeal of Dave Murphy is hereby denied. Steven P. Mulcahy shall remain the beneficiary of Bonnie Murphy's retirement benefits.

DATE: January 8, 2020

DocuSigned by:
Joseph D. Montoya
Joseph D. Montoya

Administrative Law Judge

Office of Administrative Hearings