

**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 William Varnado  
by:

CRYSTAL M. BICKFORD,

and

NICOLE P. ISAAC,

Respondents.

Case No. 2014-1235

OAH No. 2015020947

**PROPOSED DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on July 9, 2015, in Los Angeles, California. The California Public Employees' Retirement System (CalPERS) was represented by Elizabeth Yelland, Senior Staff Attorney. Crystal M. Bickford (Respondent Bickford) was present and represented herself. Respondent Nicole P. Isaac (Respondent Isaac) was present and represented herself.

Oral and documentary evidence was received, and argument was heard. The record was left open to allow Respondent Bickford to submit additional evidence regarding alleged additional children born after the beneficiary designation. Respondent Bickford was given until close of business October 9, 2015, to file and serve the additional evidence, and the remaining parties were given until October 22, 2015, to file and serve any written response to additional evidence.

On October 6, 2015, Respondent Bickford filed with OAH a letter requesting more time (until December 18, 2015) to submit the evidence regarding alleged additional children born after the beneficiary designation. The basis for this requested extension of time was that Respondent had only recently located the additional children and was in the process of obtaining documentation of their parentage. The October 6, 2015 letter was marked as Respondent's Exhibit A for identification. Respondent's Exhibit A did not include a proof of service specifying that the document had been sent to CalPERS and Respondent Isaac. Consequently, on October 6, 2015, the ALJ issued an Order to the parties, attaching Exhibit A, and allowing CalPERS and Respondent Isaac until 5:00 p.m. on October 16, 2015, to file

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RETIREMENT SYSTEM  
FILED: Jan 8 2016

*Kathy H. Bailey*

and serve any opposition or stipulation to Respondent Bickford's request for extension of time to submit the additional evidence.

On October 9, 2015, CalPERS filed and serve a letter indicating that it did not object to Respondent Bickford's request for additional time to submit evidence. CalPERS's October 9, 2015 letter was marked as Exhibit 16 for identification. Respondent Isaac did not submit any response to Respondent Bickford's October 16, 2015 request. Consequently, the ALJ issued an order leaving the record open until December 28, 2015 to allow Respondent Bickford to submit additional evidence (by December 18, 2015) and to allow the parties to submit responses to any additional evidence (by December 28, 2015).

No additional evidence was submitted by Respondent Bickford. The record was closed, and the matter was submitted for decision on December 28, 2015.

## FACTUAL FINDINGS

### *Procedural History*

1. Diane Alsup, Interim Chief of the Benefits Services Division of CalPERS, filed the Statement of Issues while acting in her official capacity.
2. William Varnado became a school miscellaneous member of CalPERS on March 28, 1972, by virtue of his employment with the Los Angeles Unified School District (LAUSD). Mr. Varnado (Decedent) retired, effective March 1, 2001.
3. On April 5, 2001, Decedent signed an application for service retirement electing Option 1 monthly allowance and designating his daughter, Respondent Isaac, as his sole beneficiary of the Option 1 Balance and Retired Death Benefit.
- 4(a). On April 5, 2001, Decedent signed a beneficiary designation form naming Respondent Isaac as his sole beneficiary for the Lump Sum Death Benefit and Option 1 balance.
- 4(b). On page 2 of that form was a notice stating:

The person listed above will receive the Lump-Sum Retired Death Benefit which is payable upon my death. I understand that I may change this beneficiary at any time and that any change in my marital status or the birth or adoption of a child automatically revokes this designation.

(Exhibit 3.)

5. Decedent died on March 30, 2014.
6. CalPERS did not receive any new beneficiary designation from Decedent prior to his death.
7. Decedent's payable benefits consist of the lump sum pro-rated allowance benefit of \$1,912.16 and the Retired Death Benefit of \$2,000. These benefits are payable according to Decedent's beneficiary designation dated April 5, 2001.
8. Prior to the hearing, CalPERS had information that Decedent was survived by five adult children, Respondent Bickford, Respondent Isaac, Shannon Varnado, Terrellesa Varnado, and William Varnado III.<sup>1</sup>
9. On around August 8, 2014, Respondent Bickford provided CalPERS a copy of Decedent's holographic will (Will) dated February 22, 2014, which bequeathed Decedent's entire estate to Respondent Bickford. She also provided CalPERS with notarized statements, Power of Attorney documents, identification cards, and correspondence contesting Decedent's signatures on the CalPERS designations.
10. CalPERS conducted a review of the file, Decedent's Will, and the other documentation provided by Respondent Bickford. CalPERS determined that the language in the Will was insufficient to establish Decedent's intent to change his previously-filed beneficiary designation and that there was insufficient evidence to support Respondent Bickford's claim that Decedent's signatures on CalPERS designations were forged.
11. In a letter dated October 8, 2014, CalPERS notified Respondent Bickford of its determination that the Will was not acceptable as a change of beneficiary designation for payment of the CalPERS death benefits and that she had the right to appeal this determination.
12. On October 22, 2014, Respondent Bickford timely appealed the determination and requested a hearing.
13. By letter dated November 7, 2014, Respondent Isaac was advised that because there was an appeal of CalPERS' determination, death benefits would not be paid until the appeal process was completed.

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<sup>1</sup> It was unclear how CalPERS was made aware of Decedent's survivors other than Respondent Isaac. In filling out the Application for Retired Member /Payee Survivor Benefits, Respondent Isaac was required to respond to the question "Was the deceased survived by natural or adopted children?" Respondent Isaac had the option of checking boxes with responses, "Yes," "No, or "Don't Know." Respondent Isaac checked the box for the response "Don't Know." (Exhibit 6.) This response was inaccurate.

14. The issue on appeal is whether CalPERS is correct in its determination that Respondent Isaac is the eligible beneficiary to receive the pro-rated allowance benefit of \$1,912.16 and the Retired Death Benefit of \$2,000.<sup>2</sup>

15. At the administrative hearing, evidence was submitted by Respondent Bickford to support her claim that Decedent's Will should supersede his previously-filed beneficiary designation and that Respondent Isaac should not receive 100 percent of the death benefits payable on Decedent's account. The documentation provided at hearing had been previously received and considered by CalPERS in rendering its decision.

16. For several months prior to his death, Decedent was hospitalized with terminal cancer. Respondent Bickford and her spouse visited him at the hospital virtually every day.

17. While in the hospital prior to his death, Decedent expressed his beliefs that his retirement benefits would terminate on his death and that he did not have any retirement beneficiary.

18. On February 22, 2014, Decedent executed his Will which stated, in pertinent part, "I give gifts, property, money, etc. . . . such as my entire estate to [Respondent Bickford]. If he/she survives me, or if not, to Shannon Varnado or a fractional gift such as one half of my entire estate. . ." (Exhibit 7.)

18. CalPERS benefits were not listed in the Will nor was any reference made to such benefits. There was no clear indication that Decedent wanted the CalPERS benefits included in the distributed property.

19. The Will did not specifically revoke the previously-filed beneficiary form,

20. Decedent never executed any Change of Beneficiary form to change the distribution of the CalPERS benefits from that indicated in the original 2001 beneficiary designation or to name anyone other than Respondent Isaac as the beneficiary.

21(a). At the administrative hearing, several witnesses, including Respondent Bickford, her spouse, Shannon Varnado-Triplett, and Terrellesa Varnado testified and

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<sup>2</sup> Decedent's monthly allowance ceased to be payable on the date of his death (March 30, 2014). Prior to CalPERS' notification of Decedent's death, his April 1, 2014 retirement warrant was sent to him, care of Respondent Bickford. That warrant amount, approximately \$1,800, is owed to CalPERS. Respondent Bickford acknowledged receipt of the April 2014 warrant but has not yet returned it. She indicated that she would like to wait for the determination on appeal. If Respondent Bickford prevails on appeal, CalPERS would deduct the warrant amount from the death benefits owed her. If Respondent Bickford does not prevail, she would reimburse CalPERS the warrant amount.

confirmed that Decedent believed that his retirement benefits would terminate on his death and that he did not have any retirement beneficiary.

21(b). None of these testimonies were sufficient to establish Decedent's intent to designate the CalPERS benefits as an asset of his property that he wished Respondent Bickford to inherit. (See also Legal Conclusion 3.)

22. Although Decedent's Will indicated that he wanted Respondent Bickford to inherit his entire estate, he did not take affirmative steps to designate Respondent Bickford, or anyone other than Respondent Isaac, as the beneficiary of his CalPERS benefits. He did not specifically revoke the prior beneficiary designation or submit any Change of Beneficiary form to CalPERS to change the distribution of the CalPERS benefits from that indicated in the original 2001 designation or to name Respondent Bickford as his CalPERS beneficiary.

23. Respondent Bickford submitted insufficient evidence to establish that she is eligible to receive any percentage of the death benefits payable on Decedent's account.

24. The totality of the evidence established that CalPERS is correct in its determination that Respondent Bickford is not eligible to receive any percentage of the death benefits payable on Decedent's account. (See also Legal Conclusions below.)

## LEGAL CONCLUSIONS

1. CalPERS established that it appropriately determined that Respondent Bickford is not entitled to any percentage of the death benefits payable on Decedent's account. Respondent Bickford has failed to establish that CalPERS's determination is incorrect, as set forth in Factual Findings 2 through 24, and Legal Conclusions 2 through 4.

2. Government Code 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.

3(a). On April 5, 2001, Decedent signed a valid CalPERS Beneficiary Designation, naming Respondent Isaac as his sole beneficiary. CalPERS must distribute the benefits according to that valid designation, unless the designation was revoked or a different beneficiary or beneficiaries were later designated.

3(b). In order to effect a change of beneficiary of a retirement fund there must be a clear manifestation in writing of intent of the member to make such change. (*Gallagher v. State Teachers' Retirement System* (1965) 237 Cal.App.2d 510; *Hudson v. Posey* (1967) 255

Cal.App.2d 89; *Watenpaugh v. State Teachers' Retirement System* (1959) 51 Cal.2d 675; *Lyles v. Teachers Retirement Bd.* (1963) 219 Cal.App.2d 523.) 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 v. Posey*, *supra*, 255 Cal.App.2d at p. 92; see also *Watenpaugh v. State Teachers' Retirement System*, *supra*, 51 Cal.2d at p. 681 (there was sufficient manifestation of intent and action by member who executed but mislaid a change of beneficiary form, which was not filed until after his death).) That clear manifestation in writing may be a will or trust which specifically bequeaths the benefits to a beneficiary. (*Lyles v. Teachers Retirement Bd.*, *supra*, 219 Cal.App.2d at pp. 527 -528.)

3(c). In this case, there was no clear manifestation in writing of Decedent's intent to change the CalPERS beneficiary designation or to revoke it.

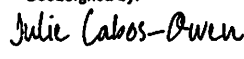
3(d). Decedent did not take affirmative steps to change his previously-filed beneficiary form. He did not execute or submit any form to revoke his prior CalPERS beneficiary designation, to change the distribution of the CalPERS benefits from the original 2001 designation, or to name Respondent Bickford as a new beneficiary. Although Decedent indicated in his Will that he wanted Respondent Bickford to inherit his entire estate, he never identified the CalPERS benefits as part of the property which Respondent Bickford would inherit. Additionally, he apparently did not intend to include his CalPERS retirement benefits in his Will because, when he executed the Will, he did not believe he would have any retirement benefits to distribute. Since there was no clear manifestation in writing of any intent to change the beneficiary designation or to revoke it, the 2001 beneficiary designation remains valid.

4. Given the foregoing, the determination of CalPERS that Respondent Bickford is not eligible to receive any percentage of the death benefits payable on Decedent's account was correct and should be upheld.

### ORDER

The appeal of Respondent Crystal Bickford is denied. CalPERS's determination that Respondent Bickford is ineligible to receive any percentage of the death benefits payable on Decedent's account is upheld.

DATED: January 7, 2016

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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings