

**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 Lifetime Monthly Benefit  
Payable Upon the Death of Kim A. Yarbrough, by:**

**PAT YARBROUGH, Respondent**

**Agency Case No. 2021-0347**

**OAH No. 2021060073**

**PROPOSED DECISION**

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter virtually using the Microsoft Teams application on November 2, 2021.

Charles H. Glauberman, Senior Staff Attorney, California Employees' Retirement System (CalPERS) represented the Complainant, Keith Riddle, Chief Disability and Survivor Benefits Division, CalPERS.

Pat Yarbrough, Respondent, represented herself.

Oral and documentary evidence was received. The record was held open until November 3, 2021, in order for the Complainant to re-submit Exhibits 5, 11, and 17.

The record matter was submitted for decision on November 3, 2021, following receipt of Complainant's Exhibits 5, 11, and 17.

## **ISSUE**

Is Respondent is eligible to receive an Option 3W Lifetime Monthly benefit and/or a Lifetime Monthly Survivor Continuance benefit?

## **FACTUAL FINDINGS**

### **Background and Jurisdiction**

1. Kim A. Yarbrough (Decedent) became a member of CalPERS through his employment as a civil engineer with the California Department of Transportation (CalTrans), beginning on May 1, 1956.

2. CalTrans is a public agency contracting with CalPERS for retirement benefits for its eligible employees. The provisions of CalTrans's contract with CalPERS are contained in the California Public Employees' Retirement Law (PERL). (Gov. Code § 20000 et seq.)

3. CalPERS is a defined benefit plan. Benefits for its members are funded by member and employer contributions and by interest and other earnings on those contributions. A member's contribution is determined by applying a fixed percentage to the member's compensation. A public agency's contribution is determined by applying a contribution rate to the payroll of the agency. Using certain actuarial assumptions specified by law, the CalPERS Board of Administration sets the employer contribution rate on an annual basis.

4. A marriage certificate, from the State of Nevada, County of Clark, showed that Decedent and Linda Yarbrough were married on July 29, 1987. The record does not include a record of dissolution of marriage or annulment between Decedent and Linda Yarbrough.

5. On November 20, 1992, Decedent applied for service retirement. On December 28, 1992, Decedent completed a Settlement and Beneficiary Designation Form 898, and he elected the Option 3W Lifetime Monthly Benefit and named Linda Yarbrough (spouse) as the beneficiary. In the same form, Decedent named Linda Yarbrough as the beneficiary of his Lump Sum - Retired Death Benefit.

6. Decedent's retirement was effective December 31, 1992.

7. A letter sent from CalPERS to Decedent on January 5, 1993, indicated that CalPERS had processed his retirement selection. A letter was also sent to Decedent's employer, CalTrans, on the same date, indicating the same.

8. A marriage certificate, from the State of Arizona, County of Yuma, showed that Decedent and Respondent were married on December 29, 1994.

9. A CalPERS Touch Point Note, dated February 23, 1995, indicated that Decedent called CalPERS to request Respondent be added to his health and dental plans, and Linda Yarbrough was on his health and dental plans but she was his "ex-spouse" and their marriage was not valid because they were "never actually married." He was waiting for a paper from the county clerk regarding the "invalid marriage" and he would forward the paper "as soon as he received it."

10. A typed letter was sent by Decedent to CalPERS on February 23, 1995, memorializing his phone call to CalPERS. The letter requested "LINDA L. YARBROUGH

(WIFE)" be deleted from his health and dental plans, and "PAT F. YARBROUGH (WIFE)" be added to his health and dental plans effective March 1, 1995. A letter from CalPERS to Decedent, dated February 25, 1995, confirmed this change was made, as requested.

11. On May 14, 2009, Linda Yarbrough passed away.

12. On February 27, 2015, Decedent signed a Special Power of Attorney naming Respondent as his Attorney-In-Fact.

13. A typed letter from Decedent to CalPERS, dated May 16, 2016, indicated Respondent signed the letter on behalf of Decedent because he was having problems writing. He had been in hospice care for a few months and Respondent was caring for him full-time, and he "truly love[d]" his "wonderful wife" and wished she be taken care of "because she took good care" of him. He asked she receive his "retirement" after his "demise."

14. On August 4, 2016, Decedent passed away.

15. On August 29, 2016, CalPERS mailed two letters to Respondent indicating its condolences and wrote, in part: [Emphasis added.]

In order to qualify for the **Survivor Continuance** monthly allowance you would have to have married one year prior to the member's retirement date. Since you are not eligible for a monthly allowance your health coverage will stop. . . .

16. On September 7, 2016, CalPERS mailed two letters to Respondent that indicated the following two warrants would be mailed to her, as she was the "beneficiary" of Decedent: (Emphasis in original.)

**BENEFIT:** Option 3w – Pro Rata                      \$550.43

[¶] . . . [¶]

**BENEFIT:** PERS Retired Death Benefit      \$2,000.00

**DEDUCTIONS:** FEDERAL TAX                      \$400.00

**NET AMOUNT:**    \$1,600.00

17. Respondent faxed a handwritten letter to CalPERS on September 8, 2016, which stated, in pertinent part: (Errors in original.)

I am Pat Yarbrough. The wife of Kim A. Yarbrough (deceased). For the past year or two Kim had a hard time with anything as he has had mild dementia. This is why I to get power of attorney so anything he has signed in the past (2) yrs. is valid.

His main concern was taking care of me and making sure I would be taken care after his death.

We have been on the phone dozens of times with lots of CalPers, making sure I would get his retirement and death benefits. We have been assured I would and now that he is gone – I have been told I won't get it. We have been married 23 yrs and out of that he has had 4 heart attacks 4 stroked cancer, aneurisms, and I took very good care of him.

My writing is terrible I know but I am under a great deal of stress. Thank You and please help me.

18. On November 14, 2016, Daniela Schofield, a CalPERS Retirement Program Specialist – Survivor Benefit Processing Section, sent a letter to Respondent offering his condolences and indicating that a “thorough review” had been conducted of Decedent’s file and it was determined that Respondent was “not eligible for a monthly allowance from CalPERS.” Regarding the Survivor Continuance Benefit, Ms. Schofield explained that pertinent statutes require a “surviving spouse” must be “a husband or wife who was married to the member for a continuous period beginning at least one year prior to retirement and to the date of death.” A “member may not designate who receives this benefit,” and since Respondent and Decedent were “not married until after his retirement, [Respondent] does not meet the requirements as a ‘surviving spouse’ for this benefit.” Ms. Schofield further explained that regarding the Lifetime 3W Option, Decedent “could have requested a recalculation of his retirement allowance to provide a monthly allowance to [Respondent] upon his death.” While Respondent indicated Decedent had submitted such paperwork in 1995, CalPERS had “no record that a recalculation requested was ever received” and this is a multi-step process . . . [that] cannot be processed in one visit.” The only documentation from Decedent in CalPERS’s record was a written request by Decedent on February 23, 1995, that Respondent be added to his health plan. Ms. Schofield expressed sympathy for not being able to provide Respondent a “more favorable response” and instructed Respondent if she located documentation showing Decedent had requested a recalculation of his Lifetime 3W Option, to forward it to CalPERS for review.

19. On January 24, 2017,<sup>1</sup> and April 25, 2017, Complainant - Mr. Riddle - sent letters to Respondent indicating Governor Brown asked CalPERS to respond to her inquiry regarding the death benefits of Decedent. Mr. Riddle reiterated the same information in the letter sent to Respondent by Ms. Schofield on November 14, 2016. Under Government Code section 21492, the "designation of beneficiary under Option 3W is irrevocable" and can be modified to provide a monthly benefit to a new beneficiary after certain qualifying life events, such as a marriage after retirement, but when a "former spouse is the named option beneficiary," the "member must be awarded the full interest in the retirement in their dissolution judgment." CalPERS had no record that Decedent had requested to modify his retirement benefit for a new Option 3W beneficiary or that Decedent had received a judgment awarding him full interest after his marriage to Linda Yarbrough was dissolved. However, Mr. Riddle wrote a "lump sum beneficiary designation can be changed at any time and also becomes revoked upon divorce or marriage," and on May 16, 2016, Decedent listed Respondent as his lump sum beneficiary for which she received \$2,000. Mr. Riddle offered his sympathy and expressed "CalPERS benefits must be paid in accordance with the law" and Respondent had received the lump sum beneficiary amount of \$2,000 and a prorated death benefit of \$550.43 for Decedent's retirement benefit for the month he passed away. Respondent was informed of her right to file an appeal.

20. A letter sent by Shayne Day-Bolar, Manager, Survivor Benefit Exceptional Processing Unit, CalPERS, to Respondent, dated March 3, 2021, included copies of the letters sent to Respondent on November 14, 2016, and January 24, 2017, which

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<sup>1</sup> At the hearing, complainant's counsel indicated the letter in Exhibit 20, pages A62 to A63, is misdated and it should be dated January 24, 2017, not January 24, 2016.



advised her of CalPERS determination to deny her request to receive a monthly death benefit allowance. Respondent was informed of her right to file an appeal.

21. In an undated handwritten letter, received by CalPERS on March 30, 2021, Respondent appealed the final determination by CalPERS.

22. On May 27, 2021, Complainant signed the Statement of Issues on behalf of the Board of Administration CalPERS. The Statement of Issues listed one issue on appeal: whether Respondent is eligible for the Option 3W Lifetime Monthly benefit and/or Lifetime Monthly Survivor Continuance benefit.

### **Testimony Presented by CalPERS**

23. Shayne Day-Bolar is a Staff Services Manager I for CalPERS. Ms. Day-Bolar's testimony is summarized as follows: She has been employed by CalPERS for 26 years. Her duties include overseeing the processing unit that handles exceptional and more complex death benefit cases, which require additional analytical review such as beneficiary and benefits determinations and property disputes.

24. Decedent selected retirement Option 3W Lifetime Monthly benefit to allow a continuing lifetime allowance to his beneficiary. The issue is whether the "continuing lifetime allowance" beneficiary who was to be paid upon the death of the member (Decedent) had ever been selected, and if so, was the beneficiary ever changed by the member (Decedent). Here, Decedent selected Linda Yarbrough as his beneficiary for the Option 3W Lifetime Monthly benefit and Decedent never changed the beneficiary to be Respondent. When a member retires he/she have options to provide the member with a monthly benefit for his/her lifetime and survivor benefits upon his/her death to provide for a beneficiary. The monthly survivor benefit to be paid to a beneficiary is irrevocable unless a qualified lifetime event occurs, such as the

death of a beneficiary, remarriage or birth of a child. However, there is a time limit to request a change of beneficiary – which is within 12 months of the life event, if the member wants the change to be effected immediately. If a request is made after 12 months, the request is processed but there is a 12-month waiting period and the member must be alive on the effective date, and there must be a court order showing 100 percent of the retirement monthly benefit was awarded to the member. Here, Decedent did not submit a court order showing a court ordered him 100 percent of his retirement monthly benefit, and there is no court document showing his marriage to Linda Yarbrough was invalid. The letter submitted by Decedent on May 16, 2016, did not effectuate a valid change of beneficiary because no elective forms were completed by Decedent and even if they were completed, Decedent passed away 11 weeks after the date of his letter and the 12-month waiting period had not been met.

25. Ms. Day-Bolar explained Respondent was also not eligible to receive a Survivor Continuance monthly benefit because it is payable only to an eligible spouse who was married to the member (Decedent) at the time of retirement and married 12 months continuously up to the date of the member's death.

26. Ms. Day-Bolar explained Respondent was eligible for the Lump Sum – Retired Death benefit because Decedent had changed his beneficiary for this benefit, in 1995, to be Respondent and no longer Linda Yarbrough. The beneficiary for this benefit can be changed and/or revoked at any time by a member.

27. Ms. Day-Bolar's testimony was credible and fully consistent with the exhibits admitted at the hearing. She demonstrated a thorough knowledge of how to determine when a beneficiary is eligible to receive an Option 3W Lifetime Monthly benefit, a Survivor Continuance Monthly benefit, and/or a Lump Sum – Retired Death benefit.

## Testimony Presented by Respondent

28. The following is a summary of the testimony of Respondent. She did send "the papers" to CalPERS and she does not know what CalPERS did with them. Decedent signed "the papers" a year after they married in 1993. They went to the "office" in San Diego in 1994, and Decedent completed "the papers" for her to be the "beneficiary" and for her to be on his insurance. She remembered that the "man" at the "office" took all the information in San Diego. A "lady over the phone" said she received "it." Decedent told her, two days before he passed away, "honey you don't have to worry, you are going to be taken care of."

29. Decedent's marriage to Linda Yarbrough was not valid because Linda Yarbrough was married to another man when she married Decedent. This is the reason why there are no divorce papers for the marriage of Decedent and Linda Yarbrough. Instead, Respondent and Decedent "worked with the court to nullify the marriage" of Decedent and Linda Yarbrough.

30. Respondent cared for Decedent when he was really sick for five years. He had suffered heart attacks when he worked for CalTrans and the "guys" would smoke in his office. After Decedent retired, he underwent heart surgery in Oakland, California. She cared for him then, too. He was a hard worker for CalTrans and a good person. She is upset because she "needs that money." She has never had to "live like this" in her life. She recently received housing assistance and lives in a tiny apartment. She has no family here in California. She has no help. She "will fight it until the day" she dies. She "will not drop this." She stated, "This is not the end. This is just the beginning. I will fight for that money . . . You don't want to take care of the widows whose husbands worked for you. I pray for your soul because God is on my side."

31. While Respondent's testimony was sincere, it was not consistent with the evidence as a whole, and provided no basis to overcome the absolute requirements regarding how the Option 3W Lifetime Monthly benefit and/or Survivor Continuance Monthly benefit are to be paid under applicable law.

## **LEGAL CONCLUSIONS**

### **General Principles Relating to CalPERS's Functions**

1. The Constitution imposes on CalPERS a duty to "ensure the rights of members and retirees to their full, earned benefits." (*City of Oakland v. Public Employees' Retirement System* (2002), 95 Cal.App.4th 29, 46.) But, "[CalPERS's] fiduciary duty to its members does not make it an insurer of every retirement promise contracting agencies make to their employees. [CalPERS] has a duty to follow the law." (*City of Pleasanton v. Bd. of Administration* (2012) 211 Cal.App.4th 522, 544.)

2. Pension legislation should be liberally construed and all ambiguities should be resolved in favor of the pensioner. (*In re Retirement Cases* (2003) 110 Cal.App.4th 426, 473.) "However, this rule of liberal construction is applied for the purpose of effectuating obvious legislative intent and should not blindly be followed so as to eradicate the clear language and purpose of the statute." (*Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1603.)

### **Burden and Standard of Proof**

3. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500.) The standard of proof is proof by a

preponderance of the evidence. (Evid. Code, § 115.) Accordingly, in this case, Respondent has the burden to prove by a preponderance of the evidence that she is eligible for the Lifetime Option benefit and/or Survivor Continuance benefit.

## **Applicable Law**

4. The PERL is contained at Government Code section 20000 et seq.

5. Government Code section 21454, regarding Option 3W lifetime monthly benefit, states:

Notwithstanding Section 21453, an **election of optional settlement 2 or 3, or optional settlement 4 involving life contingency in which a spouse is designated as the beneficiary, may be modified** as provided in this section **in the event of a dissolution of marriage** or a legal separation in which the **division of the community property awards the total interest in the retirement system to the retired member, or in an annulment of the marriage in which a court confirms the annulment.** The modification shall provide that payment shall be continued during the retired person's lifetime in accordance with the optional settlement then in effect but that no monthly allowance shall be paid following the retired person's death, and in lieu thereof there shall be paid in a lump sum to the member's estate or a beneficiary designated by him or her the amount, if any, by which the member's accumulated

contributions at retirement exceed the total payments made to the retired person to the date of his or her death.

This section shall apply to any member who retires on or before December 31, 2017. [Emphasis added.]

6. Government Code section 21462, regarding Option 3W lifetime monthly benefit, provides:

(a)(1) Notwithstanding any other provision of this part, a **member who elected to receive optional settlement 2, 3, or 4, involving a life contingency of the beneficiary,** may, **if the beneficiary predeceases the member** or if the member marries and the former spouse was not named as beneficiary, **or, if a former spouse was named,** in the event of a **dissolution of marriage or a legal separation in which the judgment dividing the community property awards the total interest in the retirement system to the retired member,** or in an **annulment of marriage in which the court confirms the annulment,** elect to have the actuarial equivalent reflecting any selection against the fund resulting from the election as of the date of election of the allowance payable for the remainder of the member's lifetime under the optional settlement previously chosen applied to a lesser allowance during the member's remaining lifetime under one of the optional settlements specified in this article and name a different beneficiary.

(2) Notwithstanding paragraph (1), for an election pursuant to this section that occurs on or after January 1, 2014, a member may name the same beneficiary as previously designated, provided that the resulting benefit to the member and the named beneficiary otherwise meets the requirements of this section.

(b) The **election provided by this section is irrevocable and shall be made within 12 months following the death of the beneficiary who predeceased the member, within 12 months of the date of entry of the annulment of marriage or judgment dividing the community property of the parties, or within 12 months following marriage if the spouse is named as beneficiary.** The election shall become effective on the date specified on the election, provided that this date is not earlier than the day following receipt of the election in this system pursuant to this section.

(c) A member who has a qualifying event prior to January 1, 1988, and who fails to elect by January 1, 1989, or a **member who has a qualifying event on or after January 1, 1988, and who fails to elect within 12 months, shall retain the right to make an election** under this section. **However, this election shall become effective no earlier than 12 months after the date it is filed** with the board, **provided that neither the member nor the designated**

**beneficiary die prior to the effective date of the election.**

(d) This section shall not be construed to mean that designation of a new beneficiary causes the selection of an optional settlement. An optional settlement shall be selected by a member in a writing filed by the member with the board.

This section shall apply to any member who retires on or before December 31, 2017. [Emphasis added.]

7. Government Code section 21492 states:

The **designation of a beneficiary under the optional settlements** in Sections 21456, 21457, 21459, 21475, 21475.5, 21476, 21476.5, and 21477, and in Section 21458, if a benefit involving the life contingency of the beneficiary is provided, **is irrevocable from the time of the first payment on account of any retirement allowance.**

Otherwise a designation of beneficiary under this system is revocable at the pleasure of the member who made it. A member's marriage, dissolution of marriage, annulment of his or her marriage, the birth of his or her child, or his or her adoption of a child shall constitute an automatic revocation of his or her previous revocable designation of beneficiary. A member's termination of employment and withdrawal of contributions shall constitute an automatic



revocation of the previous revocable designation of beneficiary. Subsequent reemployment or reinstatement from retirement to employment covered by this system shall not reinstate the previous designation of beneficiary. Upon revocation of any beneficiary designation, a member may designate the same or another beneficiary by a writing filed with the board, except as otherwise provided in Section 21490. [Emphasis added.]

8. Government Code section 21629, lifetime monthly Survivor Continuance benefit, provides:

**Upon the death, after the effective date of retirement, of a state miscellaneous member** none of whose service rendered in state employment has been included in the federal system and whose retirement is effective on or after July 1, 1974, or of a school member or school safety member none of whose service rendered in school service or school safety service has been included in the federal system and whose retirement is effective on or after July 1, 1983, **a monthly allowance derived from employer contributions equal to 50 percent of the amount of his or her retirement allowance** as it was at his or her death and based on service credited to him or her as a member subject to this section but excluding any portion of the retirement allowance derived from additional contributions of the member **shall be paid to the surviving spouse**

**throughout life.** If there is no surviving spouse, or upon the death of the surviving spouse, the allowance shall be paid collectively to every unmarried child of the deceased member who has not attained age 18, or who is disabled by a condition which disabled that child prior to attaining age 18 and which has continued without interruption after age 18, until the disability ceases. If at the time of the retired member's death there is no eligible surviving spouse or children, the allowance shall be paid to a parent, or collectively to parents, of the deceased member dependent upon him or her for support. If on the effective date of retirement there is a person who will be eligible if the person survives, the member's election of an optional settlement other than the optional settlement in Section 21455 or 21474 shall apply only to a portion of his or her allowance as provided in Section 21451 or 21471.1. If on the effective date of his or her retirement the member has no surviving spouse, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

**"Surviving spouse," for purposes of service retirement** subject to this section, **means a husband or wife who was married to the member for a continuous period beginning at least one year prior to his or her retirement and ending on the date of his or her death** and, for purposes of disability retirement subject to this

section where the member retired on or after January 1, 1995, means a husband or wife who was married to the member on the date of his or her retirement and continuously to the date of his or her death. [Emphasis added.]

## **Evaluation**

9. Respondent did not establish by a preponderance of the evidence that, under applicable law, she is eligible to receive an Option 3W Lifetime Monthly benefit and/or a Lifetime Monthly Survivor Continuance benefit.

10. Concerning the Option 3W Lifetime Monthly benefit, in order to change the beneficiary from Linda Yarbrough to Respondent, the pertinent statutes require court documentation demonstrating that Decedent was entitled to receive 100 percent of his retirement benefit or court documentation demonstrating the marriage between Decedent and Linda Yarbrough was not valid. CalPERS has no court record showing the marriage between Decedent and Linda Yarbrough was not valid or annulled. CalPERS has no court record showing that Decedent was awarded 100 percent of his retirement benefit and that Linda Yarbrough was not entitled to any portion of his retirement benefit. In addition, Decedent never completed any elective forms changing the beneficiary for the Option 3W Lifetime Monthly benefit from Linda Yarbrough to Respondent. The CalPERS Touch Point Note, dated February 23, 1995, indicated that Decedent called to inquire about making this change but he never submitted the elective forms to do so nor did he submit any court documentation showing his marriage to Linda Yarbrough was invalid. The letter sent by Decedent to CalPERS in 2016, asking that Respondent receive his retirement benefit, hardly suffices as meeting the requirement of changing the beneficiary from Linda Yarbrough to Respondent. The

elective forms were required to make this change, as well as a court order awarding 100 percent of the retirement benefit to Decedent or a court order indicating the marriage between Decedent and Linda Yarbrough was invalid. None of these requirements were met to effectuate a change in beneficiary for the Option 3W Lifetime Monthly benefit.

Even if these requirements (elective forms and court orders) were met, the 12-month waiting period after the change in beneficiary request would not have been met because Decedent passed away 11 weeks after the date of his letter in 2016.

The only exception to these requirements (elective forms and court orders) is that Decedent could have requested to add Respondent as a beneficiary within 12 months of their marriage, which was considered a qualifying event – but there is no evidence this happened. Decedent did remove Linda Yarbrough from his health benefits and add Respondent to his health benefits on February 23, 1995, which was within a year of their marriage on December 23, 1994. However, there is no evidence that Decedent added Respondent as a beneficiary to his Option 3W Lifetime Monthly benefit within a year of their marriage.

11. Concerning the Survivor Continuous Monthly benefit, the pertinent statutes define a “surviving spouse” as having been married to the member (Decedent) one year prior to the member’s retirement, and for their marriage to have continued until the death of the member. Hence, Respondent is not eligible for this monthly benefit because Decedent retired on November 20, 1992, and Respondent and Decedent married on December 23, 1994 – more than two years after his retirement.

12. Finally, the only benefit that Respondent is entitled to receive is the Lump Sum – Retired Death benefit. This benefit is payable when any member passes away.

The member can designate any person to be paid this benefit. On May 14, 2016, Decedent designated, in writing, Respondent to receive this benefit, and it was paid to Respondent, accordingly, in the amount of \$2,000 less \$400 in taxes.

13. In sum, while Respondent's position is unfortunate, the statutes dictate that Respondent was properly determined to not be eligible for an Option 3W Lifetime Monthly benefit and/or a Lifetime Monthly Survivor Continuance benefit.

14. Evidence and arguments presented by the parties that were not referenced in this decision were nonetheless considered in reaching this decision. All arguments contrary to this decision are rejected.

## **ORDER**

The appeal of Respondent Pat Yarbrough to receive an Option 3W Lifetime Monthly benefit and/or a Lifetime Monthly Survivor Continuance benefit, is denied.

DATE: December 3, 2021



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings