

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 Benefits
Payable Upon the Death of Joseph R. Garcia by:**

**KAREN D. OLSON, Custodian of TRINITY JUSTICE OLSON-
GARCIA, a minor, and**

**MARIAN D. DANFORTH, also known as (aka) MARIAN DAVIS,
aka MARIAN KUBICEK, Respondents**

CalPERS No. 2020-0591

OAH No. 2020090210

PROPOSED DECISION

Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 20 and 21, 2022, by videoconference from Sacramento, California.

Austa Wakily, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Karen Olson¹ appeared and represented her daughter Trinity Justice Olson-Garcia, a minor (respondent Olson).

Marian Danforth aka Marian Davis aka Marian Kubicek (respondent Davis) appeared and represented herself.

Oral and documentary evidence was received. The record was held open for the parties to submit simultaneous closing and reply briefs. On November 28, 2022, complainant filed a Closing Brief, marked Exhibit 24, and respondent Olson filed a Closing Brief, marked Exhibit O. Neither party filed reply briefs. The matter was submitted for decision on December 12, 2022.

ISSUE

Is respondent Davis the sole beneficiary entitled to the Lifetime Option 2 monthly allowance of Joseph R. Garcia (decedent)?

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 8, 2002, the decedent began work as a Deputy Sheriff for the County of Del Norte, becoming a local safety member of CalPERS. On April 27, 2011,

¹ Ms. Olson is a member of the State Bar of California.

the County of Del Norte applied for industrial disability retirement (IDR) on the decedent's behalf, based on an on-the-job injury.

IDR APPLICATION

2. On April 29, 2011, the decedent signed a Uniform Statutory Form Power of Attorney (POA) and a California General Durable POA, naming "Marian D. Davis, fiancé[e]," as his agent or attorney-in-fact. Attached to each POA is a notary certification for the decedent's signatures. In each POA, the decedent grants respondent Davis "all powers listed" including "retirement plan transactions." In addition, on each POA, the decedent wrote: "I, Joseph Garcia, grant Marian Davis, who is my power of attorney the extended powers to accept and/or receive any of my property, in trust or otherwise, as a gift." Respondent Davis also signed both documents, acknowledging her appointment and responsibilities.

3. On May 9, 2011, the decedent completed a Disability Retirement Election Application (IDR Application), listing "Marian Danelle Davis, Fiancé[e]" as his individual lifetime and retired death beneficiary. At the time, the decedent was also father to three children: respondent Olson, a minor (2006); Buergin N. Garcia, a minor; and Alexis D. Garcia, age unknown. The decedent listed respondent Olson and Buergin Garcia under Survivor Continuance but made no other mention of his children in the IDR Application. The IDR Application also required the selection of a retirement payment option (e.g., Option 1, 2, 2W, 3, 3W, the unmodified allowance, or one of the Option 4 types), but the decedent left that section blank. Both the decedent and respondent Davis placed notarized signatures on the IDR Application. On the IDR Application, above the signature block, an admonition reads: "I certify, under penalty of perjury, that the information submitted hereon is true and correct to the best of my knowledge. I understand to cancel this application or to change the elected option or

beneficiary I must notify CalPERS before the mailing of my first full monthly retirement allowance check." Shortly thereafter, the decedent was incarcerated, and respondent Davis submitted the decedent's IDR Application to CalPERS.

4. On May 19, 2011, CalPERS received decedent's IDR Application. After review, CalPERS sent the decedent a letter requesting he select a retirement payment option. On June 22, 2009, respondent Davis completed a CalPERS Supplemental Retirement Information (SRI) form for the decedent, selecting Option 2 and identifying herself as the single lifetime and lump-sum retired death beneficiary. Respondent Davis signed the decedent's name, as well as her own, writing "power of attorney" after each signature and attached a notary certification for her signatures. Respondent Davis then submitted the SRI to CalPERS on the decedent's behalf. On June 29, 2011, CalPERS issued a letter granting the decedent's IDR and confirming his Option 2 monthly allowance of \$2,226.47, noting "your first regular warrant will arrive on or shortly after 8/02/2011." Thereafter, the decedent received the monthly allowance until his death.

5. In or about October 2011, the decedent and Ms. Davis broke off their engagement and ended their relationship. In or about November 2011, the decedent was released from jail.

REQUEST TO MODIFY BENEFICIARY

6. On March 3, 2015, CalPERS received from decedent an Application to Modify Option and/or Life Option Beneficiary (Modification Application) and Request for Option 2 or 3 Pop-Up Increase (Benefit Increase Request). The Modification Application, Section 1, requests the identification of a qualifying event, stating:

You can change your benefit option or life option beneficiary only if one of the following events occurs . . . : death of current life option beneficiary; marriage; establishment of domestic partnership; divorce, annulment or legal separation from spouse or ex-spouse who is your life option beneficiary; or dissolution or termination of domestic partnership from domestic partner or ex-domestic partner who is your life option beneficiary.

The decedent left Section 1 blank. In Section 2, the decedent listed respondent Olson as his new individual lifetime beneficiary.

7. In the Benefit Increase Request, Section 1, the decedent identified respondent Davis as his current Option 2 or 3 lifetime beneficiary. The Benefit Increase Request, Section 2 requests the identification of a qualifying event, stating:

Eligibility for Option 2 or 3 Pop Up increase is based on one of the following events . . . : death of current life option beneficiary; divorce, annulment or legal separation from spouse or ex-spouse who is your life option beneficiary; or dissolution or termination of domestic partnership from domestic partner or ex-domestic partner who is your life option beneficiary.

The decedent left Section 2 blank. In Section 3, the decedent checked a box requesting a Non-Spouse or Non-Domestic Partner Disclaimer of CalPERS Benefits form.²

8. On March 25, 2015, CalPERS sent the decedent a letter, rejecting his Modification Application for failing to state a qualifying event. CalPERS provided direction to the decedent stating: "You can modify your current retirement election and name a new beneficiary for a lifetime option allowance only after a qualifying event and provided your current lifetime beneficiary is not a former or legally separated spouse or domestic partner who has a community property interest in your CalPERS retirement." On or about April 13, 2015, CalPERS mailed a Disclaimer of CalPERS Benefits to decedent.³ CalPERS never received the signed disclaimer from respondent Davis.

9. On January 7, 2016, using his online CalPERS account, the decedent changed his lump-sum death beneficiary to respondent Olson.

² A non-spouse or non-domestic partner beneficiary can voluntarily disclaim entitlement to an option benefit. The form must be returned to CalPERS with the beneficiary's notarized signature and be approved by CalPERS.

³ The disclaimer provides, in the event of Mr. Garcia's death, respondent Davis is the beneficiary of the decedent's monthly retirement benefits, and to forever disclaim all rights and interest to the benefit, she need only sign and return the disclaimer to CalPERS.

DISBURSEMENT

10. On November 11, 2017, the decedent passed away. CalPERS sent letters to respondents Davis and Olson, identifying them as beneficiaries of decedent's retirement and death benefits, and requesting supplemental information. In December 2017, CalPERS received an Application for Retired Member/Payee Survivor Benefits (Benefit Application) from respondents Davis and Olson. Thereafter, CalPERS determined respondent Davis to be the decedent's individual lifetime beneficiary and began paying her the monthly allowance of \$2,564. On December 3, 2018, CalPERS paid the retired death benefit of \$500 to respondent Olson.

RESPONDENT OLSON APPEAL

11. On February 14, 2019, CalPERS received an Appeal and Request for Hearing from respondent Olson, challenging the designation of respondent Davis as the decedent's individual lifetime beneficiary. On March 25, 2019, CalPERS received a Demand for Correction of Error from respondent Olson, seeking relief under Government Code section 20160, and requesting that CalPERS change the decedent's individual lifetime beneficiary from respondent Davis to respondent Olson. On July 5, 2019, CalPERS received a Government Tort Claim from respondent Olson, for failure to identify her as the decedent's individual lifetime beneficiary. Finally, on July 19, 2019, respondent Olson filed a civil complaint against respondent Davis, seeking damages and all equitable relief available (Del Norte Case No. CVPI-2019-1199), alleging respondent Davis fraudulently identified herself as the individual lifetime beneficiary on the decedent's IDR Application, when the decedent's true intent was always to make respondent Olson his individual lifetime beneficiary.

12. On January 15, 2020, CalPERS sent respondent Olson a determination letter, finding the decedent's IDR Application, naming respondent Davis as the individual lifetime beneficiary, to be valid. CalPERS also indicated that there was no evidence compelling a change to the decedent's beneficiary designations. On February 2, 2020, respondent Olson filed an Appeal and Request for Hearing. On September 1, 2020, complainant filed a Statement of Issues. This hearing followed.

Respondent Olson's Case

13. Respondent Olson alleges CalPERS erred in finding respondent Davis to be the decedent's individual lifetime beneficiary. Respondent Olson supports her position with several arguments. First, the decedent always intended respondent Olson to be his individual lifetime beneficiary. To that end, respondent Olson offered several writings she attributes to the decedent, stating his desire for her to be his individual lifetime beneficiary and not respondent Davis. She also offered testimony from friends who spoke to the decedent and heard him say he never wanted respondent Davis to be his individual lifetime beneficiary, but always intended to leave his retirement benefits to respondent Olson. Second, respondent Davis fraudulently changed the decedent's IDR Application, without the decedent's knowledge or permission, by replacing respondent Olson's name as the individual lifetime beneficiary with herself. Respondent Olson contends the change is impermissible under the Probate Code, because a POA does not have the specific authority to change a beneficiary designation on a retirement application. Third, the IDR Application is void because: (1) respondent Davis misrepresented herself when she signed the IDR Application as the decedent's spouse and/or registered domestic partner, when she was neither, and the decedent was still married to Diane Bonilla; and (2) the IDR Application did not include the proper signatures and documentation (i.e., Diane Bonilla, the decedent's current

spouse, was required to sign Sections 5 (spouse consenting to the designation of a lifetime beneficiary other than themselves) and 7 (requires either the spouse's signature, or the decedent's signature under the Spousal Consent Member Acknowledgement and the signed form entitled Justification of Absence of Spouse's or Registered Domestic Partner's Signature).⁴

Respondent Davis's Case

14. Respondent Davis made no objection to the CalPERS determination naming her the individual lifetime beneficiary of decedent's retirement. In 2011, respondent Davis was engaged to the decedent. She believed she would marry the decedent when he was released from jail. At the time, respondent Davis had no knowledge of Diane Bonilla or her relationship with the decedent.

15. Respondent Davis testified at hearing. She authenticated her signature and the decedent's signature on the IDR Application and the two POA forms. She denied making any changes to the decedent's documents without his express permission and specifically denied removing respondent Olson's name from any document. Even after the decedent was incarcerated, respondent Davis explained, she would bring any and all issues to him, so he could make the final decision. For example, respondent Davis brought the letter from CalPERS regarding the option selection. She read the letter and the SRI form to the decedent. She then completed the form as the decedent directed her to and submitted the same to CalPERS.

⁴ Diane Bonilla testified at hearing and made no claim to the decedent's retirement.

16. Respondent Davis denied ever receiving the Disclaimer of Benefits from CalPERS or the decedent. When she received the letter from CalPERS, identifying her as a beneficiary of the decedent, respondent Davis submitted the required paperwork. She believes CalPERS completed an investigation and determined she was the rightful beneficiary.

Analysis

17. When all the evidence is considered, CalPERS correctly determined respondent Davis was the decedent's individual lifetime beneficiary. Respondent Olson has the burden of proving the CalPERS's determination was incorrect; she did not. First, respondent Olson offered writings and testimony allegedly recounting the decedent's intentions, but the writings were not authenticated and are hearsay, as are the secondhand witness statements. No independent legal finding can be made from such evidence. (Gov. Code, § 11513.) Second, the decedent's intentions, even if true, are irrelevant when a valid legal document exists, and in this case, the decedent's IDR Application is valid. The decedent and respondent Davis both signed the IDR Application, with a notary certification; the decedent named respondent Davis as his individual lifetime beneficiary in the IDR Application; and he selected respondent Davis as his POA, authorizing her to submit the SRI and select Option 2 for his retirement payment. Further, the signatures on the IDR Application remain valid whether respondent Davis is/was characterized as the decedent's spouse, domestic partner, fiancée, or friend; the beneficiary and/or POA need not be related to the decedent. Notwithstanding the above, respondent Olson also contends that the decedent was still married to Diane Bonilla at the time he submitted his IDR Application, thereby requiring her signature. However, respondent Olson offered no evidence to support this theory (e.g., a valid marriage license, no legal separation filings, etc.) and Ms.

Bonilla filed no claim with CalPERS seeking a portion of the decedent's retirement as community property and/or under a dissolution agreement. In addition, respondent Olson does not have standing to make such a claim on Ms. Bonilla's behalf.

18. Third, respondent Olson offered no evidence to support a finding of fraud by respondent Davis. The decedent signed and notarized two POA certifications, providing respondent Davis with authority to act for the decedent on all things including retirement plan transactions. When respondent Davis submitted the decedent's IDR Application and SRI, she did so legally with the authority of the decedent. In addition, respondent Olson provided no evidence that respondent Davis changed the decedent's beneficiary selection before submitting his IDR Application; but if respondent Davis did change the decedent's beneficiary designation, she had the authority to do so under the POA certifications.

19. Finally, the decedent was aware of the process to designate beneficiaries with CalPERS: individual lifetime beneficiaries and lump-sum death beneficiaries. The decedent was repeatedly informed that his individual lifetime beneficiary was irrevocable, with a few exceptions, but he could change his lump-sum beneficiary at any time. More specifically, the IDR Application included an admonition above his signature stating: "I understand to cancel this application or to change the elected option or beneficiary I must notify CalPERS before the mailing of my first full monthly retirement allowance check." Then, in or about August 2011, the decedent began receiving monthly retirement payments. In 2015, he submitted a Request to Modify his individual lifetime beneficiary and was informed by CalPERS that he needed a qualifying event to remove respondent Davis, but thereafter, the decedent did not act to meet any of the required criteria. Also in 2015, the decedent submitted a Request for Increase and asked for a disclaimer of benefits for his individual lifetime

beneficiary, a non-spouse or non-domestic partner; and CalPERS provided the decedent with the same. The Request for Increase form and the Disclaimer of Benefits both clearly state that the beneficiary must place a notarized signature on the Disclaimer of Benefits and return it to CalPERS for approval. Respondent did not act to ensure respondent Davis signed and submitted the Disclaimer of Benefits to CalPERS. Lastly, on January 7, 2016, the decedent changed his lump-sum death beneficiary to respondent Olson via his online CalPERS account. Given the above, the decedent was aware of the requirements to change his individual lifetime beneficiary, and prior to his death, he did not meet the requirements to do so.

20. In sum, respondent Olson did not submit sufficient evidence to overturn the CalPERS determination. Consequently, the CalPERS determination naming respondent Davis as the decedent's individual lifetime beneficiary, Option 2, should be upheld. In or about August 2011, the decedent began receiving retirement benefits in or about August 2011. Thereafter, the decedent had no eligible, qualifying event allowing him to remove respondent Davis as his individual lifetime beneficiary and no Disclaimer of Benefits was submitted.

LEGAL CONCLUSIONS

1. CalPERS is governed by the provisions of the Public Employees' Retirement Law (PERL), Government Code section 20000, et seq. Pursuant to Government Code section 20134, the hearing in this matter was conducted under the Administrative Procedure Act (APA), Government Code section 11500 et seq.

2. As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of

going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051). Respondent Olson has the burden of proving the decedent's individual lifetime beneficiary designation to respondent Davis is invalid, and that respondent Olson is entitled to the decedent's Option 2 retirement benefits.

3. "Optional settlement 2 consists of the right to have a retirement allowance paid to a member until his or her death and thereafter to his or her beneficiary for life." (Gov. Code, § 21456.) "The designation of a beneficiary under [Option 2 and 3, and flexible beneficiary Option 4] is irrevocable from the time of the first payment on account of any retirement allowance." (Gov. Code, § 21492.)

4. As set forth in the Factual Findings as a whole, CalPERS correctly determined respondent Davis to be the sole beneficiary entitled to the Lifetime Option 2 monthly allowance of the decedent. Respondent Olson did not submit sufficient evidence to establish the CalPERS determination should be overturned. Consequently, respondent Olson's appeal must be denied.

ORDER

The appeal of respondent Karen Olson, on behalf of Trinity Justice Olson-Garcia, a minor, is DENIED. The Option 2 retirement benefits of the decedent shall be paid to respondent Marian Danforth aka Marian Davis aka Marian Kubicek.

DATE: December 23, 2022



ERIN R. KOCH-GOODMAN

Administrative Law Judge

Office of Administrative Hearings