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

IN RE: ACCOUNT OF ALLEN M. HOFKNECHT (D)
DOCKET NO. 2021-18
CLAIM OF THOMAS HOFKNECHT

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the post-hearing briefs, the proposed Opinion and Recommendation of the Hearing Examiner ("HEO"), the Public School Employees' Retirement System's ("PSERS") Brief on Exceptions ("Exceptions"), Haley Hofknecht's ("Intervenor") Brief on Exceptions, and Thomas Hofknecht's ("Claimant") Brief Opposing Exceptions. Claimant did not file exceptions to the HEO.

On October 29, 2021, Claimant filed an *Appeal and Request for Administrative Hearing* with the Board. Claimant asks that the Board honor a *Nomination of Beneficiaries* ("NOB") form for Allen M. Hofknecht ("Decedent") that was executed on October 31, 2020 and prior to Decedent's death, but not submitted to PSERS until January 26, 2021 and after Decedent's death ("2021 NOB"). Claimant requests that he receive 65% of Decedent's death benefit, pursuant to this form. PSERS determined that the death benefit on Decedent's account should be paid according to the NOB form that Decedent submitted to PSERS on December 1, 2014 ("2014 NOB") and that was the last one on file with PSERS at the time of Decedent's death. On November 10, 2021, PSERS filed its Answer. On December 13, 2021, Intervenor, who Decedent designated as a beneficiary in his 2014 NOB, filed a *Petition to Intervene in Appeal of Thomas Hofknecht* ("Petition to Intervene"). By Order dated January 13, 2022, the Board granted the uncontested Petition to Intervene.

An administrative hearing occurred on November 16, 2022. Following the administrative hearing, all parties filed post-hearing briefs, and the Hearing Examiner issued his HEO. The Hearing Examiner recommends that the Board grant Claimant's appeal. Specifically, he recognizes that an NOB generally must be received by PSERS prior to a member's death, but he determines that an exception exists when a member did everything reasonably possible to change beneficiaries during his life. (See HEO, pp. 16-17). The Hearing Examiner opines that only the member's actions are relevant to this exception, regardless of the amount of time that has passed or the negligence of others. (See HEO, p. 19). The Hearing Examiner, therefore, determines that Claimant's actions in submitting the 2021 NOB to PSERS are irrelevant. (See HEO, pp. 17-19). Accordingly, the Hearing Examiner recommends that the 2021 NOB filed with PSERS months after death be deemed valid because Decedent passed the form to Claimant during Decedent's life. (See HEO, p. 19). Both PSERS and Intervenor filed exceptions, and Claimant replied to the exceptions.

After a careful review of the entire record, the Board rejects the HEO and hereby issues the following¹:

FINDINGS OF FACT

1. Decedent enrolled as a member in PSERS in 1984 through his employment with the Philadelphia City School District. Note of Testimony ("N.T.") 15, 55-56.
2. PSERS received an NOB form from Decedent on December 1, 2014 (the 2014 NOB), through which Decedent named the following beneficiaries to share any death benefit, by a percentage: Albert Hofknecht (Decedent's father) to receive 20%; Louise Hofknecht (Decedent's now deceased mother) to receive 20%; Robert Hofknecht (one of Decedent's brothers) to receive 20%; Intervenor (Decedent's niece and Claimant's daughter) to receive 20%; William Hecker (Decedent's friend) to receive 15%; and

¹ The Board may adopt or reject, in whole or in part, the proposed opinion and recommendation of the Hearing Examiner or issue its own opinion and order. 22 Pa.

Trinity Episcopal Church (Decedent's church) to receive 5%. (PSERS-1); N.T. 16, 17, 46, 58, 60, 99.

3. Decedent did not name Claimant, who is one of his brothers and Intervenor's father, as a beneficiary in the 2014 NOB. (PSERS-1); N.T. 15, 16, 99.

4. By letter dated December 11, 2014, PSERS informed Decedent that it had received and accepted his 2014 NOB, and explained to him that he could change beneficiaries in the future by completing and submitting a new NOB form to PSERS. (PSERS-2); N.T. 61-63.

5. After PSERS accepted Decedent's 2014 NOB, PSERS mailed Decedent an annual statement of account in November of 2015, 2016, 2017, 2018, 2019, and 2020, listing Decedent's beneficiaries. (PSERS-3 – PSERS-7); N.T. 63-65.

6. Claimant is not listed as a beneficiary in any of Decedent's annual statements. (PSERS-3 – PSERS-7); N.T. 63-65.

7. PSERS explained in each cover letter sent with the statements of account that Decedent could change beneficiaries by submitting a new NOB form to PSERS, and PSERS recommended that if the listed beneficiaries did not reflect his wishes, he update his beneficiaries "as soon as possible." (PSERS-3 – PSERS-7); N.T. 65-66.

8. PSERS members can change their beneficiaries by filing an NOB with PSERS by email, facsimile, or regular mail, or they can change beneficiaries online through a member self-service account ("MSS"). N.T. 67-68.

9. There is no limit to the number of times members may change their beneficiaries with PSERS, but members are also not required to change their beneficiaries, even if a primary beneficiary passes away. N.T. 67.

10. In September of 2020, Decedent was admitted to the hospital. N.T. 17.

Code § 201.11(c).

11. On October 20, 2020, Decedent executed a Power of Attorney ("POA") naming Claimant as agent. (Claimant-9).

12. Through the POA, Decedent did not grant Claimant the authority to designate Claimant as beneficiary. (Claimant-9); 20 Pa.C.S. §§ 5601.3, 5601.4(b) (Notwithstanding the authority to change beneficiaries pursuant to a POA, an agent who is not an ancestor, spouse, or descendent of the principal may not name themselves as a beneficiary of the principal.).

13. On an October 29, 2020 recorded telephone call to PSERS, Claimant represented to PSERS that Decedent would pass away soon, and asked how Decedent should change his beneficiaries on his account considering Decedent was not "coherent enough right yet." (PSERS-17; PSERS-19); N.T. 34, 38-39, 83-84.

14. The PSERS representative advised Claimant that Decedent should complete a PSERS' NOB form, which is available on the PSERS website, and Claimant responded, "I do have that in front of me right now." (PSERS-17; PSERS-19); N.T. 34, 38-39, 83-84.

15. The PSERS representative provided Claimant with PSERS' facsimile number and advised him that the form should be faxed to PSERS. (PSERS-17; PSERS-19); N.T. 34, 38-39, 83-84.

16. The Guidelines that come with an NOB indicate that, to change beneficiaries, "a new form must be filed with PSERS," that a member may change their nomination at any time "by submitting a new form," and that "[a]fter receipt and acceptance" of the nomination, PSERS will return an acknowledgment of the nomination. (PSERS-16, p. 1); N.T. 81-82.

17. While in the hospital, on November 2, 2020, Decedent passed away. N.T. 19, 56-57.

18. Neither Decedent nor Claimant sent the 2021 NOB to PSERS prior to Decedent's death. (PSERS-11, p. 3); N.T. 34-37, 53, 72-74.

19. PSERS did not receive a subsequent NOB for Decedent during his life. N.T. 67.

20. At the time of his death, Decedent was as an active member of PSERS, resulting in a death benefit payable on his account of approximately \$957,901.79. N.T. 19, 56-57.

21. PSERS pays a death benefit to the beneficiaries on file with PSERS based on the most recent NOB received prior to death, which for Decedent, was the 2014 NOB. (PSERS-1); N.T. 57, 58, 67.

22. On December 30, 2020, Claimant contacted PSERS and reported Decedent's death and provided PSERS with Claimant's contact information. N.T. 35, 68.

23. Pursuant to its business practices, PSERS mailed Claimant, as the individual who reported Decedent's death, a letter dated December 30, 2020, requesting Decedent's death certificate. (PSERS-9); N.T. 68-70.

24. Claimant provided PSERS with Decedent's death certificate, along with a note containing Claimant's contact information, which PSERS received on January 11, 2021. (PSERS-10); N.T. 35-36, 70-71.

25. On January 21, 2021, Claimant, on a recorded call with PSERS, raised the issue of beneficiaries again, indicated a lot of things were changed regarding Decedent's beneficiaries, asked how PSERS would know who to pay to because Claimant "never sent any paperwork in," asked how to go about getting PSERS the paperwork, and indicated next time he was in Pennsylvania, he would get that paperwork together and send it to PSERS. (PSERS-18; PSERS-20); N.T. 38-39, 85-86.

26. During the January 21, 2021 call, the PSERS representative told Claimant that he could fax or mail documents to PSERS, and she gave Claimant the facsimile number for PSERS. (PSERS-18; PSERS-20); N.T. 38-39, 85-86.

27. Claimant faxed the 2021 NOB to PSERS on January 26, 2021, which was 85 days after Decedent's death. (PSERS-11, p. 4); N.T. 72-74; *see also* (PSERS-18; PSERS-20); N.T. 36, 38-39, 85-86.

28. On January 26, 2021, PSERS first received the 2021 NOB, which, if accepted, would change Decedent's beneficiaries so that Claimant, who was not designated as a beneficiary in the 2014 NOB, would receive 65% of the death benefit, Albert Hofknecht would receive 20%, and William Hecker would receive 15%. Intervenor would receive nothing. (PSERS-11); N.T. 36, 72-74; *see also* (PSERS-18; PSERS-20); N.T. 38-39, 85-86.

29. Decedent appears to have signed the 2021 NOB on October 31, 2020. (PSERS-11, p. 3); N.T. 34-37, 53, 72-74.

30. PSERS wrote to Claimant, by letter dated February 3, 2021, acknowledging receipt of Decedent's death certificate. (PSERS-12); N.T. 74-75.

31. Subsequently, in letters dated March 10, 2021, PSERS mistakenly indicated that it intended to pay any death benefit to Claimant, Albert Hofknecht, and William Hecker, from which mistaken letters Intervenor appealed. (PSERS-13); N.T. 76-78.

32. On May 18, 2021, PSERS mailed a corrected letter to all beneficiaries named in the 2014 NOB and the 2021 NOB, indicating that the 2021 NOB is invalid because PSERS did not receive it until after Decedent's death, and therefore, PSERS would pay according to the 2014 NOB. (PSERS-14); N.T. 78-79.

33. Claimant appealed the May 18, 2021 letter to the Executive Staff Review Committee ("ESRC"). N.T. 79-80.

34. By letter dated October 1, 2021, the ESRC denied Claimant's appeal. (PSERS-15); N.T. 80-81.

35. On October 29, 2021, Claimant filed an appeal from the ESRC's determination, through which he requested an administrative hearing. (Official Notice – agency records); N.T. 81.

36. PSERS filed its Answer to Claimant's appeal on November 10, 2021. (Official Notice – agency records).

37. On December 13, 2021, Intervenor, through counsel, filed the Petition to Intervene.

38. By Order dated January 13, 2022, the Board granted the uncontested Petition to Intervene.

39. Claimant and Intervenor, through counsel, were served with all pleadings, orders, and notices filed of record in this matter, and they participated at the November 16, 2022 hearing, represented by counsel, through which they were provided an opportunity to testify, examine witnesses, and offer evidence. (N.T. *passim*).

PROPOSED CONCLUSIONS OF LAW

1. PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101, et seq. See *Forman v. Public Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

2. A PSERS member has only those rights recognized by the Retirement Code and none beyond. See *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).

3. Claimant and Intervenor were afforded an opportunity to be heard in connection with Claimant's appeal.

4. Claimant bears the burden of establishing those facts upon which he relies in order to prevail. See 22 Pa. Code §§ 201.12(d), 201.10, and 201.8(a); *Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999).
5. The burden of proof applied in an administrative action is the preponderance of the evidence standard and is "such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence." *Sigafoos v. Pennsylvania Bd. of Prob. & Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986); see *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
6. Cases interpreting the State Employees' Retirement Code provisions "are equally applicable in deciding issues arising under similar or identical provisions" of the PSERS Retirement Code. *Krill v. Public Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).
7. Section 8309 of the Retirement Code provides that "[i]n the event of the death of a [PSERS] member who is eligible for an annuity . . . his beneficiary shall be entitled to a death benefit as provided in section 8347 (relating to death benefits)." 24 Pa.C.S. § 8309; see 24 Pa.C.S. § 8347; 22 Pa. Code § 213.9.
8. When an active member of PSERS who was eligible for an annuity passes away, he is considered to have applied for an annuity from PSERS to be effective the day before his death and, in the event he has not elected an option, it shall be assumed that the member elected Option 1 and assigned as beneficiary that person last designated in writing to the Board. 24 Pa.C.S. § 8347(a).
9. "Option 1," as set forth in the Retirement Code, provides a "life annuity to the member with a guaranteed total payment equal to the present value of the maximum single life annuity on the effective date of retirement with the provision that, if, at his death, he has received less than such present value, the unpaid balance shall be payable to his beneficiary." 24 Pa.C.S. § 8345(a)(1).

10. "Beneficiary" is statutorily 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.

11. The Retirement Code requires every member to nominate a beneficiary for death benefits by written designation filed with the Board. 24 Pa.C.S. § 8507(e); *see also* 22 Pa. Code § 215.7(d).

12. A member may change their beneficiary designation, also by written designation filed with the Board. 24 Pa.C.S. § 8507(e).

13. A member's written beneficiary designation must be received by PSERS prior to the member's death. *See* 22 Pa. Code § 201.1 and 1 Pa. Code § 31.11 ("...The date of receipt at the office of the agency and not the date of deposit in the mails is determinative."); *Estate of Wilson v. State Employees' Ret. Bd.*, 219 A.3d 1141, 1142 (Pa. 2019); *see also Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783, 788 (Pa. Cmwlth. 2008).

14. The Retirement Code directs that if a valid beneficiary form is not "in effect at [the member's] death," any money that would be payable to a beneficiary is to be paid to the member's estate. 24 Pa.C.S. § 8349(c); *see also* 24 Pa.C.S. § 8505(h).

15. Decedent's beneficiaries last designated in writing to the Board at the time of his death were the individuals and percentages shown on Decedent's 2014 NOB.

16. Decedent's death benefit must be paid out in accordance with the 2014 NOB.

DISCUSSION

The present administrative appeal poses the question of whether PSERS can honor an NOB form received 85 days after a member's death. For the reasons set forth below, this Board concludes that it cannot.

Preliminarily, the Board is the ultimate finder of fact. *White v. Public Sch. Employees' Ret. Bd.*, 11 A.3d 1, 7; *Dowler v. Public Sch. Employees' Ret. Bd.*, 620 A.2d 639, 641 (Pa. Cmwith. 1993). The Board may "adopt or reject, in whole or in part" the HEO, or the Board may "issue its own opinion and order." 22 Pa. Code § 201.11(c). Therefore, Claimant's argument that the Hearing Examiner is "the sole judge of credibility and the creditability of witnesses" is rejected. (See *contra* Claimant's Brief on Exceptions, p. 10). Indeed, questions of resolving conflicts of evidence, witness credibility, and evidentiary weight are within the Board's exclusive jurisdiction. *Wyland v. Public Sch. Employees' Ret. Bd.*, 669 A.2d 1098, 1103 (Pa. Cmwith. 1996) (citation omitted). The Hearing Examiner's proposed opinion and recommendation "will not become the opinion and order of the Board unless it is adopted by the Board." 22 Pa. Code § 201.11(a).

The credible facts establish that Decedent enrolled as a member in PSERS in 1984 through his employment with the Philadelphia City School District. PSERS received an NOB form from Decedent on December 1, 2014 (i.e., the 2014 NOB), naming the following beneficiaries to share any death benefit, by a percentage: Albert Hofknecht (Decedent's father) to receive 20%; Louise Hofknecht (Decedent's now deceased mother) to receive 20%; Robert Hofknecht (one of Decedent's brothers) to receive 20%; Intervenor (Decedent's niece and Claimant's daughter) to receive 20%; William Hecker (Decedent's friend) to receive 15%; and Trinity Episcopal Church (Decedent's church) to receive 5%. Claimant, who is Decedent's other brother and Intervenor's father, was not identified by Decedent as a beneficiary in the 2014 NOB.

After receiving the 2014 NOB, PSERS wrote to Decedent, by letter dated December 11, 2014, informing him that PSERS received and accepted his 2014 NOB, and explaining that he could later change beneficiaries by completing and submitting a new NOB form to PSERS. Thereafter, PSERS mailed Decedent an annual statement of account in November of 2015, 2016, 2017, 2018, 2019, and 2020, identifying Decedent's beneficiaries. PSERS explained, in each cover letter sent with the

statements of account, that Decedent could change beneficiaries by submitting a new NOB form to PSERS. PSERS recommended that if the listed beneficiaries do not reflect his wishes, he should update his beneficiaries "as soon as possible."

There are multiple methods by which a member may file an NOB form with PSERS, including those that are instantaneous. A member, for example, can submit an NOB to PSERS by facsimile, email, or online through PSERS' MSS. In fact, the record reflects that, when Claimant called PSERS to inquire about changing Decedent's beneficiaries on October 29, 2020 and represented to PSERS that Decedent would pass away soon, the PSERS representative recommended that any NOB form be faxed to PSERS. PSERS, however, did not receive a new NOB form for Decedent prior to his death on November 2, 2020.

On January 26, 2021, which was 85 days after Decedent's death, PSERS first received the 2021 NOB that, if accepted, would change Decedent's beneficiaries so that Claimant, who was not named at any percentage in the 2014 NOB, would receive 65% of the death benefit, Albert Hofknecht would receive 20%, and William Hecker would receive 15%. Intervenor would receive nothing. Because the 2021 NOB was received after Decedent's death, this Board concludes that PSERS properly rejected it.

The Retirement Code defines "beneficiary" 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. The Retirement Code contemplates that every member files a written designation:

Every member shall nominate a beneficiary by written designation *filed with the board* to receive the death benefit or the benefit payable from the system under the provisions of Option 1. Such nomination may be changed at any time by the member by written designation *filed with the board*. A member may also nominate a contingent beneficiary or beneficiaries to receive the death benefit or the benefit payable under the provisions of Option 1.

24 Pa.C.S. § 8507(e) (emphasis added); see also 22 Pa. Code § 215.7(d) ("Every member shall nominate a beneficiary and, if desired, a contingent beneficiary, in writing with the Board."). If a member does not have a beneficiary on file with PSERS *at the time of death*, however, the Retirement Code instructs PSERS to pay any death benefit to the member's estate: "If the beneficiary designated by a member should predecease him or die within 30 days of his death, or if a valid nomination of a beneficiary is not *in effect at his death*, any money payable to a beneficiary shall be paid to the estate of the member." 24 Pa.C.S. § 8349(c) (emphasis added); 22 Pa. Code § 213.49(b) ("[I]f there is no valid beneficiary designation *on file to take effect at death*, money payable from the account of the member shall be paid to the estate of the member or next of kin, under 20 Pa.C.S. § 3101... as the case may be.") (Emphasis added); see also 22 Pa. Code §§ 213.9, 215.7(d).

Likewise, the Retirement Code provides that when a vested, active member of PSERS passes away, he is considered to have applied for an annuity from PSERS to be *effective the day before his death* and, in the event he has not elected an option, it shall be assumed that the member elected Option 1 and assigned as beneficiary that person last designated in writing to the Board. 24 Pa.C.S. § 8347(a). "Option 1," as set forth in the Retirement Code, provides a "life annuity to the member with a guaranteed total payment equal to the present value of the maximum single life annuity on the effective date of retirement with the provision that, if, *at his death*, he has received less than such present value, the unpaid balance shall be payable to his beneficiary." 24 Pa.C.S. § 8345(a)(1) (emphasis added). PSERS, importantly, must pay the death benefit to the member's "beneficiary" within 60 days of receipt of certification of the death benefit and other necessary data. 24 Pa.C.S. § 8505(h).

As a beneficiary designation must be *filed* with PSERS and be in effect at the time of the member's death, signing a form alone does not serve as a designation of beneficiaries. The date of filing is the date *of receipt by PSERS*, pursuant to Section 201.1 of the Board's duly promulgated regulations that adopt, among other provisions,

Section 31.11 of the General Rules of Administrative Practice and Procedure ("GRAPP"). 22 Pa. Code § 201.1. Section 31.11 of GRAPP provides that the "date of receipt at the office of the agency and not the date of deposit in the mails is determinative." 1 Pa. Code § 31.11; see *Estate of Wilson*, 219 A.3d at 1142 (citing Section 31.11 of GRAPP and holding that forms mailed to SERS before death but received after death were invalid); see also *Harasty*, 945 A.2d at 788 (holding that a class election is not filed with PSERS until received); *Account of Ruth Elaine King*, Docket No. 2018-02, at *14-15 (PSERB Aug. 16, 2019) (holding that Claimant was ineligible to purchase out-of-state service because PSERS received her forms after she terminated public school service);² *Account of Laurie L. Kristiniak*, Docket No. 2014-02, at *19 (PSERB Dec. 9, 2015) (holding that a retirement application is filed the date it is received by PSERS, not the date it is mailed). Moreover, Decedent could only act during his life. See generally *Estate of Wilson*, 219 A.3d 1141.³ Thus, both steps – execution and receipt by PSERS – were required to effectuate filing while Decedent was alive.

In 2019, the Pennsylvania Supreme Court conclusively affirmed that GRAPP's requirement that filing means received by the retirement system applies to documents with a *de facto* deadline of a member's death. *Estate of Wilson*, 219 A.3d at 1152-53.⁴ Therefore, documents due while a member is alive must be *received* by PSERS before the member's death to be valid. In *Estate of Wilson*, a SERS member's survivor

² Board adjudications are available at www.psers.pa.gov.

³ Cases interpreting the SERS Retirement Code provisions "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Public Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

⁴ The Supreme Court noted that "the Legislature empowered the [SERS] Board to 'adopt and promulgate rules and regulations for the uniform administration of the system,' which, once adopted are 'as effective as if fully set forth in' the [SERS] Code." *Estate of Wilson*, 219 A.3d at 1151 (quoting 71 Pa.C.S. § 5902(h)). The Legislature empowered this Board to do the same. 24 Pa.C.S. § 8502(h).

annuitant passed away, creating an ability for the member to change his retirement option. *Id.* at 1143. On June 1, 2012, eight days before the SERS member passed away, he completed an NOB form and an application to change his retirement option to Option 1, which would create a death benefit. *Id.* at 1144. Under the option he had chosen at retirement, i.e., Option 2, there would be no payments due to anyone after his death as his survivor annuitant predeceased him. SERS, however, did not receive the NOB and option change forms until June 13, 2012, i.e., *four days* after his death. *Id.* The member's estate argued the change should be accepted because the member dated, signed, and mailed the requests prior to death. *Id.* at 1145. The Supreme Court rejected the estate's arguments and held that the "*de facto* deadline for filing Option Change Documents is before the SERS member's death, and filing in this context must mean 'receipt' as indicated by Section 31.11 [of GRAPP]." *Id.* at 1153. The Supreme Court noted that, pursuant to the SERS Code, the decedent's retirement account had already been terminated by operation of law, as the option he had selected at retirement (i.e., Option 2) provided "[a] joint and survivor annuity payable during the lifetime of the member . . . to his survivor annuitant, *if living at his death.*" *Estate of Wilson*, 219 A.3d at 1153 (emphasis in original) (quoting 71 Pa.C.S. § 5705(a)(2)).

This Board, like the SERS Board, adopted Section 31.11 of GRAPP through regulation, thus requiring receipt of a document by PSERS. See 22 Pa. Code § 201.1. Similar to the option change at issue in *Estate of Wilson*, the Option 1 election dictated by the Retirement Code in this matter was "effective the day before [Decedent's] death," and the beneficiary is the person (or persons) who was "last designated in writing to the Board." 24 Pa.C.S. § 8347(a); see 24 Pa.C.S. § 8349(c) ("If . . . a valid nomination of a beneficiary is not *in effect at [the member's] death*, any money payable to a beneficiary shall be paid to the estate of the member." (Emphasis added)); see also 24 Pa.C.S. §§ 8102 (def. "beneficiary"), 8507(e), 8349(c); 22 Pa. Code §§ 213.9, 215.7(d). The *de*

facto deadline to nominate a beneficiary with PSERS, therefore, is before the member's death. 24 Pa.C.S. § 8102; 22 Pa. Code § 201.1; 1 Pa. Code § 31.11.⁵

The present case is even more persuasive than *Estate of Wilson* factually because the 2021 NOB was not even mailed prior to Decedent's death. (PSERS-11, p. 3); N.T. 34-37, 53, 72-74. Indeed, Claimant acknowledged at the hearing that he did not send the 2021 NOB to PSERS prior to Decedent's death.⁶ N.T. 34-35. Additionally, unlike *Estate of Wilson* where the form was received just four days after death, the 2021 NOB was not received shortly after Decedent's death.

Further, any argument that the date of execution is the only relevant date is contrary to the Retirement Code and GRAPP, as explained above, and also would open the door for potential fraud. The prudence of the requirement that an NOB be received during a member's life is clear, as explained in the *Coleman Appeal*:

Any number of cogent reasons can be advanced to demonstrate the logic of the proposition that the filing be required within the lifetime of the contributor. It is a means of preventing fraud. A contributor can always know, by inquiry to the board, the name of his beneficiary. If it is incorrect, it can be changed. But a contributor cannot insure against the possibility that after his death someone will forge a designation of beneficiary, or that a would-be beneficiary will find an executed form in his favor, which was discarded by contributor, but which is found and filed; or still, that an

⁵ This Board notes that where it has chosen to create an exception to the receipt rule, it has specifically done so through a duly promulgated regulation. 22 Pa. Code § 213.45. Specifically, for documentation submitted during the process to change a member's initial retirement selection, the Board chose to create an exception to the receipt rule. *Id.* Even with that specifically identified exception, however, the member must have either (1) proof of certified mailing before the deadline, return receipt requested, or (2) proof that the document was faxed before the deadline *and* that PSERS received the actual document within 10 days of the date of the facsimile. *Id.*

⁶ Claimant further testified that he first mailed the 2021 NOB to PSERS "about a week after" Decedent's death and prior to January 26, 2021. N.T. 37. PSERS produced a telephone recording at the administrative hearing, however, during which Claimant represented to PSERS, on January 21, 2020, that he "never sent any paperwork in." (PSERS-18; PSERS-20); N.T. 37-39, 85-86.

unscrupulous friend or relative would, by fraudulent means, obtain the signature to the form and hold it until death effectively bars the revelation of contributor's true intention. . . .

33 Pa. D&C 2nd 191, 197 (1963).

In reversing the Commonwealth Court's decision in *Estate of Wilson*, the Supreme Court also identified the risk of fraud in allowing posthumous retirement changes:

[T]he Commonwealth Court's interpretation would encourage fraud on the system and undermine the ability of SERS to comply with its fiduciary obligations. By way of a simple example, if a member's intended beneficiaries discovered the completed Option Change Documents days, weeks, or even months after that member's death, there is nothing to prevent the application of the Commonwealth Court's reasoning (which asks only whether the member completed the forms and considers SERS's date of receipt irrelevant) to allow those intended beneficiaries to bring or mail the documents to SERS, and require SERS to honor the change, contrary to controlling precedent and to the obvious detriment of the system.

219 A.3d at 1153-54 (internal citations omitted).

In addition to the prevention of fraud, requiring that an NOB form be received prior to a member's death also provides finality in the distribution of death benefits. The HEO would, without limitation, require that PSERS accept an NOB form *at any time*, so long as it was signed prior to the member's death. That cannot be the conclusion, as there would be no certainty for the member's last named beneficiaries on file when receiving a death benefit. Moreover, the HEO ignores the Legislature's clear intent, as expressed through Section 8505(h), to have a death benefit paid out expeditiously. 24 Pa.C.S. § 8505(h).

In reaching the conclusion herein, this Board acknowledges the mention of a possible common law exception to the receipt by death rule in two earlier court cases. See *Coleman Appeal*, 33 Pa. D&C 2nd 191, 197 (1963); *Greene v. Public Sch. Employees' Ret. Sys.*, 878 A.2d 153, 155, 159 (Pa. Cmwlth. 2005). Both courts,

however, declined to apply the exception and both cases pre-date the Supreme Court's decision in *Estate of Wilson*. Moreover, the potential exception, as explained most recently in *Greene*, would not apply here regardless because the 2021 NOB did not arrive within a reasonable mailing period after Decedent's death.⁷ See *Greene*, 878 A.2d at 159.

Claimant's argument that PSERS should be estopped from applying the law because Claimant did not know that Decedent needed to file a change in beneficiaries before death also must fail. (See Claimant's Brief on Exceptions, p. 5). Equitable estoppel cannot apply to prevent PSERS from asserting a statutory provision. See *Finnegan v. Public Sch. Employees' Ret. Bd.*, 560 A.2d 848, 851 (Pa. Cmwlth. 1989), *aff'd w/o op.*, 591 A.2d 1053 (Pa. 1991). Moreover, Claimant, who testified that he lived in Florida for the past 28 years, has never asserted that he is a member of PSERS. PSERS has no duty to inform the general public on how a PSERS member may change beneficiaries. Even with respect to its own members, PSERS has no obligation to notify members that an NOB form must be filed with PSERS prior to death. See *Trakes v. Public Sch. Employees' Ret. Sys.*, 768 A.2d 357, 367 (Pa. Cmwlth. 2001) (holding that PSERS is not required to provide notice of a deadline where the Retirement Code does not contain a specific provision mandating such notice). Despite having no such duty, however, PSERS provided Decedent with ample information on the process to change beneficiaries. (PSERS-2 – PSERS-7). Also, the guidelines that come with the NOB form indicate that, to change beneficiaries, "a new form must be filed with PSERS," that a member may change their nomination at any time "by submitting a new form," and

⁷ If an NOB form received 85 days after death could be accepted, additional analysis by this Board would be necessary as to whether the facts present a confidential relationship, undue influence, and competency concerns, but no such analysis is necessary because the form was not filed before death. Similarly, evidentiary issues, including PSERS' objections on speculation, hearsay, and the Dead Man's Act, along with credibility concerns, need not be addressed as the 2021 NOB was not received until long after death.

that “[a]fter receipt and acceptance” of the nomination, PSERS will return an acknowledgment of the nomination. (PSERS-16, p. 1); N.T. 81-82.

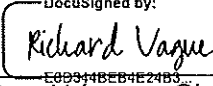
As PSERS cannot honor an NOB form received 85 days after death, the remaining arguments and exceptions need not be addressed. They do, however, emphasize the prudence of the receipt by death requirement. PSERS is not situated to know what occurred in the days leading to a member's death. PSERS must base its decisions on the intent expressed to it by its members. If a member executes and files an NOB form prior to death, PSERS relies on that action to determine, absent evidence to the contrary, that the form represents the member's wishes. If a member does not file a new NOB form with PSERS prior to their death, PSERS relies on that inaction to determine that the member did not wish to change their beneficiaries. As Decedent cannot now convey his intent, PSERS must rely on the wishes he expressed to PSERS during his life through filing his 2014 NOB, and never submitting a subsequent change to that designation.

CONCLUSION

IT IS HEREBY ORDERED that Claimant's appeal is DENIED; Decedent's beneficiaries are those last designated in writing to the Board at the time of his death, which are reflected in the 2014 NOB, and the 2021 NOB is void as it was not submitted to PSERS prior to Decedent's death.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 3/22/2024

By: 
Richard Vague, Chairman