

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

IN RE: ACCOUNT OF RICHARD A. EDWARDS (DECEDENT)  
DOCKET NO. 2015-07  
CLAIM OF RENÉE A. EDWARDS

**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 Hearing Examiner's proposed Opinion and Recommendation, Claimant Renée A. Edwards's letter brief on exceptions, and the Public School Employees' Retirement System's ("PSERS") letter brief on exceptions.

The issue on appeal is whether Decedent's October 26, 2006, beneficiary form, which nominated Jean Harris ("Intervenor") as Decedent's sole beneficiary, was the product of undue influence. To establish undue influence, Claimant had to first show that Decedent and Intervenor had a confidential relationship when Intervenor was named beneficiary in October 2006. See *Snizaski v. Public School Employees' Retirement Board*, No. 1329 C.D. 2008, 2014 Pa. Commw. Unpub. LEXIS 506, at \*25-26 (Pa. Cmwlth. Aug. 13, 2014) (citing *Banko v. Malanecki*, 451 A.2d 1008); *Pyewell's Estate*, 5 A.2d 123, 124 (Pa. 1939); *In re Estate of Clark*, 359 A.2d 777, 781 (Pa. 1976). The Hearing Examiner held that Claimant failed to meet her burden of proving a confidential relationship and, therefore, concluded that the October 26, 2006, nomination is binding.

Claimant excepts to the proposed Opinion and Recommendation on several grounds, which the Board will address *in seriatim*.

First, Claimant asserts that the Hearing Examiner erred in framing Claimant's case. In particular, Claimant asserts that the Hearing Examiner incorrectly stated in the proposed decision's "History" section that Claimant had asserted that "Decedent may not have been competent to consent to change in beneficiary." Claimant insists that this "characterization of Decedent has never been made by Claimant," and she speculates that all testimony and evidence was judged incorrectly due to the "material mischaracterization and legal

standard.” Contrary to Claimant’s representation, however, a review of the *Appeal and Request for Administrative Hearing* that she personally filed with this Board shows that Claimant initially argued that the Executive Staff Review Committee’s determination did not take into account the possibility that Decedent “was not able to consent to change in beneficiary.” *Appeal and Request for Administrative Hearing* Section D at ¶ 10.

Accordingly, the Hearing Examiner’s statement is correct. Furthermore, throughout the Hearing Examiner’s opinion and the parties’ submissions, it is apparent that the issue presented and addressed was not whether Decedent was competent, but whether Decedent and Intervenor had a confidential relationship that would support Claimant’s assertion of undue influence. The Board thus finds no error.

Second, Claimant asserts that the Hearing Examiner erred by failing to find that Intervenor’s “pastoral counseling” of Decedent evidenced the confidential relationship necessary to shift the burden in this appeal to Intervenor. The Board has reviewed the record and finds no error. No evidence was presented that indicates that the Intervenor provided “pastoral counseling” to Decedent in or around the time that the October 26, 2006, beneficiary form was completed. As the Hearing Examiner correctly finds, there “is no testimony as to Intervenor’s interactions with Decedent during the time he was a member of the Deliverance Church, specifically in 2006 when Decedent named Intervenor as the sole beneficiary of his death benefit.” Nor was evidence presented that would support Claimant’s assertion that, during the relevant time period, Decedent was dependent on Intervenor. The evidence also does not support a conclusion that Intervenor used her position with the Deliverance Church to unduly influence Decedent.

Claimant alleges that the Hearing Examiner limited the elicitation of direct testimony from Intervenor. Claimant, however, does not identify the ruling, explain the substance of the testimony that she claims was improperly excluded, or include an argument as to why that testimony should have been admitted. Nonetheless, a review of the transcript establishes that there was no error. The transcript shows that the Hearing Examiner sustained two objections during the examination of Intervenor. First, she sustained PSERS’ objection to Claimant’s questions to Intervenor regarding events that occurred while Decedent was hospitalized in 2014 on relevancy grounds. Notes of Testimony (“N.T.”) 105-106. Second, the Hearing Examiner sustained Intervenor’s objection to

Claimant's inquiry as to whether Intervenor was involved in Intervenor's twin sister's affairs on the grounds of relevance. N.T. 108-109. The Board finds both rulings proper.

The General Rules of Administrative Practice and Procedure, which govern these proceedings, provide that "relevant and material evidence" shall be admissible in proceedings before the Board and that the Hearing Examiner has the authority to rule on the admissibility of such evidence and is tasked with controlling the reception of that evidence "so as to confine it to the issues in the proceeding." 1 Pa. Code §§ 35.161 and 35.162. Relevant evidence is that which "has any tendency to make a fact more or less probable than it would be without the evidence" and that which "is of consequence in determining the action." Pa.R.E. 401. Intervenor's relationship with her twin sister, who has no involvement or interest in this matter, is irrelevant, immaterial, and has no bearing on whether Decedent's October 26, 2006, beneficiary form was a product of undue influence. Nor are Intervenor's actions in 2014 relevant or material as to whether she unduly influenced Decedent more than seven years earlier. Nevertheless, as to the latter, Claimant's counsel rephrased the question and was permitted to inquire as to Intervenor's involvement in Decedent's affairs in 2014. N.T. 107-108.

Third, Claimant excepts to the Hearing Examiner's proposed opinion because there is no specific finding of fact as to: (1) whether Decedent knew or would have known Intervenor's Social Security number; and (2) how Decedent came to know Intervenor's Social Security number. The Board, again, finds no error. Claimant seemingly takes issue with the Hearing Examiner's failure to speculate that Intervenor must have been involved in the completion of Decedent's October 26, 2006, beneficiary form because Intervenor's Social Security number is on the form, but "opportunity is not evidence, and conjecture and suspicion do not take the place of testimony." *In re Thompson Will*, 126 A.2d at 749 (citations omitted). Intervenor testified that she had no involvement in filling out the form and was not aware in October 2006 that she had been named Decedent's beneficiary. N.T. 127-128. No conflicting evidence was presented. No testimony was elicited from Intervenor as to how Decedent came to know Intervenor's Social Security number. The Hearing Examiner found Intervenor's testimony credible, and the Board agrees with that finding.

Fourth, Claimant excepts to the proposed Opinion and Recommendation on the ground that it is "largely based on the false premise that Decedent did not have a

relationship with his daughters.” Preliminarily, the Board finds that no such determination was made. The Hearing Examiner found that Decedent did not have a “particularly close-knit family.” This finding is supported by the record and, in particular, Claimant’s own testimony. Moreover, even if Decedent’s daughters had a close relationship with Decedent, the outcome would not change. The crux of this case is Decedent’s relationship with Intervenor around the time the beneficiary form was completed and submitted to PSERS. Accordingly, the burden is on Claimant to prove first that a confidential relationship existed between Decedent and Intervenor in October 2006. Absent proof of a confidential relationship, the October 26, 2006, form is presumed valid. It is not the role of this Board to second guess Decedent’s personal beneficiary choice based on his relationships with his daughters.<sup>1</sup> See *Hess v. Public School Employees’ Retirement Board*, 460 A.2d 1231,1232 (1983); *Titler v. State Employees’ Retirement Board*, 768 A.2d 899, 903 (Pa. Cmwlth. 2001).

Fourth, Claimant avers that the Hearing Examiner erred when she failed to issue an affirmative finding of fact that Decedent’s February 23, 2006, nomination was “not expressly rejected” by PSERS for lack of Social Security numbers. The Board again finds no error. The Hearing Examiner’s finding of fact that the February 23, 2006, nomination was not accepted by PSERS because the form ““contained inaccurate and/or incomplete information (beneficiary address information was incomplete or missing)” is supported by the record. PSERS-2. The PSERS’ letter that returned the February 23, 2006, form to Decedent does not mention Social Security numbers and, consequently, there is no indication as to whether the lack thereof was considered. PSERS-2.

Claimant also avers the Hearing Examiner erred by failing to find the July 24, 2006, beneficiary form valid and by failing to conclude that PSERS violated the Privacy Act of 1974 when it did not accept that form. The Board finds no error here either. The evidence establishes that Decedent did not challenge PSERS’ decision not to accept the July 24,

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<sup>1</sup> Claimant refers to Exhibit C-3 throughout her exceptions as evidence of Decedent’s intent to name her, her sisters, and Intervenor as beneficiaries with PSERS. The Hearing Examiner properly concluded that this document was hearsay and not to be given any weight or considered beyond the fact of its existence. Additionally, the Board finds that this document is not relevant or material because it does not mention PSERS, it pre-dates the October 26, 2006, nomination, and no evidence was presented that Decedent filed this letter at any time with PSERS. Beneficiary designations must be submitted to PSERS.

2006, form,<sup>2</sup> but instead opted to resubmit another form. Decedent was notified that by filing another form with PSERS, all earlier forms would be “considered void.” PSERS-4. PSERS’ rejection of the July 24, 2006, form is thus final and binding. Further, this Board does not have the authority to supplant a valid beneficiary form that evidences a member’s most recent intent with a prior, rejected form *that the member chose not to refile with PSERS*.<sup>3</sup> The Retirement Code directs that a member’s beneficiary is the “person *last designated* in writing to the Board.” 24 Pa.C.S. § 8102 (emphasis added). Absent proof that Decedent’s most recent nomination in October 2006 is the product of fraud, undue influence, or mental incompetence, all prior beneficiary submissions – valid or invalid, accepted or rejected -- are superseded and, therefore, immaterial. Consequently, the Board finds no error.

Accordingly, this Board finds appropriate the Hearing Examiner’s History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation with the following modifications:

1. On page 10, under “Conclusions of Law,” the following paragraph is added between paragraphs 13 and 14: “The presumption that a beneficiary nomination is valid may be overcome by establishing that a confidential relationship existed between the member and the beneficiary at the time the nomination was made. *See Snizaski v. Public School Employees’ Retirement Board*, No. 1329 C.D. 2008, 2014 Pa. Commw. Unpub. LEXIS 506, at \*25-26 (Pa. Cmwlth. Aug. 13, 2014).”
2. On page 15, the sentence “Intervenor testified that she guided Decedent spiritually, but adamantly denied counseling Decedent on financial matters” is amended to “Intervenor testified that she guided Decedent spiritually in her role as a pastor, but adamantly denied counseling Decedent on financial matters.”

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<sup>2</sup> 1 Pa. Code § 35.20 (Appeals from actions of staff), *superseded by regulation*, 22 Pa. Code § 201.3a (2008) (Nonadjudicatory benefit appeal).

<sup>3</sup> Under the Public School Employees’ Retirement Code, and as PSERS reminded Decedent in five, post-October 2006 *Statement(s) of Account*, Decedent could have changed his beneficiary to any person at any time prior to his death. PSERS-11 through PSERS-15. He did not do so. N.T. 54-55.

With the above modifications, we hereby adopt the Hearing Examiner's Opinion and Recommendation as our own, and accordingly:

IT IS HEREBY ORDERED that

1. Claimant's request that the Board find that Decedent's October 26, 2006, *Beneficiary Nomination* form was a product of undue influence is DENIED;
2. One hundred percent of Decedent's death benefit with PSERS shall be paid out to Intervenor in accordance with the October 26, 2006, *Beneficiary Nomination* form; and
3. Claimant's Appeal and Request for Administrative Hearing is DISMISSED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: May 25, 2016

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

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

In Re: :  
Account of Richard Edwards (D) : Docket No. 2015-07  
Claim of Renee A. Edwards :

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EXECUTIVE OFFICE

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**OPINION AND RECOMMENDATION**

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Date of Hearing: November 20, 2015  
Hearing Examiner: Suzanne Rauer, Esquire  
For Claimant: Joshua D. Baer, Esquire  
Renee A. Edwards, Esquire  
For PSERS: Kathrin V. Smith, Esquire  
For Intervenor: Matthew C. Stone, Esquire

## HISTORY

This matter came before the Public School Employees' Retirement Board (Board) on May 18, 2015, at which time Renee A. Edwards (Claimant) filed a Request for Administrative Hearing to appeal the April 2, 2015 decision by the Executive Staff Review Committee (ESRC) of the Public School Employees Retirement System (PSERS), of which Claimant was informed by correspondence dated April 17, 2015, which denied Claimant's request that PSERS not honor the *Nomination of Beneficiaries* form PSERS received from Decedent Richard A. Edwards on October 26, 2006. The ESRC found that Decedent properly executed a *Nomination of Beneficiaries* form on October 26, 2006, and that PSERS' statutory obligation is to disburse the death benefits payable on a member's account to the person last designated in writing to the Board, which in this case was Jean Harris (Intervenor), Decedent's sister. (PSERS-20) Decedent died on May 20, 2014. (PSERS-18) Claimant challenged the validity of Decedent's October 26, 2006 designation, claiming that Decedent did not intend to name Intervenor as the sole beneficiary, and that Decedent may not have been competent to consent to change in beneficiary.

On July 27, 2015, Suzanne Rauer, Esquire was appointed to act as hearing examiner for the administrative hearing in this appeal. Claimant entered her appearance in this matter *pro se*. A hearing notice was subsequently issued on July 30, 2015, scheduling a hearing for September 30, 2015 in Harrisburg. That hearing was continued, and an Order Rescheduling Hearing was issued on October 13, 2015 rescheduling the hearing for November 20, 2015 in Harrisburg. On November 10, 2015, Joshua D. Baer, Esquire entered his appearance on behalf of Claimant and requested a brief continuance of the November 20, 2015 hearing. That request was denied by Order dated November 12, 2015, and the hearing proceeded as scheduled on November 20, 2015 at PSERS, 5 North Fifth Street, Harrisburg, PA. Joshua D. Baer, Esquire was present at the hearing



on behalf of Claimant, who was also present at the hearing. Matthew C. Stone, Esquire appeared at the hearing on behalf of Intervenor, who was also present. Kathrin V. Smith, Esquire appeared at the hearing on behalf of PSERS.

Following the close of evidence and upon receipt of the hearing transcript on December 8, 2015, the Hearing Examiner issued a December 22, 2015 notice to the parties establishing a briefing schedule. Pursuant to the briefing schedule, Claimant's brief was due by January 21, 2016, PSERS' and Intervenor's briefs were due by February 22, 2016, and Claimant's reply brief, if any, was due by March 3, 2016. On January 21, 2016, Claimant re-entered her appearance *pro se* and submitted Claimant's brief. Timely briefs were filed by all parties, and the matter is now before the Board for final disposition.

## FINDINGS OF FACT

1. Richard A. Edwards (Decedent) was enrolled in PSERS through his employment with the School District of the City of Philadelphia in April 1998. (N.T. 14)
2. On February 23, 2006, Decedent submitted a *Nomination of Beneficiaries* form to PSERS identifying his younger sister, Jean Harris (Intervenor), Robin Edwards, Ricole Johnson and Renee A. Edwards (Claimant), his three daughters, as his primary beneficiaries to share equally in his death benefit. (PSERS-1; N.T. 15-17, 85)
3. Decedent did not identify the intended beneficiaries' Social Security numbers or a complete address for Ricole Johnson on the February 23, 2006 *Nomination of Beneficiaries* form. (PSERS-1; N.T. 15-17)
4. PSERS did not accept the February 23, 2006 *Nomination of Beneficiaries* form. (N.T. 17)
5. By correspondence dated March 17, 2006, PSERS informed Decedent that his February 23, 2006 *Nomination of Beneficiaries* form "contained inaccurate and/or incomplete information" (beneficiary address information was incomplete or missing) and send Decedent a new *Nomination of Beneficiaries* form to fill out. (PSERS-2; N.T. 17, 18-20)
6. On July 24, 2006, Decedent submitted a *Beneficiary Nomination* form to PSERS identifying Intervenor, Claimant, Robin Edwards and Ricole Johnson as his primary beneficiaries to share equally in his death benefit. (PSERS-3; N.T. 21-23)
7. Decedent did not include the intended beneficiaries' Social Security numbers on the July 24, 2006 *Beneficiary Nomination* form. (PSERS-3; N.T. 21-23)
8. PSERS did not accept the July 24, 2006 *Beneficiary Nomination* form. (N.T. 23)

9. By correspondence dated July 27, 2006, PSERS informed Decedent that his July 24, 2006 *Beneficiary Nomination* form “contained inaccurate or incomplete information” and that “for the form to be valid, [PSERS] must have the social security number of all beneficiaries” and sent him a pre-filled form and instructions to assist him in completing the form correctly. (PSERS-4; N.T. 23-26)

10. The March 17, 2006 and July 27, 2006 correspondence from PSERS advised Decedent that, “If you wish to change beneficiaries at a later date, a new form must be filed with PSERS. The form with the most recent date is the only one used to distribute benefits regardless of your membership status at the time of your death. Earlier forms are considered void.” (PSERS-2 and PSERS-4)

11. On October 19, 2006, Decedent submitted an unsigned *Beneficiary Nomination* form to PSERS that identified Intervenor as his sole primary beneficiary. (PSERS-5; N.T. 26-28)

12. By correspondence dated October 19, 2006, PSERS informed Decedent that the October 19, 2006 *Beneficiary Nomination* form was “not legally acceptable and may not be processed” without Decedent’s signature, and included a pre-filled form and instructions to assist him in completing the form correctly. (PSERS-6; N.T. 28-30)

13. On October 26, 2006, Decedent submitted to PSERS two completed *Beneficiary Nomination* forms that he had signed on October 24, 2006, which forms identified Intervenor as his sole principal beneficiary to receive 100 percent of his death benefit. (PSERS-7, N.T. 31-33)

14. By correspondence dated November 3, 2006, PSERS informed Decedent that it had “received and processed” his October 26, 2006 *Beneficiary Nomination* form and advised him that “[i]f you wish to change your beneficiary information with PSERS in the future, you must obtain

a new *Nomination of Beneficiaries*, complete it and forward it to PSERS for processing.” (PSERS-8; N.T. 33-34)

15. Prior to February 23, 2006, Decedent had not attempted to name a primary beneficiary for his PSERS account. (N.T. 16-17)

16. The only *Nomination of Beneficiaries* form ever accepted by PSERS from Decedent was the October 26, 2006 form identifying Intervenor as his sole primary beneficiary. (N.T. 82)

17. Intervenor was not with Decedent when he filled out the October 26, 2006 *Nomination of Beneficiaries* form, and Intervenor was not involved in completing that form. (N.T. 128)

18. In 2006, Decedent was living with family members other than Intervenor. (N.T. 193)

19. In 2006, Decedent owned a vehicle and possessed a valid driver’s license. (N.T. 196-197)

20. In 2006, Decedent handled his own financial matters without input from or consultation with Intervenor, Claimant or Claimant’s sisters. (N.T. 91, 99, 107, 109, 113)

21. In October 2006, Intervenor was not aware that Decedent had nominated her as his sole primary beneficiary with PSERS. (N.T. 127)

22. Decedent worked as a chemistry and/or math substitute teacher for the District during October 2006, and through the 2012-2013 school year. (PSERS-9 through PSERS-15)

23. The Statements of Account issued by PSERS to Decedent dated October 17, 2009, October 30, 2010, November 24, 2011, November 23, 2012, and November 1, 2013 advised Decedent that Intervenor was his sole primary beneficiary, that he should keep his beneficiary

information up to date, and that he could change his beneficiary at any time. (PSERS-11 through PSERS-15)

24. Decedent died on May 20, 2014. (PSERS-17 and PSERS-18; N.T. 57)

25. Decedent was an active member of PSERS at the time he died. (N.T. 63)

26. Decedent was reported to have last worked for the District in late January/early February 2014. (N.T. 62)

27. Decedent had not applied for retirement with PSERS at any time prior to his death, and was eligible for an annuity. (N.T. 62-63)

28. The present value of Decedent's account with PSERS, i.e., his death benefit, is approximately \$49,500. (N.T. 64)

29. At no time between October 26, 2006 and May 20, 2014 did Decedent or anyone else attempt to change Decedent's beneficiary with PSERS. (N.T. 54-55)

30. On May 28, 2014, Intervenor contacted PSERS by telephone to inform PSERS that Decedent had died, and requested that all correspondence be sent to her daughter, Dorian Harris. (N.T. 54, 67-68)

31. PSERS requires a death certificate prior to processing a member's death benefit and, by correspondence dated May 28, 2014 to Dorian Harris, PSERS requested a copy of Decedent's death certificate. (PSERS-16; N.T. 52-53)

32. On July 14, 2014, Claimant submitted Decedent's death certificate to PSERS. (PSERS-17; N.T. 56)

33. Claimant challenged Decedent's naming of Intervenor as his beneficiary. (N.T. 59-60)

34. By correspondence dated April 2, 2015, PSERS' ESRC denied Claimant's request to not honor the October 26, 2006 *Nomination of Beneficiary* form naming Intervenor as Decedent's sole primary beneficiary, stating that:

PSERS' statutory obligation is to disburse the death benefits payable on a member's account to the person last designated in writing to the Board. Mr. Edwards properly executed a *Nomination of Beneficiaries* form on October 26, 2006. Under Pennsylvania law, the member is presumed competent to have made his beneficiary designation. The *Nomination of Beneficiaries* form dated October 24, 2006 and received by PSERS on October 26, 2006 will, therefore, govern the distribution of the death benefit to the named beneficiary, Jean Harris, in the percentage designated, 100 percent.

(PSERS-19, PSERS-20)

35. Claimant filed a timely appeal and request for administrative hearing. (N.T. 62; Docket No. 2015-07)

36. By Order dated July 2, 2015, the Board granted Intervenor's petition to intervene. (Docket No. 2015-07)

37. An administrative hearing was held on November 20, 2015 before Hearing Examiner Suzanne Rauer; Claimant and Intervenor were present and represented by counsel, and had the opportunity to testify, examine witnesses, and offer evidence. (Transcript, *passim*)

38. Following the close of evidence and upon receipt of the hearing transcript on December 8, 2015, the Hearing Examiner issued a December 22, 2015 notice to the parties establishing a briefing schedule. Pursuant to the briefing schedule, Claimant's brief was due by January 21, 2016, PSERS' and Intervenor's briefs were due by February 22, 2016, and Claimant's reply brief, if any, was due by March 3, 2016. (Docket No. 2015-07)

39. On January 21, 2016, Claimant re-entered her appearance *pro se* and submitted Claimant's brief. (Docket No. 2015-07)

## CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact Nos. 1-35)
2. Claimant was afforded notice and an opportunity to be heard in connection with her appeal. (Findings of Fact Nos. 33-39)
3. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).
4. A preponderance of the evidence is the correct burden of proof to be applied in this administrative action. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 529 Pa. 654, 602 A. 2d 863 (1998); *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A. 2d 678 (Pa. Cmwlth. 2005).
5. A preponderance of the evidence 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 Board of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986); *A.B. v. Slippery Rock Area School District*, 906 A. 2d 674 (Pa. Cmwlth. 2006).
6. PSERS is a creature of statute and derives its authority from the provisions of the Retirement Code. (24 Pa.C.S. §§8101 *et. seq.*)
7. The authority of the Board to grant or deny Claimant's request is limited to the provisions of the Retirement Code; the Board has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Burris v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992).

8. Members of PSERS have only those rights recognized by statute and none beyond. *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992).
9. "In 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)." (4 Pa.C.S. §8309; *see also* 24 Pa.C.S. §8347, 22 Pa. Code 213.9)
10. 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))
11. A "beneficiary" is defined under the Retirement Code 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. §8102 (relating to definition of "beneficiary"))
12. The member is presumed to have been competent at the time he executed the *Nomination of Beneficiaries* form. *See, Estate of McGovern v. State Employees' Retirement Board*, 517 A.2d 523 (Pa. 1986)
13. Decedent effectuated a contractual obligation on PSERS to pay the death benefit to his nominated beneficiary. *See Estate of Rosenstein v. Public School Employees' Retirement System*, 685 A.2d 624 (Pa.Cmwlth.1996)
14. A confidential relationship exists when circumstances make it certain that the parties do not deal on equal terms, but, on the one side there is an overmastering influence or, on the other, weakness, dependence or trust, justifiably reposed. *Frowen v. Blank*, 425 A.2d 412, 416 (Pa. 1981)
15. The burden of proving a confidential relationship is on the party asserting it. *Banko v. Malanecki*, 451 A.2d 1008, 1010 (Pa. 1982)



16. Claimant has not proven that Intervenor and Decedent had a confidential relationship in October 2006 or at any time thereafter. (Findings of Fact, Nos. 2-29)

17. Intervenor is Decedent's sole beneficiary and is entitled to his death benefit.  
.....  
(Findings of Fact, Nos. 1-39)

## DISCUSSION

Richard A. Edwards (Decedent) was enrolled in PSERS through his employment with the School District of the City of Philadelphia in April 1998. Prior to February 23, 2006, Decedent had not attempted to name a primary beneficiary for his PSERS account, and there is no evidence or testimony as to why Decedent addressed this matter in 2006. Nevertheless, on February 23, 2006 Decedent submitted a *Nomination of Beneficiaries* form to PSERS identifying his younger sister, Intervenor Jean Harris, together with Robin Edwards, Ricole Johnson and Claimant René A. Edwards, his three daughters, as his primary beneficiaries to share equally in his death benefit. Decedent did not identify the intended beneficiaries' Social Security numbers or a complete address for Ricole Johnson on the February 23, 2006 *Nomination of Beneficiaries* form, and PSERS informed Decedent that it did not accept the beneficiary form. On July 24, 2006, Decedent submitted a second *Beneficiary Nomination* form to PSERS identifying Intervenor, Claimant, Robin Edwards and Ricole Johnson as his primary beneficiaries to share equally in his death benefit. Decedent did not include the intended beneficiaries' Social Security numbers on the July 24, 2006 *Beneficiary Nomination* form, and PSERS informed Decedent that it again did not accept the beneficiary form. On October 19, 2006, Decedent submitted an unsigned *Beneficiary Nomination* form to PSERS that identified Intervenor as his sole primary beneficiary, and PSERS informed him the form was not acceptable without his signature. On October 26, 2006, Decedent submitted to PSERS two completed *Beneficiary Nomination* forms that he had signed on October 24, 2006, identifying Intervenor as his sole principal beneficiary to receive 100 percent of his death benefit, and PSERS informed Decedent that the October 24, 2006 forms had been received on October 26, 2006 and processed. The only *Nomination of Beneficiaries* form that PSERS ever accepted and processed was the October 26, 2006 form identifying Intervenor as his sole primary

beneficiary. Intervenor was not with Decedent when he filled out the October 26, 2006 *Nomination of Beneficiaries* form, and Intervenor was not involved in completing that form. In 2006, Decedent handled his own financial matters without input from or consultation with Intervenor, Claimant or Claimant's sisters, and Intervenor was not aware that Decedent had nominated her as his sole primary beneficiary with PSERS. Decedent made no attempt in the following years to change his beneficiary, although PSERS reminded him every year in his Statements of Account between October 17, 2009 and November 1, 2013 that Intervenor was his sole primary beneficiary and that he could change his beneficiary at any time. (PSERS-11 through PSERS-15)

Decedent died while he was an active member of PSERS and was eligible for an annuity from PSERS. In the event of the death of an active member who is eligible for an annuity, the member is deemed to have elected an Option 1 retirement plan, and his beneficiary is entitled to his death benefit.<sup>1</sup> The death benefit amount in question is approximately \$49,500. The dispute in this matter is whether the October 26, 2006 *Nomination of Beneficiaries* form controls who receives Decedent's death benefit.

Under Pennsylvania law, it is presumed that Decedent was competent when he completed and submitted the October 26, 2006 *Nomination of Beneficiaries* forms to PSERS, and the signed forms give rise to the presumption that they accurately express his state of mind. *See Estate of McGovern v. State Employees' Retirement Board*, 517 A.2d 523 (Pa. 1986). A member's written nomination of beneficiary controls regardless of any perceived inequity with the selection. *See Hess v. Pub. Sch. Employes' Ret. Bd.*, 460 A.2d 1331 (1983); *Titler v. State Employees' Ret. Bd.*,

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<sup>1</sup> See 24 Pa. C.S. §§8102, 8309, 8347; 22 Pa. Code §213.9. Option 1 is 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.

768 A.2d 899 (Pa.Cmwlt. 2001). Absent fraud, undue influence or Decedent's mental incapacity, Intervenor is the sole beneficiary of Decedent's death benefit.

Claimant argued that Decedent's and Intervenor's sibling relationship, together with Intervenor's involvement in Decedent's medical and financial affairs, constituted a confidential relationship. The sibling relationship alone does not constitute a confidential relationship, which exists when circumstances make it certain that the parties do not deal on equal terms, but, on the one side there is an overmastering influence or, on the other, weakness, dependence or trust, justifiably reposed. *Frowen v. Blank*, 425 A.2d 412 (Pa. 1981); *Truver v. Kennedy*, 229 A.2d 468 (Pa. 1967). It is Claimant's burden to prove that a confidential relationship did in fact exist between Intervenor and Decedent, such that Intervenor asserted undue influence in Decedent's decision to name Intervenor as his sole beneficiary. The only testimony elicited, however, showed that Decedent and Intervenor shared a close family relationship. Intervenor testified that she spoke to Decedent on almost a daily basis over the last fifteen years of his life, and was involved in hospitalizing him in Delaware in 2014 prior to Claimant and her sisters moving him to a facility in New Jersey, but Intervenor testified that she was never involved in Decedent's financial affairs. Claimant provided no evidence or testimony other than speculation to rebut Intervenor's testimony. Claimant claimed that Intervenor helped Decedent to obtain a life insurance policy by referring him to her son, Kevin Harris, a licensed insurance agent, but Intervenor denied that claim and Claimant provided no evidence to the contrary. (N.T. 91) Intervenor also testified that she was not aware she was named as a beneficiary on that life insurance policy as well as on another small life insurance policy. Interestingly, after Decedent's death, Intervenor immediately signed over the two policies, which totaled approximately \$11,000, to the funeral home to partly pay for Decedent's funeral. (N.T. 121-123)

From the testimony presented, this does not appear to have been a particularly close-knit family, and Intervenor was the family member who had the most contact with Decedent. As Claimant testified, and PSERS pointed out, Decedent did not raise his daughters, did not live near them after his divorce from their mother, spent few holidays with them and did not speak to them regularly. (N.T. 146-147, 160-161, 172, 176, 193, 199) Claimant testified that her contact with Decedent in 2006 was sporadic and that she may have seen Decedent on only one occasion in 2006 (N.T. 147-185-187, 195-196). Again, as PSERS pointed out, it is not inconceivable that, under these facts, Decedent would choose Intervenor as his beneficiary.

Claimant also points to a pastor-congregant relationship between Intervenor and Decedent as a confidential relationship and proof of undue influence. Testimony reveals that Decedent was a member of the Deliverance Church, a church where Intervenor was a minister and missionary, between about 2001 and some time in 2010, at which time Intervenor became the pastor and CEO of the New Birth Tabernacle Church, a small congregation of 12-15 people, where Decedent also became a member. (N.T. 85-86, 88-89, 96) Intervenor testified that she guided Decedent spiritually, but adamantly denied counseling Decedent on financial matters. (N.T. 90-91) There is no testimony as to Intervenor's interactions with Decedent during the time he was a member of the Deliverance Church, specifically in 2006 when Decedent named Intervenor as the sole beneficiary of his death benefit. At the time, Decedent was living with his sister Rose in Philadelphia, and attending the Deliverance Church with Rose. (N.T. 135-135) There is no hint of *any* evidence that would show Intervenor using her position through either church to unduly influence Decedent in financial matters. Claimant's claim that Decedent and Intervenor were in a confidential relationship as the result of their participation in the Deliverance Church in 2006 therefore fails.

Claimant relies on correspondence from Decedent to Claimant's sister, Robin, in which Decedent stated that he had three insurance policies, one with Colonial Penn, one with Globe Life Insurance Co., and one with the school board, and that Decedent's beneficiaries on all three policies were Claimant, her sisters Ricole and Robin, and Intervenor. The correspondence further instructed Robin to keep his funeral simple, and to divide whatever money remained from the three policies among the four of them. (Claimant's Exhibit C-3) That correspondence was dated January 2, 2006, prior to Decedent's first attempts to name any beneficiary for his PSERS account.<sup>2</sup> (Claimant's Exhibit C-3) Decedent on two occasions, on February 23, 2006 and July 24, 2006, named his three daughters and Intervenor as his primary beneficiaries to share equally in his death benefit, but Decedent did not have the necessary personal information from his named beneficiaries to properly complete the beneficiary forms. On October 19, 2006, Decedent submitted an unsigned beneficiary form naming Intervenor as his sole beneficiary, and finally on October 26, 2006 Decedent submitted a properly executed beneficiary form naming Intervenor as his sole beneficiary. There is no indication as to why Decedent changed his intended beneficiary on the October 19, 2006 and October 26, 2006 beneficiary forms, only that he did so. The October 26, 2006 beneficiary form is the only beneficiary form ever properly completed, submitted and processed on Decedent's account. As PSERS pointed out, this is not a case where Decedent was dependent upon Intervenor for life's necessities, where Decedent was physically or mentally weakened or incapacitated, where Intervenor was involved in the transaction, where Intervenor had any control over Decedent's financial affairs, or where the close relationship between Decedent and Intervenor is suspect. Claimant was granted wide latitude in presenting testimony

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<sup>2</sup> It must also be noted that Claimant's Exhibit C-3, while admitted into evidence at the time of the hearing, is hearsay with no corroborative evidence presented to support the contents of the document, and it will not be given any weight or considered further.

and evidence at the hearing, but none of the testimony and evidence considered in this matter, while replete with speculation, shows a confidential relationship between Decedent and Intervenor or any undue influence on the part of Intervenor. While the October 26, 2006 beneficiary form may not meet the expectations of Claimant and her two sisters, it is still controlling where no confidential relationship has been shown. As the designation of beneficiary made by Decedent on October 26, 2006 was the only complete designation in writing to the Board by Decedent, that election is binding on PSERS. Accordingly, Intervenor is Decedent's sole beneficiary and is entitled to his death benefits.

Accordingly, the following recommendation will be made to the Board:

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

In Re: : Docket No. 2015-07  
Account of Richard Edwards (D) :  
Claim of Renee A. Edwards :

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EXECUTIVE OFFICE

**RECOMMENDATION**

AND NOW, this 9<sup>th</sup> day of March, 2016, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the Hearing Examiner for the Public School Employees' Retirement Board recommends that 100 percent of Decedent's death benefits shall be payable to Intervenor, Jean Harris, as directed by Decedent's October 26, 2006 fully executed *Nomination of Beneficiaries* form directs, and that the claim of Renee A. Edwards be **DISMISSED.**

  
Suzanne Rauer  
Hearing Officer

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***Date of Mailing:*** March 9, 2016