

Mail Date: DEC 17 2008

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF DAVID PHILLIP (D)
DOCKET NO. 2007-12
CLAIM OF VERONA PHILLIP

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Opinion and Recommendation of the Hearing Examiner in the above-referenced matter. We note that none of the parties filed Exceptions to the Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the Hearing Examiner's Findings of Fact, Discussion, Conclusions of Law, and Recommendation. Accordingly, we hereby adopt them as our own.

IT IS HEREBY ORDERED that Claimant's request to be designated as a beneficiary of Decedent's retirement account is DENIED; and that Decedent's death benefit is payable to Intervenor, Rahim Phillip and Ayenda Lambert, as designated by Decedent in Decedent's most recently filed, processed and acknowledged Nomination of Beneficiary form dated May 28, 1987.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: DEC 17 2008

By: Melva S. Vogler
Melva S. Vogler, Chairman

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM**

IN RE:

ACCOUNT OF DAVID PHILLIP (D)
CLAIM OF VERONA PHILLIP

LEGAL OFFICE AUG 28 2008

DOCKET NO. 2007-12

Michael L. Bangs
Hearing Examiner
429 South 18th Street
Camp Hill, PA 17011

February 24, 2008

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Counsel for Claimant

Rahim Phillip,
Pro se Intervenor

Ayenda Lambert
Pro Se Intervenor

OPINION OF THE HEARING EXAMINER

Findings of Fact

1. David A. Phillip ("Decedent") was a member of the Public School Employees' Retirement System ("PSERS") by virtue of his employment with the Philadelphia City School District. (Exhibit PSERS – 6)

2. David Phillip died on April 18, 2007, while still an active member of PSERS. (N.T. 25, Exhibit PSERS – 8)

3. Verona Phillip ("Claimant") was David Phillip's wife since their wedding of November 13, 1998. (N.T. 7-8, Exhibit Claimant - 1)

4. On April 21, 1983, Decedent completed a Nomination of Beneficiaries Form for PSERS, naming his children, Rahim Phillip and Ayenda Phillip as equal principal beneficiaries. (Exhibit PSERS -1)

5. On May 28, 1987, Decedent completed another Nomination of Beneficiaries Form for PSERS, again naming his children, Rahim Phillip and Ayenda Lambert as equal principal beneficiaries, while making some other changes from the earlier form. (Exhibit PSERS - 2)

6. All of Decedent's mail was sent to his mother's house at Redacted Redacted, rather than Redacted Redacted Redacted address where he resided with Claimant. (N.T. 13, 18, 37)

7. From 2002 through 2006, PSERS sent yearly Account Statements to the address Decedent had provided on Gratz Street. (N.T. 36-37, Exhibits PSERS - 3-7)

8. Each of the Account Statements named "Phillip, Rahim D T" and "Phillip, Ayenda M L" as Decedent's Principal Beneficiaries. (N.T. 36, Exhibits PSERS 3-7)

9. After Decedent was hospitalized in January of 2007, Claimant changed the mailing address with the school district so that they would send Decedent's mail to their address on North 11th Street. (N.T. 20-21)

10. After receiving notification of Decedent's death, on May 3, 2007, PSERS sent a letter to his address of file, Redacted, informing the "Phillip Family" that in order to

process his account, they would need a copy of his death certificate. (N.T. 38, Exhibit PSERS – 8A)

11. This letter was sent to the address on file, as per PSERS procedure, because the beneficiaries form was twenty years old, and therefore PSERS could not be sure that the addresses of the beneficiaries were still correct. (N.T. 38)

12. On May 21, 2007, PSERS sent a letter to both named beneficiaries, Rahim Phillip and Ayenda Lambert, informing them that they were beneficiaries, and providing them with an approximate amount of money that they would be receiving. (N.T. 39, 41, Exhibits PSERS – 9, 10)

13. Pursuant to Claimant's authorization for a rollover and request for a specific option for death benefits, PSERS sent her a letter, dated June 15, 2007, informing her that because she was not a named beneficiary, she would not be receiving any benefit from Decedent's account, but that she could request an administrative hearing if she disagreed with that decision. (N.T. 41-42, Exhibit PSERS – 12)

14. On June 15, 2007, PSERS also sent letters to Rahim Phillip and Ayenda Lambert, informing them that Claimant may be contesting the death benefit, and therefore their settlement may be delayed. (N.T. 42, Exhibits PSERS – 13, 14)

15. On June 19, 2007, Claimant filed a Request for Administrative Hearing on the above issue.

16. Rahim Phillip and Ayenda Lambert filed Petitions to Intervene in the Administrative Hearing requested by Claimant, which were granted by Order of the Public School Employees' Retirement Board on August 17, 2007.

17. On February 24, 2008, a hearing on the above matter was held before Independent Hearing Examiner Michael L. Bangs, Esquire.

Discussion

PSERS was created by the legislature and can grant no rights beyond those specifically set forth in the Retirement Code. Hughes vs. PSERS, 622 A.2d 701 (Pa. Cmwlth. 1995); alloc. den. 668 A.2d 1139 (Pa. 1995). While a member is entitled to a liberal construction of the Retirement Code, he has only those rights that were created by the retirement benefit statutes, and none beyond. Cosgrove v. State Employees' Retirement Board, 665 A.2d 870 (Pa. Cmwlth. 1995).

According to the Retirement Code, "every member shall nominate a beneficiary by written designation filed with the board to receive the death benefit or the benefit payable under the provisions of Option 1. Such nomination may be changed at any time by the member by written designation filed with the board...." 24 Pa.C.S. § 8507(e). "Beneficiary" is defined as: "The person or persons last designated in writing to the board by a member to receive his accumulated deductions or a lump sum benefit upon the death of such member." 24 Pa.C.S. § 8102. Retirement benefits shall be paid according to the following formula:

Any member, other than an annuitant, who dies and was eligible for an annuity in accordance with section 8307(a) or (b) (relating to eligibility for annuities) shall be considered as having applied for an annuity to become effective the day before his death; and, in the event he has not elected an option, it shall be assumed that he elected Option 1 *and assigned as beneficiary that person last designated in writing to the board.*

24 Pa.C.S. § 8347(a) (emphasis added).

The burden of proof and persuasion is on the Claimant. Wingert v. State Employees' Retirement Board, 138 Pa. Cmwlth. 43, 589 A.2d 269 (1991). In this case, Claimant seeks to

“invalidate” Decedent’s last completed nomination of beneficiary’s form filed with BSERS dated May 29, 1977, naming his children Rahim Phillip and Ayenda Lambert, as equal principal beneficiaries.

In support of her request, Claimant testified that Decedent had assumed that upon their marriage and their consequent addition of her name to his medical plan and insurance, she would automatically be added as a beneficiary to his account. However, the facts of the case belie this assertion. Decedent received annual forms, for a period of at least five years from 2002 through 2006, indicating that the Intervenors (his children) were the named beneficiaries of his PSERS account. Additionally, it is apparent that Decedent knew how to obtain and make changes to the beneficiary form, as he did so in 1987. Decedent originally completed a beneficiary form in 1983, naming his children (the Intervenors) as beneficiaries. Then, in 1987, he completed a new form, again naming his children as beneficiaries (though changing his daughter’s last name), but adding a contingent beneficiary, and changing the Guardian. Thus, all available evidence, other than Claimant’s testimony, indicates that Decedent knew who his beneficiaries were, and knew how to change, delete, or add to them if he so desired.

Even if we accept Claimant’s testimony of Decedent’s oral representations, those oral representations are not sufficient to change beneficiaries when the beneficiaries were not actually changed in writing. Hess vs. Public School Employees’ Retirement Board, 460 A.2d 1231 (Pa. Cmwlth. 1983). The only way to overcome the written beneficiary designation is to prove that “[d]ecedent made all possible efforts to designate the new beneficiary prior to [his] death...” See e.g. Greene v. Public Sch. Empls. Ret. Sys., 878 A.2d 153, 158, 2005 Pa. Commw. LEXIS 332 (2005). Claimant provided no evidence that Decedent made any actual effort to change his

written beneficiary designation and as such has failed to meet her burden of proof and persuasion on this point. Wingert v. State Employees' Retirement Board, 138 Pa. Cmwlth. 43, 589 A.2d 269 (1991). PSERS simply cannot invalidate a properly filed nomination of beneficiary form that complies in all respects with the mandates of the Retirement Code.

Claimant also argues that the Retirement Code somehow violates her rights of Due Process and Equal Protection under the U.S. and Pennsylvania Constitutions. Claimant's reliance on the rights of Due Process and Equal Protection under the U.S. and Pennsylvania Constitutions is misplaced. A state may recognize differences and create classifications as long as it treats similarly situated people alike. See, e.g., Burns v. Public Sch. Emples. Ret. Bd., 853 A.2d 1146, 1152, 2004 Pa. Commw. LEXIS 532 (2004). Because the challenged statute, requiring written beneficiary designation, does not implicate a suspect class or burden a fundamental right, it will be upheld if it is rationally related to a legitimate governmental interest. Id. In this case, the government has a legitimate interest in acting in conformity with the wishes of the school employees as to the disposition of their accounts following their death. Thus, Claimant's constitutional rights have not been violated.

Conclusions of Law

1. PSERS was created by the legislature and can grant no rights beyond those contained in the Retirement Code. Hughes vs. PSERS, 622 A.2d 701 (Pa. Cmwlth. 1995); *alloc. den.* 668 A.2d 1139 (Pa. 1995).

2. Claimant has only those rights recognized by statute and none beyond. Bittenbender v. State Employees' Retirement Board, 154 Pa. Cmwlth. 11, 622 A.2d 403 (1992).

3. Claimant bears the burden of establishing those facts upon which she relies in order to prevail. Wingert v. State Employees' Retirement Board, 138 Pa. Cmwlth. 43, 589 A.2d 269 (1991).

4. The Retirement Code states that "every member shall nominate a beneficiary by written designation filed with the board to receive the death benefit or the benefit payable under the provisions of Option 1. Such nomination may be changed at any time by the member by written designation filed with the board...." 24 Pa.C.S. § 8507(e).

5. "Beneficiary" is defined by the Retirement Code as "the person or persons last designated in writing to the board by a member to receive his accumulated deductions or a lump sum benefit upon the death of such member." 24 Pa.C.S. § 8102.

6. Oral representations are insufficient to change a properly filed written nomination of beneficiary. Hess vs. Public School Employees' Retirement Board, 460 A.2d 1231 (Pa. Cmwlth. 1983).

7. The beneficiary designation on file with PSERS can only be overcome by proof that "Decedent made all possible efforts to designate [a] new beneficiary prior to [his] death." Greene v. Public Sch. Emples. Ret. Sys., 878 A.2d 153, 158, 2005 Pa. Commw. LEXIS 332 (2005).

8. The last written beneficiary designation completed by Decedent and filed with PSERS indicates that the Intervenor, Decedent's children, are the beneficiaries of his account.

9. Claimant did not meet the burden of proof that Decedent made all possible efforts to change his beneficiary designation filed with PSERS prior to his death.

10. Because the state has a legitimate interest in ensuring the disposition of a school employee's retirement account according to his expressed written wishes, there was no infringement of Claimant's constitutional rights.

Recommendation

This Hearing Examiner recommends that the Decedent's last filed nomination of beneficiary form nominating his two children, Rahim Phillip and Ayenda Phillip, as beneficiaries be confirmed and deny Claimant's request to invalidate this nomination of beneficiary form or otherwise add her as an additional beneficiary.

Respectfully submitted,

BY: Michael L Bangs
MICHAEL L. BANGS
Hearing Examiner

Date: 8-26-08