

Mail Date: AUG 14 2009

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

IN RE: ACCOUNT OF RONALD A. BECKER (D)
DOCKET NO. 2008-14
CLAIM OF LISA E. BECKER

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs; the Opinion and Recommendation of the Hearing Examiner; and Claimant's Exceptions to the Opinion and Recommendation of the Hearing Examiner. We note that Claimant's Exceptions provide no additional argument or authority to support her Exceptions to the Hearing Examiner's Opinion. The Board, therefore, denies Claimant's Exceptions.

The Board believes it is appropriate to comment on Claimant's claims to a right of spousal consent to her deceased spouse's election of a benefit payment plan. PSERS is a "governmental plan" as defined in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. 29 U.S.C. §1002(32) and 26 U.S.C. § 414(d) (a "governmental plan" means "a plan established and maintained for its employees by . . . the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing"). The spousal sign-off provision in ERISA, 26 U.S.C. § 401(a)(13) does not apply to governmental plans. 29 U.S.C. §1003(b).

The Board finds appropriate the Hearing Examiner's History, Findings of Fact, Conclusions of Law, Discussion and Recommendation supplemented by the above and with the correction of the noted typographical errors. The Board hereby notes the following corrections to typographical errors in the Hearing Examiner's Opinion in order to conform to the record in this matter: Page 3, Finding of Fact No. 1, the sentence "On February 13, 2002, Ronald A. Becker ("Decedent") filed an Application for Disability Retirement with the Pennsylvania State Employees' Retirement Services (PSERS)." is corrected to "On February 13, 2002, Ronald A. Becker ("Decedent") filed an Application for Disability Retirement with the Public School Employees' Retirement System (PSERS)."; and Page 4, Finding of Fact No. 12, in the first sentence, "Department" is changed to "PSERS."

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

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 Susan M. Smale (Stanley), as designated by Decedent in Decedent's Application for Disability Retirement filed on February 13, 2002.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: AUG 14 2009

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

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

IN RE:

**Account of Ronald Becker (D)
Claim of Lisa E. Becker**

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Docket No. 2008-14

OPINION AND RECOMMENDATION

Dates of Hearing: November 19, 2008
Hearing Examiner: Jackie Wiest Lutz, Esquire
For the Claimant: Lisa E. Becker, *pro se*
For PSERS: David W. Speck, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Lisa E. Becker (Claimant) from a decision of the Public School Employees Retirement System (PSERS) to pay the death benefit from Ronald A. Becker's (Decedent) retirement account to the beneficiary named by the Decedent on his Application for Disability Retirement, which was received by PSERS on February 13, 2002. Claimant requests, instead, that she be named as the sole beneficiary of Decedent's retirement account.

On June 20, 2008, Jackie Wiest Lutz, Esquire was appointed to act as hearing officer for the administrative hearing in this matter. A hearing notice was subsequently issued on August 4, 2008, scheduling a hearing for November 19, 2008.

The hearing proceeded as scheduled on November 19, 2008 at 5 North Fifth Street, Harrisburg, Pennsylvania. Claimant appeared at the hearing, *pro se*. David W. Speck, Esquire, represented PSERS.

Following the close of evidence and upon receipt of the hearing transcript, a briefing schedule was established by the Hearing Officer. Pursuant to the briefing schedule, Claimant's brief was due on or before January 14, 2009; PSERS' brief was due on or before February 13, 2009; and, Claimant's reply brief, if any, was due on or before March 2, 2009. Timely briefs were filed by all parties.

The matter is now before the Board for final disposition.

FINDINGS OF FACT

1. On February 13, 2002, Ronald A. Becker (“Decedent”) filed an Application for Disability Retirement with the Pennsylvania State Employees’ Retirement Services (PSERS). (N.T. 7, 11, 19; PSERS’ Exhibit 1)
2. On the Application for Disability Retirement, Decedent nominated Susan M. Smale (Stanley), Decedent’s sister, as the Survivor Annuitant. (N.T. 11, 19; PSERS’ Exhibit 1)
3. On his retirement application, Decedent selected option 2 as his benefit which provides the same gross monthly benefit to the designated survivor as the Decedent was receiving. (N.T. 19-20; PSERS’ Exhibit 1).
4. Because Decedent’s retirement was a disability retirement, his survivor is only entitled to the annuity portion and not the disability portion of the benefit that the Decedent was receiving. (N.T. 20).
5. On his retirement application, Decedent indicated that there were no existing court orders or pending divorce proceedings which affects or will affect the distribution of his benefit to someone other than himself. (N.T. 20; PSERS’ Exhibit 1, page 6 of 8).
6. On April 17, 2002, Decedent filed for divorce. (N.T. 8, 12, 14-15; PSERS’ Exhibit 5)
7. On August 21, 2002, PSERS sent Decedent a “Recomputation of Your Retirement” letter reflecting that he was a disability annuitant and advising him that his gross monthly check would be \$792.70. The letter also advised the Decedent that upon his death, his designated survivor annuitant would receive a retirement benefit in the

amount of \$243.53 per month and to contact PSERS if his marital status has changed.
(N.T. 21-22; PSERS' Exhibit 2)

8. On February 6, 2007, Claimant filed for "economic relief" under Section 3101(d) of the Divorce Code with the Lancaster County Court of Common Pleas. (N.T. 9, 15; PSERS' Exhibit 5; Claimant's Exhibit 1, pages 7-8).

9. The Lancaster County Court of Common Pleas has not taken action on Claimant's request for economic relief. (N.T. 11)

10. Decedent died on December 10, 2007. (N.T. 10, 23; PSERS' Exhibit 3 and Claimant's Exhibit 7).

11. At the time of Decedent's death in 2007, he was still married to Claimant.
(N.T. 9-10)

12. On February 1, 2008, the Department sent Ms. Stanley a letter advising her of the amount (\$243.53 per month) of the monthly death or disability benefit that she will receive as the annuitant name on Decedent's retirement application. The letter also advised her to reimburse PSERS for the December 31, 2007 payment that was electronically deposited into Decedent's bank account. (N.T. 11, 23; PSERS's Exhibit 4).

13. On May 12, 2008, PSERS sent Ms. Stanley a letter enclosing Claimant's request for an administrative hearing and PSERS' Answer. The letter advised Ms. Stanley of her right to participate in the administrative hearing to protect her interests.
(N.T. 24; PSERS' Exhibit 5)

14. On April 15, 2008, Claimant filed a Request for Administrative Hearing
(N.T. 24; PSERS' Exhibit 5)

15. On May 2, 2008, PSERS filed an Answer to Claimant's Request for Administrative Hearing asserting that Claimant was not a named beneficiary or survivor annuitant on Decedent's retirement account. (N.T. 24; PSERS' Exhibit 5)

16. On August 4, 2008, PSERS notified Claimant that a hearing had been scheduled for November 19, 2008. (N.T. 24; PSERS' Exhibit 6)

17. On November 19, 2008 a hearing was held in connection with Claimant's request for an administrative hearing. (Transcript, *passim*)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact Nos. 1-17)
2. The statutory provisions of the Retirement Code create a contract between the Commonwealth and the public school employees. *Kline v. Morrison*, 44 A.2d 267 (1945).
3. The contract that a public school employee has with the Commonwealth must be liberally construed in favor of the member. *Bowers v. State Employees' Retirement System*, 371 A.2d 1040 (1977).
4. A retiree's rights under the Retirement Code are so personal that no other person can exercise those rights on behalf of the member. 24 Pa. C.S. §8507.
5. PSERS is a "governmental plan" as defined in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. 29 U.S.C. §1002(32) and 26 U.S.C. § 414(d).
6. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).
7. Claimant has failed to proffer convincing evidence or arguments in support of her appeal. (Findings of Fact Nos. 1-17)
8. The Board has no authority to change the Decedent's survivor annuitant designation from Ms. Smale to the Claimant. 24 Pa. C.S. §8507; *Estate of Rosenstein v. Public School Employees' Retirement Board*, 685 A. 2d 624 (Pa. Cmwlth. 1996).

DISCUSSION

The Board is charged in this matter with determining how the Decedent's death benefits should be distributed.

The facts of this case are principally undisputed. On February 13, 2002, PSERS received an Application for Disability Retirement ("Retirement Application") from the Decedent in which the Decedent elected Option 2 and named his sister, Susan Stanley, formerly Susan Smaley, as his survivor annuitant. On his Retirement Application, the Decedent checked the box under section 10 of the form that reads: "I certify that there is **no existing** court order or pending divorce proceeding which affects or will affect the distribution of my benefit to someone other than myself." (PSERS' Exhibit 1)

When the Decedent filed his Retirement Application with PSERS in 2002, and at the time of the Decedent's death in December of 2007, the Decedent and the Claimant were married. However, the Decedent filed for Divorce on April 17, 2002. Claimant believes that she should be named as the Decedent's sole beneficiary because she was married to him for 26 years and because she was still married to the Decedent at the time of his death.

Claimant contends that the Decedent knew when he completed his Retirement Application *that there would be a divorce proceeding pending* which would affect the distribution of his benefits to someone else because the Decedent filed for divorce just two months later on April 17, 2002. Claimant maintains that the Decedent's transfer of real property that was titled in his name to his sister on January 8, 2002, just one month prior to filing his Retirement Application, was an attempt to hide assets, and corroborates

her contention that the Decedent's was *contemplating* divorce when he completed and filed his Retirement Application.¹

Claimant testified that she waited until February of 2007 to file for Economic Relief – even though the divorce action commenced in 2002 – because she and the Decedent were going back and forth with agreements in an attempt to resolve matters outside of court. (N.T. 15)

Claimant argues that the Decedent's omission of these material facts should be treated as perjury under 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities) and that she should be entitled to the Decedent's death/disability benefits. Claimant's position is that the length of her marriage and the fact that the Decedent worked for the School District the entire time they were married should outweigh the Decedent's deception. (N.T. 14)

Claimant's plight is unfortunate. However, the Commonwealth Court has recognized and affirmed that the rights granted to a retiree/member under the Retirement Code are so personal that no person, except the retiree/member, may exercise those rights on his/her behalf. In *Estate of Rosenstein v. Public School Employees' Retirement Board*, 685 A. 2d 624 (Pa. Cmwlth. 1996), the Court acknowledged:

When an employee retires and elects an option for retirement benefits, he or she enters into a contract with a retirement board. *Bowers v. State Employes' Retirement Board*, 29 Pa. Commw. 561, 371 A. 2d 1040 (Pa. Cmwlth. 1977). Thereafter, the employee is permitted to reelect an option and designate a substitute survivor annuitant only under limited circumstances provided in Section 8507(j) of the [Retirement] Code.
Id. at 626.

¹ Claimant further contends that the Decedent took all three marital vehicles in February of 2002, leaving her with no means of transportation and, therefore, no way to defend herself in a divorce action.

Under section 8507(j) of the Retirement Code, a *member* who has designated a survivor annuitant at the time of his/her retirement may nominate a new survivor annuitant under only two circumstances: (1) if the survivor annuitant predeceases the retiree/member; or, (2) the member is awarded a divorce or becomes married subsequent to the election of the option.² However, these exceptions apply only to *members* of the system – not a member’s spouse. Moreover, none of these conditions applies here.

It is unfortunate that the Claimant never obtained an approved domestic relations order that may possibly have entitled her to a portion of the Decedent’s retirement benefits.³ Nonetheless, the Board acts as a governmental agency that performs a government function in determining and administering pension benefits of public school employees. *Pennsylvania Ass’n of State Mental Hosp. Physicians v. State Employees’*

² Section 8507(j) of the Retirement Code provides, in pertinent part, as follows:

§8507. Rights and duties of school employees and members.

(j) Nomination of beneficiary or survivor annuitant. - - A member who is eligible and elects to receive a reduced annuity under Option 1, 2, 3, or 4, shall nominate a beneficiary or a survivor annuitant, as the case may be, by written designation filed with the board at the time of his retirement. . . . A member having designated a survivor annuitant at time of retirement shall not be permitted to nominate a new survivor annuitant unless such survivor annuitant predeceases him or unless the member is awarded a divorce or becomes married subsequent to the election of the option. In such cases, the annuitant shall have the right to reelect an option and to nominate a beneficiary or a new survivor annuitant and to have his annuity recomputed to be actuarially equivalent as of the date of recomputation to the annuity in effect immediately prior to the recomputation. In no other case shall a benefit plan be changed by an annuitant.
24 Pa. C.S. §8507(j).

Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, the Retirement Code’s corresponding regulations allow a member to change a retirement option election within 30 days of the initial benefit letter, and within 30 days of the final benefit calculation letter, but, only if specific conditions, which are not applicable here, are met. 22 Pa. Code §213.45.

³ Under section 8533.2 of the Retirement Code, a domestic relations order may provide for an irrevocable beneficiary; when it does, it shall be deemed to be one that requires a member to nominate an alternate payee as a beneficiary and that prohibits the removal or change of that beneficiary without approval of a court of competent jurisdiction, except by operation of law. 24 Pa. C.S. §8533.2.

Retirement Board, 375 A. 2d 863 (Pa. Cmwlth. 1977). The Board has only those powers that have been granted to it by the Retirement Code. As well, PSERS is bound by the Retirement Code. The Retirement Code does not authorize anyone, other than the member, to make an annuity option choice on his behalf. *Estate of Rosenstein, supra.*⁴

Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). Claimant has not proffered sufficient evidence to support her appeal. The following recommendation will therefore be made to the Board:

⁴ Claimant testified that she believes that PSERS' policies are outdated and unfair. She maintains that one spouse should not be allowed to transfer their benefits to someone else without the other spouses consent. (Claimant's Brief). However, Claimant's remedy is with the legislature.

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

IN RE:

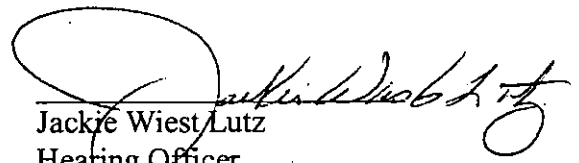
Account of Ronald Becker (D)
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Docket No. 2008-14

RECOMMENDATION

AND NOW, this 3rd day of June 2009, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the Hearing Officer for the Public School Employees' Retirement System recommends that Claimant's request to change the Decedent's survivor annuity from Ms. Stanley to Claimant should be denied.


Jackie Wiest Lutz
Hearing Officer

Date of Mailing: June 4, 2009