

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 Benefits Payable Upon the
Death of John R. Ford by:**

**JOHNETTA LAMAR FORD, JOHN P. FORD, JERMAINE FORD,
and TENEEN FORD, Respondents,**

and

DEBRA SHELTON-LOVE, Respondent

Agency Case No. 2020-0786

OAH No. 2020110294

PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 26, 2021, by video conference due to the ongoing coronavirus pandemic public health emergency.

John Shipley, Senior Attorney, California Public Employees' Retirement System (CalPERS) represented complainant Keith Riddle, Chief, Disability and Survivor Benefits Division, CalPERS.

Johnetta Lamar Ford, John P. Ford, and Jermaine Ford, respondents, (collectively Ford respondents) represented themselves. Respondent Teneen Ford, who died before the hearing, did not appear.

Debra Shelton-Love, respondent, represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 26, 2021.

SUMMARY

CalPERS member and decedent John Ford was married to respondent Debra Shelton-Love. A default judgment dissolving their marriage was entered in superior court in 2015. They continued to live together as husband and wife. Mr. Ford died in 2018. A dispute arose between Ms. Shelton-Love and Mr. Ford's four children over who was entitled to receive Mr. Ford's CalPERS survivor benefits. After she discovered the default judgment dissolving her marriage, Ms. Shelton-Love successfully set it aside based on fraud. After the court set aside the marriage dissolution, CalPERS determined that Ms. Shelton-Love was entitled to the survivor benefits.

Based on the evidence presented in this record, CalPERS's determination is affirmed.

FACTUAL FINDINGS

Jurisdictional and Procedural Matters

1. John R. Ford worked for the City of Inglewood and became a CalPERS member on November 11, 1985. He retired on January 1, 2014, after over 28 years of public service. He died on February 26, 2018. Both his wife and his children filed claims with CalPERS to receive survivor death benefits.

2. On June 12, 2020, CalPERS sent formal denial letters to the Ford respondents notifying them of its final beneficiary determination that Debra Shelton-Love was the sole beneficiary. On July 22, 2020, the Ford respondents requested an appeal.

3. On October 22, 2020, complainant, in his official capacity, issued the statement of issues concerning the appeal of CalPERS's determination of benefits payable upon the death of Mr. Ford, along with all required jurisdictional documents.

4. On April 26, 2021, the administrative record was opened. Oral and documentary evidence was received. The parties provided their various arguments. The matter was submitted for decision.

John R. Ford Names Ms. Shelton-Love in His Will, Then They Marry

5. On September 4, 2006, John R. Ford executed a last will and testament. The will described him as a single man. The will provided:

By operation of law, my common law wife, Debra Ann Shelton-Love, shall receive fifty percent (50%) of my full Estate as my surviving spouse. In addition, I leave my

common law surviving spouse, Debra Ann Shelton-Love the remaining fifty percent (50%) immediately after the execution of this Will, by me, John Rudolph Ford. The property may be added to or disposed of in any manner that Debra Ann Shelton-Love deems appropriate.

6. The will also made Ms. Shelton-Love executor and identified Mr. Ford's four children (respondents in this case). Mr. Ford did not leave any property to his children in the will.

7. On October 28, 2006, 52 days after executing the will, Mr. Ford and Ms. Shelton-Love were married. Respondent Jermaine Ford signed the License and Certificate of Confidential Marriage as the person solemnizing the marriage.

John Ford Names Ms. Shelton-Love as Retirement Beneficiary

8. John Ford submitted an application for retirement to CalPERS, signed on November 7, 2013. He named Ms. Shelton-Love as his beneficiary to receive the Option 1 balance of his contributions and his retired death benefit.

CalPERS Receives Competing Claims for Survivor Benefits

9. On March 1, 2018, Ms. Shelton-Love contacted CalPERS to report Mr. Ford's death.

10. On March 13, 2018, Johnetta Ford (Ms. Ford) called CalPERS and notified it that Ms. Shelton-Love was not married to Mr. Ford at the time of his death; she reported that she found a divorce judgment showing the marriage was dissolved in 2015. On March 14, 2018, Ms. Ford faxed to CalPERS a copy of a Judgment of Dissolution dated July 14, 2015.

11. Based on the judgment dissolving the marriage, on March 14, 2018, CalPERS staff sent a letter to Ms. Ford requesting additional information to establish eligibility for the death benefit payment.

12. On August 9, 2018, CalPERS received a letter from Ms. Shelton-Love stating that she is the rightful beneficiary. The letter enclosed a copy of Mr. Ford's will, his death certificate, their marriage license, copies of tax returns for 2015 and 2016 with filing status married filing separately, and a letter verifying that Mr. Ford was listed as a spouse on Ms. Shelton-Love's employee medical and dental coverage through March 1, 2018.

13. On September 6, 2018, CalPERS received Ms. Ford's application for retired member survivor benefits. Ms. Ford indicated she was Mr. Ford's daughter. Responding to a question that asked about Mr. Ford's marital status, she wrote "Divorced!" and gave a date of July 2015.

14. On September 18, 2018, CalPERS sent a letter to Ms. Ford requesting additional information.

15. On October 4, 2018, CalPERS received a letter from Ms. Shelton-Love with her application for retired member survivor benefits. The letter also included receipts showing that Ms. Shelton-Love paid Mr. Ford's funeral expenses, hall rental, catering, and printing costs for his service.

16. On October 29, 2018, CalPERS sent a letter to Ms. Shelton-Love stating it determined that Mr. Ford's designation of Ms. Shelton-Love as his beneficiary was revoked by operation of law due to the marriage dissolution. CalPERS would determine statutory beneficiaries according to Government Code section 21493. The

letter also invited Ms. Shelton-Love to submit a community property claim for the benefits as a former spouse.

17. On November 11, 2018, Ms. Ford submitted another application for retired member survivor benefits in which she listed all of the Ford respondents as children of Mr. Ford.

CalPERS Receives a Community Property Claim from Ms. Shelton-Love and Places a Hold on Benefits

18. On November 20, 2018, CalPERS received a letter from Ms. Shelton-Love. The letter carried a subject line: "Re Intent to Pursue a Community Property Interest/Community Property Settlement." In the letter she asserted beneficiary status "under the theory of California Domestic Partnership." She listed several facts as evidence that they lived together as husband and wife until the time of his death.

19. A CalPERS member's former spouse is entitled to make a community property claim. A different CalPERS unit evaluates community property claims. On December 17, 2018, CalPERS notified Ms. Ford and Ms. Shelton-Love that it was placing a community property hold on payment of any benefits.

The Divorce Judgment and the Order Setting It Aside

20. A document from the Superior Court of California, County of Los Angeles, Case No. BD606569, dated July 14, 2015, shows that the court entered a judgment of dissolution in the marriage of Debra Shelton-Love, petitioner and John Ford, respondent. The court form indicates "This proceeding was heard as follows: Default or uncontested. By declaration under Family Code section 2336." The form further states:

Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons on July 14, 2015.

21. On July 23, 2019, Ms. Shelton-Love filed a motion in the superior court to set aside the default judgment. She alleged that she filed a petition and family law summons on August 14, 2014, filed a proof of service with the court on September 16, 2014, but she had taken no further action in that family court case. She stated in the moving papers that she had a change of heart and reconciled with Mr. Ford. She alleged that she had no idea that a request for entry of default and other supporting documents were filed in the case, and that someone had forged her signature on those documents.

22. CalPERS obtained documents from the superior court file. Official notice was taken of two superior court minute orders dated September 25, 2019, and September 30, 2019. These documents, along with Ms. Shelton-Love's testimony, support factual findings concerning what happened in the superior court.

23. The motion to set aside the default judgment was set for hearing on September 25, 2019. On that date, the court continued the hearing on its own motion to September 30, 2019. Ms. Shelton-Love appeared at that hearing. In the present hearing, Ms. Shelton-Love testified that the hearing to set aside the default lasted about three hours. She testified at that hearing, presented a witness and her evidence. The superior court judge asked questions. The same day, the court issued a minute order stating:

The Court orders the Default Judgment for Dissolution and the Request for Entry of Default set aside pursuant to

Family Code § 2122. The Court's minute order shall serve as the Order After Hearing. No formal order is necessary.

24. After the hearing, that same day, Ms. Shelton-Love attempted to file a request for dismissal form to dismiss the family court action. Ms. Shelton-Love testified at the present hearing that the family court judge recommended that she file a dismissal of the case because someone could come along and attempt to enter a default judgment again without her knowledge. On October 1, 2019, a court clerk checked a box on the request for dismissal form that stated "Dismissal not entered as requested for the following reasons (specify):" and wrote "clerk can't dismissed [*sic*] after judgment was entered."

25. Ms. Shelton-Love filed another request for dismissal of the family court case on May 18, 2020. The clerk again checked the "dismissal not entered" box and specified the reason: "it can't be done with prejudice address is not the same noticed of change of address is required [*sic*]."

26. Ms. Shelton-Love's testimony in the present hearing was somewhat inconsistent with her statements in the motion to set aside the default. In that motion, she asserted that she filed the divorce petition, but had a change of heart. At the present hearing, she testified that she did not remember filing a divorce petition or wanting a divorce. She testified that they continued to live together as husband and wife up until Mr. Ford died. She said she "buried my husband like a wife is supposed to."

CalPERS Final Determination – Ms. Shelton-Love Entitled to Benefits

27. CalPERS made its final determination based on the fact that the marriage dissolution judgment was set aside, Mr. Ford and Ms. Shelton-Love were married at

the time of his death and she is entitled to his survivor benefits. It notified all respondents by letter dated June 12, 2020.

28. Once the final determination was made, the community property claim process at CalPERS ceased without a final resolution because Ms. Shelton-Love was awarded benefits as a surviving spouse and did not need to pursue a community property claim.

Amounts Payable and Recoverable

29. CalPERS holds an Option 1 contributions balance of \$112,352.25. Mr. Ford's beneficiary(ies) would be entitled to payment of this amount plus a lump sum death benefit of \$500 and a pro rata benefit of \$3,942.

30. CalPERS paid Mr. Ford's retirement allowance for February 2018 on March 1, 2018. Because Mr. Ford did not live the entire month of February 2018, CalPERS is entitled to be reimbursed the amount it overpaid. The overpayment amount is \$3,850.30.

Ford Respondents' Testimony

31. Both Ms. Ford and Mr. John P. Ford testified at the hearing. The Ford children had many concerns about Ms. Shelton-Love receiving their father's survivor benefits. They testified that Mr. Ford and Ms. Shelton-Love had spent time separate and apart because their marriage was having problems. They noted Ms. Shelton-Love's many inconsistent statements and positions about their marital status, whether she filed a divorce petition at all, whether she and Mr. Ford were domestic partners or former spouses. They testified that they did not believe the court's order setting aside

the divorce judgment was real. They asserted the fact that she twice filed requests to dismiss the divorce case was inconsistent with the judgment being set aside.

32. The Ford respondents challenged Ms. Shelton-Love's credibility when she testified at the present hearing about certain encounters she had with Mr. Ford's children at various times and about a report in which she asserted that Mr. Ford's wallet had been stolen and that somehow led to the fraudulent default divorce judgment. They agreed that Ms. Shelton-Love was with Mr. Ford in the hospital every day during the time leading up to his death, and that Ms. Shelton-Love paid for Mr. Ford's burial and funeral service expenses.

33. The Ford respondents did not dispute that Ms. Shelton-Love and Mr. Ford lived together as husband and wife until his death, although they asserted there were times when they separated.

Evaluation

34. Mr. Ford and Ms. Shelton-Love's marriage was dissolved by a default judgment in 2015. Ms. Shelton-Love successfully set that judgment aside after a full evidentiary hearing in front of a superior court judge in 2019, in which she met her burden of proving the judgment was entered fraudulently. The legal result is that Mr. Ford and Ms. Shelton-Love were married at the time that Mr. Ford died. She was Mr. Ford's designated beneficiary in his will, and also his designated beneficiary for his CalPERS survivor benefits.

35. The Ford respondents have legitimate concerns about Ms. Shelton-Love's inconsistent statements and credibility. However, none of those concerns are relevant or alter the outcome in this case. The relevant facts are established by the documents from the superior court. None of the relevant facts turn on whether Ms. Shelton-Love

can or cannot be believed. CalPERS is bound by the order of the superior court to honor the marriage between Mr. Ford and Ms. Shelton-Love, and to pay his survivor benefits accordingly. This outcome is also consistent with Mr. Ford's apparent intention, since he left Ms. Shelton-Love all of his assets in his will and never modified that will.

LEGAL CONCLUSIONS

1. All references are to the Government Code unless another statute is specified. Government Code section 21490 provides that a CalPERS member may designate a beneficiary to receive benefits that may be payable to the member's estate. Section 21492 states that the dissolution of a member's marriage constitutes an automatic revocation of his or her previous revocable beneficiary designation. Section 21493 provides that if a member has no beneficiary designation in effect on the date of death, any benefits payable are to be paid in a certain order, first to the decedent's spouse, then to the decedent's natural or adopted children.

2. Family Code section 2122 authorizes the superior court to set aside a judgment in certain circumstances, including if there was actual fraud where the defrauded party was kept in ignorance or was fraudulently prevented from fully participating in the proceeding.

3. Since Mr. Ford and Ms. Shelton-Love were legally married at the time Mr. Ford died, she is the proper recipient of his survivor death benefits under either Mr. Ford's beneficiary designation in effect at the time of his death, or under section 21493 as Mr. Ford's surviving spouse.

ORDER

CalPERS's determination that John R. Ford's death benefits must be paid to Debra Shelton-Love is affirmed.

CalPERS shall pay the Option 1 contributions balance of \$112,352.25, plus the lump sum death benefit of \$500 and pro rata benefit of \$3,942, to Debra Shelton-Love. CalPERS may offset the amounts paid to Debra Shelton-Love by the amount of overpayment of \$3,850.30.

DATE: May 20, 2021

Alan R. Alvord

ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings