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

IN RE: ACCOUNT OF THOMAS W. BAKER (D)  
DOCKET NO. 2010-14  
CLAIM OF MICHELLE CUNNINGHAM-BAKER

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal, requesting that Michelle Cunningham-Baker's ("Claimant") Request for Administrative Hearing be dismissed because there is no issue of material fact, and PSERS is entitled to a summary judgment as a matter of law that Monica L. Golden ("Intervenor") is the last named beneficiary on file with PSERS under the account of Thomas W. Baker ("Decedent").

PSERS filed its Motion for Summary Judgment on June 10, 2011, and served a copy on Claimant and Intervenor, as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. By letter received July 26, 2011, Claimant timely responded to the motion. Intervenor did not file a response to the motion.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The purpose of an evidentiary hearing is to give each party the opportunity to present evidence to support his or her view of applicable law. A party moving for summary judgment is attempting to eliminate the needless use of time and resources of the parties and the Board in cases where an evidentiary administrative hearing would be a useless formality because the relevant facts are already in the record and are not disputed. See, *Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). In the absence of disputed material facts, this Board has the authority to decide the legal

issues in dispute without an evidentiary hearing. *United Healthcare Benefits v. Insurance Commission of Pennsylvania*, 620 A.2d 81 (Pa. Cmwlth. 1993); *Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa. Cmwlth. 1987).

To defeat a motion for summary judgment, the non-moving party has to show only that a dispute of material facts exists. In determining whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party, i.e. Claimant, giving such non-moving party the benefit of all reasonable inferences, and all doubt as to the existence of a genuine issue of material fact must be resolved against the moving party, i.e., PSERS. *Thompson v. Nason Hospital*, 535 A.2d 1177 (Pa. Super. 1988); *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817 (Pa. Cmwlth. 1984).

Although Claimant does not deny any facts contained in PSERS' Motion for Summary Judgment, Claimant does offer additional facts that she believes supports her claim. Claimant asserts that the Decedent was unaware that he had an account with PSERS after he terminated employment in 1992; and, that, if he had known of the monies standing to his credit with PSERS, he would have either changed his beneficiary from Intervenor to Claimant or would have requested a refund. Claimant's assertion, however, is not supported by PSERS' records, of which the Board may take official notice. By letter dated June 8, 1999, PSERS notified the Decedent that his account with PSERS was inactive and that he had the right to withdraw the money credited to his account. (A copy of the June 8, 1999 letter is attached as Attachment A.) The statement "Disabled, sent disability ret app" is written on PSERS' copy of the letter and dated June 21, 1999. It is presumed, therefore, that the Decedent received the June 8, 1999 letter and contacted PSERS, thereby notifying PSERS that he was disabled. The Decedent, however, never filed for a disability retirement with PSERS.

Claimant also appears to argue that Decedent's health issues prevented him from taking action with his PSERS account. Such argument, however, is contradicted by the fact that the Decedent was able to work at least in June of 2007 as shown on the

pay stub Claimant provided in her response to PSERS' motion. Claimant further stated that the Decedent began putting his affairs in order in 2004. Claimant's own factual assertions, therefore, support the conclusion that the Decedent was, at all times relevant, competent to handle his own affairs.

Nonetheless, even if such assertions are true, the Board finds that such facts are immaterial to whether Claimant or Intervenor is the last validly named beneficiary on file with PSERS. Claimant has not identified any additional facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter.

The Board, therefore, finds that there are no disputed material facts. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of who is the beneficiary of Decedent's account without an evidentiary hearing.

### **FINDINGS OF FACT**

Based on the Motion for Summary Judgment, Claimant's Brief in Response to Motion for Summary Judgment and PSERS' records, the Board finds the following facts not in dispute:

1. The Decedent became a member of PSERS in March 1987 by virtue of his employment with the Philadelphia School District.
2. On April 6, 1987, PSERS received a Nomination of Beneficiaries form signed by the Decedent nominating Intervenor as primary beneficiary with 100% distribution.
3. On August 31, 1989, the Decedent and Intervenor were divorced in the Court of Common Pleas of Philadelphia County.

4. On October 1, 1992, the Decedent terminated employment with the Philadelphia School District.
5. As of the time the Decedent terminated school employment, the Decedent had accumulated approximately 5.39 years of service credit with PSERS.
6. By letter dated June 8, 1999, PSERS notified the Decedent that his account with PSERS was inactive and that he had the right to withdraw the money credited to his account. (See Attachment A).
7. On December 28, 2003, the Decedent and Claimant were married in the U.S. Virgin Islands.
8. On March 18, 2009, PSERS received a Certificate of Death stating that the Decedent died on January 29, 2009.
9. Decedent made no changes to his beneficiary nomination.
10. At the time of the Decedent's death, the last beneficiary designation PSERS had on file for the Member was the April 6, 1987 beneficiary form naming the Intervenor as primary beneficiary.
11. At the time of the Decedent's death, the Decedent was not eligible for an annuity because the Decedent was not eligible to vest and did not reach superannuation retirement age.<sup>1</sup>
12. The amount of the death benefit payable is approximately \$10,200.00.

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<sup>1</sup> Prior to the Act of May 17, 2001, (P.L. 26, No. 9) ("Act 9"), a member was eligible to vest after ten years of credited service. After Act 9, a member was eligible to vest after five years of credited service.

## DISCUSSION

Section 8507(e) of the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8507(e), requires every member to nominate a beneficiary for death benefits by written designation filed with the Board. "Beneficiary" is defined as, "[t]he 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. § 8507(e). Section 215.7(d) of the Board's regulations, 22 Pa. Code § 215.7(d) further provides that such designated beneficiary "shall be the only one entitled to receive the accumulated deductions." When a member who is not eligible for an annuity dies, the member's designated beneficiary shall receive the full amount of the member's accumulated deductions. 24 Pa.C.S. §§ 8309 and 8347(b).

A beneficiary nomination may be changed *at any time* by the member provided it is by written designation and filed with the Board. 24 Pa.C.S. § 8507(e). Pennsylvania courts have repeatedly held that a "retiree's mere oral expression of his or her intention to designate such annuitant is insufficient." *Estate of Rosenstein v. Public School Employees' Retirement System*, 685 A.2d 624, 626 (Pa. Cmwlth. 1996), (citing *Myers v. State Employees' Retirement Board*, 486 A.2d 529 (Pa. Cmwlth. 1984)); *see also Hess v. Public School Employees' Retirement Board*, 460 A.2d 1231 (Pa. Cmwlth. 1983); *Coleman Appeal*, 33 Pa.D. & C.2d 191 (1963). Where there is a substantive statutory provision requiring the member to nominate a beneficiary, the statutory provision cannot be disregarded and cannot be waived. *See Coleman, supra*. Accordingly, any death benefit payable under a member's account must be paid in accordance with the last Nomination of Beneficiaries form on file with the Board. 24 Pa.C.S. § 8102 (definition of

"beneficiary"); 24 Pa.C.S. § 8347(b). The only exception that will excuse the member from exact compliance with the statutory provision requiring a written change of beneficiary would be a showing that the member did everything under the circumstances reasonably possible to comply with the statute. *Appeal of Coleman*, 33 Pa.D. & C.2d 191 (1963).

Here, the Decedent filed a Nomination of Beneficiaries form with the Board on April 6, 1987 naming Intervenor as his primary beneficiary. The Decedent made no attempt to change his beneficiary designation after divorcing the Intervenor in 1989. The Decedent also did not attempt to change his beneficiary after receiving the June 8, 1999 letter from PSERS notifying him that he had an account with PSERS. Indeed, Claimant has not provided evidence that the Decedent made any effort to change his written beneficiary designation. Rather, Claimant argues that her right to receive the death benefit derives from certain oral statements of the Decedent and the Decedent's Will.

Pennsylvania courts have repeatedly held that a "retiree's mere oral expression of his or her intention to designate such annuitant is insufficient." *Estate of Rosenstein v. Public School Employees' Retirement System*, 685 A.2d 624, 626 (Pa. Cmwlth. 1996), (citing *Myers v. State Employees' Retirement Board*, 486 A.2d 529 (Pa. Cmwlth. 1984)); see also *Hess v. Public School Employees' Retirement Board*, 460 A.2d 1231 (Pa. Cmwlth. 1983); *Coleman Appeal*, 33 Pa.D. & C.2d 191 (1963). Without satisfaction of the substantive statutory requirements, the Decedent's oral expression cannot supersede a prior validly executed and filed beneficiary form. PSERS simply cannot

invalidate a properly filed nomination of beneficiary form that complies in all respects with the mandates of the Retirement Code.

Further, the Decedent's Will cannot invalidate a properly filed beneficiary designation because the death benefit payable by PSERS is non-testamentary. See, 20 Pa.C.S. §6108(a). Consequently, the April 6, 1987 beneficiary form cannot be invalidated or amended through the Decedent's Will.<sup>2</sup>

For the above stated reasons, the death benefit payable under the Decedent's account must be paid to the last validly named beneficiary on file with the Board, i.e. Intervenor. Accordingly, PSERS' Motion for Summary Judgment is GRANTED and Claimant's Request for Administrative Hearing is DENIED.

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<sup>2</sup> Nor can the April 6, 1987 beneficiary form be voided by operation of Section 6111.2 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 6111.2, because both the April 6, 1987 beneficiary form and the divorce between the Decedent and the Intervenor occurred prior to December 16, 1992, the effective date of Section 6111.2. See, *Paronese v. Midland National Insurance Co.*, 706 A.2d 814 (Pa. 1998) (holding that 20 Pa.C.S. § 6111.2 cannot be applied retroactively to beneficiary designations which predate the Act because to do so would be an unconstitutional impairment of contract.) See also, *Mager v. State Employees' Retirement System*, 849 A.2d 287 (Pa. Cmwlth. 2004), appeal denied, 859 A. 2d 770.

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ORDER

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Request for Administrative Hearing is DISMISSED in compliance with 22 Pa.Code § 201.6(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimant's request and finds Intervenor, Monica L. Golden, to be Decedent's primary beneficiary pursuant to the April 6, 1987 Nomination of Beneficiary form.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: OCT 11, 2011

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