

ATTACHMENT A
PROPOSED DECISION

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

**In the Matter of the Appeal of Survivor Benefits Payable
Upon the Death of Harry W. Arnold by:**

MARIE E. ARNOLD, Respondent

Agency Case No. 2024-0584

OAH No. 2024090287

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on December 30, 2024, from Sacramento, California.

Mehron Assadi, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Marie E. Arnold represented herself.

Evidence was received, and the record was left open to allow respondent to submit additional documents and CalPERS to respond to those documents. Respondent did not submit any additional documents by the specified deadline. The record was closed and the matter submitted for decision on January 8, 2025.

FACTUAL FINDINGS

Background

1. Harry W. Arnold (decedent) worked for the California Highway Patrol (CHP). He was a state safety member of CalPERS by virtue of such employment.

2. Decedent retired for disability from the CHP. He elected to receive an Optional Settlement 2 monthly allowance in lieu of an unmodified monthly allowance. Upon his death, CalPERS would continue paying his monthly allowance to his designated beneficiary for the remainder of the beneficiary's life. Had decedent elected to receive an unmodified allowance, he would have received a larger monthly allowance during his lifetime, but CalPERS would have ceased paying that allowance upon his death. He began receiving his monthly allowance on June 1, 1969.

3. Decedent was married to Patricia Arnold when he retired from the CHP. He named her as the sole beneficiary of any CalPERS benefits payable upon his death. Their marriage was terminated by a judgment of dissolution entered July 5, 1978. During the divorce proceedings, Patricia Arnold waived all interest in decedent's CalPERS benefits.

4. Decedent married Aida Arnold in November 1982. She has two children from a prior marriage, respondent and her older brother. Decedent adopted both children.

5. Decedent named Aida Arnold as his Optional Settlement 2 beneficiary on November 10, 1988. He died on September 19, 1995. The following month, CalPERS notified Aida Arnold she was decedent's designated beneficiary for his prorated monthly allowance (for the 18 days in September prior to his death) and retired death

benefit. The following day, CalPERS notified her she was also his designated beneficiary for his monthly allowance.

6. Aida Arnold submitted a claim to CalPERS for all survivor benefits to which she was entitled upon decedent's death. CalPERS approved her claim on October 24, 1995. She subsequently designated respondent and her brother as the primary and secondary beneficiary, respectively, of the prorated monthly allowance payable upon Aida Arnold's death (the amount payable for the days of the month in which she died immediately preceding her death).

7. On December 15, 2023, respondent sent CalPERS a form designating her as decedent's primary beneficiary along with correspondence stating she was entitled to, and therefore applying for, half the survivor benefits payable upon decedent's death. She sent two follow-up letters the following month and included documents purporting to support her claim for half the survivor benefits. Decedent's will was one of the documents provided.

8. CalPERS responded to respondent's claim on May 1, 2024. It explained:

A Post-Retirement Survivor Allowance (PRSA) is a benefit provided to members' eligible survivors either by statute or contract. Members cannot directly designate beneficiaries for PRSAs. For local agency employees, the eligibility criteria for a PRSA are set forth in statute depending upon which benefit the member's employer contracted for. State employees' PRSA benefits are enumerated solely in statute. Because Mr. Arnold was a state safety member, the

applicable statutes are California Government Code (GC) sections 21633 and 21624.

GC 21633 explicitly provides for a PRSA for "patrol and state safety members retired for nonindustrial disability." This does not apply to Mr. Arnold. GC 21624 likewise excludes Mr. Arnold because he retired on June 1, 1969, whereas the statute only applies to those members who retired after April 1, 1973.

All benefits due to Mr. Arnold's survivors were distributed at the time of his death pursuant to Mr. Arnold's retirement election and beneficiary designation and in accordance with the California Government Code. No further benefits are payable on his behalf.

9. CalPERS sent respondent a follow-up letter on May 30, 2024. It identified the following benefits that were payable upon decedent's death: (1) an Optional Settlement 2 monthly allowance; (2) a retired death benefit (\$2,000); and (3) a pro rata share of the monthly allowance for the 18 days in September prior to his death (\$1,556.02). CalPERS explained respondent was not entitled to any of those benefits because she "[was] not designated as a primary beneficiary in any of Harry W. Arnold's beneficiary requests."

10. CalPERS also explained decedent's will was insufficient to designate respondent as his Optional Settlement 2 beneficiary. First, decedent created the will after he applied for disability retirement and designated Aida Arnold as his beneficiary. Second, CalPERS may accept a will as a written designation of a beneficiary only when

the will clearly indicates the testator's intent to make such a designation. The testator may express the requisite intent by expressly identifying his CalPERS benefits as an asset to be administered by the will. Decedent did not expressly identify any of his CalPERS benefits in his will. The only assets identified were: (1) "any retirement fund registered in [Aida Arnold's] name"; (2) real property located in the Philippines and the State of Washington; and (3) "the rest and residue of [decedent's] estate."

11. A testator may also express his intent to designate a beneficiary in his will by expressly disinheriting an otherwise entitled beneficiary. Aida Arnold was decedent's designated beneficiary when he created his will. He did not expressly disinherit her in his will. Indeed, he bequeathed all his assets to her, provided she survived him, except "the rest and residue of [his] estate" which he bequeathed to the trustee of the Harry Arnold, 1982 Trust.

12. CalPERS explained it paid the prorated Optional Settlement 2 allowance and the retired death benefit to Aida Arnold in 1995. It has been paying her the Optional Settlement 2 monthly allowance since then. Respondent was required to make any claim that those benefits were erroneously paid to Aida Arnold no later than six months from her discovery of the error. That time has long since lapsed.

13. Lastly, CalPERS explained Probate Code section 5000, subdivision (b)(1), provides for the nonprobate transfer of pension benefits by a written designation of a beneficiary. Such written designation is not subject to the requirements for execution of the will. (*Id.* at subd. (a).) CalPERS notified respondent of her right to appeal the denial of her claim for decedent's CalPERS benefits.

14. Respondent timely appealed CalPERS's decision. On August 22, 2024, Sharon Hobbs, Chief of CalPERS's Disability and Survivor Benefits Division, signed the

Statement of Issues. The Statement of Issues identified the sole issue on appeal as “whether CalPERS correctly determined that Respondent is not entitled to any portion of the survivor benefits payable upon Decedent’s death.”

Hearing Testimony

LETICIA BONILLAS

15. Leticia Bonillas is an Associate Governmental Program Analyst in CalPERS’s Exceptional Processing Unit, Disability and Survivor Benefits Division. Her duties include reviewing and determining disputed claims for survivor benefits. She reviewed decedent’s CalPERS member file.

16. Decedent chose to receive an Optional Settlement 2 monthly allowance when he retired. That settlement option provided him a smaller monthly allowance in exchange for the ability to designate a beneficiary to continue receiving the allowance for life after decedent’s death. An unmodified allowance would have provided decedent a higher monthly allowance, but the allowance would have stopped upon his death.

17. A member’s designation of an Optional Settlement 2 beneficiary is generally irrevocable upon payment of the first monthly allowance. However, an exception applies if a member designated his wife as the beneficiary, their marriage was subsequently terminated, and the member was awarded the entire interest in his CalPERS benefits. In that instance, the member may designate a new Option Settlement 2 beneficiary.

18. When decedent applied for disability retirement and elected Optional Settlement 2 benefits, he designated his then-wife Patricia Arnold as his beneficiary.

They subsequently divorced, and decedent was awarded the entire interest in his CalPERS benefits – an exception to the general rule that the designation of an optional settlement beneficiary is irrevocable. Decedent later married Aida Arnold and designated her as his beneficiary. His designation was irrevocable. Therefore, CalPERS approved Aida Arnold’s claim for the prorated Optional Settlement 2 allowance and retired death benefit upon decedent’s death. It also began paying her an Optional Settlement 2 allowance each month. Upon Aida Arnold’s death, the monthly allowance will cease. Under her current beneficiary designation, the pro rata amount due for the number of days she was alive during the month in which she dies will be paid to respondent, if alive, otherwise to respondent’s brother.

19. Respondent submitted a copy of decedent’s will. Ms. Bonillas reviewed the will and concluded it was insufficient to designate respondent as a beneficiary of the survivor benefits. She explained the will says nothing about decedent’s CalPERS benefits. Additionally, the will did not disinherit Aida Arnold, decedent’s designated beneficiary.

RESPONDENT

20. Respondent criticized CalPERS for writing letters that were unclear to her. Although she readily admitted Aida Arnold is the primary beneficiary of the survivor benefits, she also explained all the letters denying her survivor benefits led her to think she has “absolutely no right” to any benefit. After hearing Ms. Bonillas’s testimony, she now understands she has been designated to receive any benefits payable upon Aida Arnold’s death, provided she is still alive.

21. Respondent insisted decedent’s will is valid and enforceable, and she claimed entitlement to half the survivor benefits pursuant to its terms. Although she

conceded the will does not expressly mention CalPERS benefits, she pointed out that it references pension plans.

Analysis

22. Respondent bears the burden of proving her entitlement to half of decedent's CalPERS survivor benefits. She failed to do so. Decedent's written designation of Aida Arnold as his beneficiary was valid and remained in effect upon his death. Respondent did not produce any evidence to the contrary.

23. Respondent's claim to half the CalPERS survivor benefits pursuant to decedent's will is devoid of any evidentiary support. First, CalPERS persuasively explained in its May 30, 2024 correspondence that CalPERS survivor benefits may be transferred outside of probate through a valid beneficiary designation. (See *Estate William Stanley Petersen v. Orr* (1994) 28 Cal.App.4th 1742, 1746 [property excluded from probate includes that which is disposed of by a written agreement transferring property upon owner's death].) Decedent provided for such transfer when he designated Aida Arnold his beneficiary.

24. Second, decedent's will did not bequest his CalPERS benefits to anyone, let alone respondent. Indeed, such benefits were not even mentioned in the will. Respondent admitted as much. Her reliance on the language referencing "pension plan(s)" ignores the preceding qualifying language in decedent's will: "I give to [Aida Arnold] all of my interest in and to any retirement fund registered in her name." Even if such language could be interpreted as including decedent's CalPERS benefits, the will bequeathed decedent's "pension plan(s)" solely to Aida Arnold.

25. Last, respondent failed to identify any correctable error or omission that led to CalPERS paying Aida Arnold the survivor benefits. As previously discussed, Aida

Arnold was decedent's designated beneficiary when he died. Therefore, she was entitled to such benefits.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Respondent has the burden of proving she is entitled to half of decedent's survivor benefits. (Gov. Code, § 20160, subd. (d) ["The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b)"]; see *In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has "a built-in bias in favor of the status quo," and the party seeking to change the status quo has the burden "to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing"].) She must meet her burden by a preponderance of the evidence. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence"].) This evidentiary standard requires respondent to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, respondent must prove she is more likely than not entitled to half the survivor benefits.

Applicable Law

MONTHLY RETIREMENT ALLOWANCE

2. When a member applies for retirement, he may elect to receive an unmodified allowance calculated pursuant to Government Code section 21350. The California Supreme Court described the unmodified allowance as follows:

Members of CalPERS, once vested, participate in a defined benefit retirement plan, which supplies a monthly retirement allowance under a formula comprising factors such as final compensation, service credit (i.e., the credited years of employment), and a per-service-year multiplier. The retirement allowance consists of an *annuity* (which is funded by member contributions deducted from the member's paycheck and interest thereon) and a *pension* (which is funded by employer contributions and which must be sufficient, when added to the annuity, to satisfy the amount specified in the benefit formula). (Gov. Code, §§ 21350, 21362.2, subd. (a), & 21363.1, subd. (a).)

(In re Marriage of Sonne (2010) 48 Cal.4th 118, 121, italics original.)

3. Alternatively, "a member . . . may elect . . . to have the actuarial equivalent of his . . . retirement allowance as of the date of retirement applied to a lesser retirement allowance, in accordance with one of the optional settlements specified in this article." (Gov. Code, § 21451.) Optional Settlement 2 is one such optional settlement. It "consists of the right to have a retirement allowance paid to a

member until his . . . death and thereafter to his . . . beneficiary for life." (Gov. Code, § 21456.)

4. The designation of an Optional Settlement 2 beneficiary "is irrevocable from the time of the first payment on account of any retirement allowance." (Gov. Code, § 21492.) However, if the member designated his spouse as his beneficiary, they subsequently divorced, and the member was awarded the total interest in his CalPERS benefits, he is entitled to elect one of the optional settlements and designate a new beneficiary. (Gov. Code, § 21462, subd. (a)(1).) The designation of a new beneficiary "is irrevocable and shall be made . . . within 12 months of the date of entry of the . . . judgment dividing the community property of the parties." (*Id.* at subd. (b).) A beneficiary entitled to receive a member's monthly allowance upon the member's death "may designate a beneficiary to receive the pro rata allowance payable following . . . her death." (Gov. Code, § 21491.)

POST-RETIREMENT SURVIVOR ALLOWANCE

5. "Upon the death of a patrol . . . or state safety member whose retirement for . . . disability is effective on or after April 1, 1973," the surviving spouse is entitled to a lifetime "monthly allowance derived from employer contributions equal to a percentage of the amount of his . . . retirement allowance as it was at his . . . death based on service credited to him . . . as a member subject to this section, but excluding any portion of the retirement allowance derived from additional contributions of the member." (Gov. Code, § 21624.) This PRSA is also available to the surviving spouse of a patrol or state safety member who retired for nonindustrial disability prior to April 1, 1972, and did not elect Optional Settlement 2 benefits. (Gov. Code, § 21633.)

6. Decedent's death did not qualify for payment of a PRSA under either statute. He retired for disability prior to April 1, 1973. (Gov. Code, § 21624.) He elected Optional Settlement 2 benefits. (Gov. Code, § 21633.)

RETIRED DEATH BENEFIT

7. When a retired state member dies while receiving a monthly retirement allowance, his designated beneficiary is entitled to a death benefit in the sum of \$2,000. (Gov. Code, § 21623, subd. (a).) "State member" includes "patrol members" and "state safety members." (Gov. Code, § 20370, subd. (b)(3), (4).)

AUTHORITY TO CORRECT AN ERROR OR OMISSION

8.....CalPERS's Board of Administration has discretion to "correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member....." (Gov. Code, § 20160, subd. (a).) Such discretion "shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164." (*Id.* at subd. (c).)

Conclusion


9. The survivor benefits payable upon decedent's death consisted of: (1) the prorated monthly benefit for the 18 days of September preceding his death (\$1,556.02); (2) the retired death benefit (\$2,000); and (3) the lifetime Optional Settlement 2 monthly allowance. Decedent properly designated Aida Arnold as his beneficiary. His will did not supersede his beneficiary designation. As such, CalPERS properly paid the prorated monthly benefit and retired death benefit to her, and it has been properly paying the Optional Settlement 2 benefit to her each month.

Respondent failed to prove Aida Arnold received those benefits due to a correctable error or omission. Therefore, respondent's appeal should be denied.

ORDER

Respondent Marie E. Arnold's appeal from CalPERS's determination that Aida Arnold is entitled to payment of decedent's survivor benefits is DENIED.

DATE: January 22, 2025


Coren D. Wong (Jan 22, 2025 15:43 PST)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings