

BEFORE THE
TEACHERS' RETIREMENT BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Request for an Entitlement
to Lynne Lowe's Defined Benefit Account, by

Eugene Stisser,

Respondent.

**PRECEDENTIAL DECISION
18-02**

Effective February 9, 2018

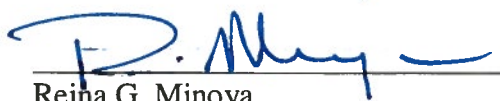
Case No. APL20140818-0000674
OAH No. 2015021171

On February 9, 2018, the Appeals Committee of the Teachers' Retirement Board, acting pursuant to Government Code section 11425.60 and Section 800 D of the Teachers' Retirement Board Policy Manual on Designating Precedential Decisions, designated the following parts of *In the Matter of the Request for an Entitlement to Lynne Lowe's Defined Benefit Account, by Eugene Stisser* as a Precedential Decision: the entire decision except for 1) the last sentence of Paragraph 39 of "Factual Findings" and 2) Paragraph 1 of "Legal Conclusions."

The attached copy of the Notice of Decision and Order is a true and correct copy thereof as adopted and designated as precedential by the Appeals Committee.

Once a decision or part of a decision has been designated as a Precedential Decision, it is binding in future administrative adjudications unless the Appeals Committee has rescinded the designation. The Precedential Decision shall be added to an index containing all of CalSTRS' Precedential Decisions and will be publicized annually in the California Regulatory Notice Registry. The designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedential decision is not subject to judicial review.

Dated: February 12, 2018



Reina G. Minoya
Assistant General Counsel
Office of the General Counsel
California State Teachers' Retirement System

BEFORE THE
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OF THE STATE OF CALIFORNIA

In the Matter of the Request for an Entitlement
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EUGENE STISSER,

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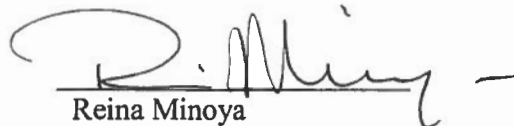
NOTICE OF DECISION AND ORDER

The attached proposed decision of the administrative law judge was adopted on January 26, 2016, by the Appeals Committee of the Teachers' Retirement Board of the State of California as its decision in the above-entitled matter.

The Appeals Committee adopted the proposed decision pursuant to Government Code section 11517, subdivision (c)(2)(C), with the following minor technical changes, which do not affect the factual or legal basis of the proposed decision:

- (1) Under Factual Findings, page 8, paragraph 24, line 1, replace "Linda Marshall" with "Lynn Marshall"
- (2) Under Factual Findings, page 9, paragraph 28, line 1, replace "Mr. Lowe" with "Mr. Stisser"
- (3) Under Factual Findings, page 12, paragraph 40, lines 14-15, replace "red flags" with "legal flags"

Dated: 1/26/16



Reina Minoya
Assistant General Counsel
Office of the General Counsel
California State Teachers' Retirement System

Pursuant to Government Code section 11425.60, the following parts of this decision are designated as a Precedential Decision: the entire decision except for the last sentence of Paragraph 39 of "Factual Findings" and Paragraph 1 of "Legal Conclusions."

BEFORE THE
TEACHERS' RETIREMENT BOARD OF THE
STATE OF CALIFORNIA

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CALSTRS LEGAL

In the Matter of the Request for an
Entitlement to Lynne Lowe's Defined
Benefit Account, by

EUGENE STISSER,

Respondent.

Agency Case No. APL 20140818 -
0000674

OAH No. 2015021171

PROPOSED DECISION

Administrative Law Judge (ALJ) Ann Elizabeth Sarli, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on July 7 and July 8, 2015 and on October 9, 2015.

Heidi Raveling, Counsel, represented complainant Peggy A. Plett, Deputy Chief Executive Officer, California State Teachers' Retirement System (CalSTRS).

Richard R. Guggenheim, Esq., represented Eugene Stisser.

The record remained open to allow the parties to file closing briefs. CalSTRS filed its post hearing brief on July 30, 2015, which was marked for identification as Exhibit 52.¹ Respondent filed his post hearing brief/closing argument on July 30, 2015, which was marked for identification as Exhibit BB. The matter was submitted and the record was closed on July 31, 2015.

On August 28, 2015, the ALJ, sua sponte, reopened the record for the purpose of taking additional evidence. Additional hearing was held on October 9, 2015, during which testimony and documents were received and the parties made closing statements. The matter was submitted and the record was closed on October 9, 2015.

¹ Complainant also filed a Request for Reconsideration and Admission of the third page of Exhibit Q. The request is granted and the third page of Exhibit Q is admitted in evidence.

PROCEDURAL FINDINGS

1. Lynn Lowe became a member of CalSTRS on September 1, 1969. She died in March 2012. Ms. Lowe has a CalSTRS defined benefit account consisting of her contributions and interest. Her widower, Eugene Stisser, requested an ongoing monthly allowance in the form of an option benefit or, in the alternative, a distribution (refund) of Ms. Lowe's defined benefit account contributions and interest. In the event he is not eligible for the option benefit or refund of the defined benefit account contributions and interest, he requested an ongoing monthly allowance in the form of a family allowance.

2. On May 15 2013, CalSTRS sent correspondence to Mr. Stisser advising he was ineligible for an ongoing monthly allowance because Ms. Lowe had not elected him as an option beneficiary. The letter also advised that Mr. Stisser was ineligible for a refund of defined benefit contributions and interest, because, pursuant to a Court Order, there was an option election on file for Ms. Lowe's former husband, Richard Lowe. Pursuant to Education Code section 23802, defined benefit contributions and interest could not be refunded when there was an option election filed. Finally, the letter advised Mr. Stisser that he was ineligible for a family allowance because he did not meet the definition of "spouse" under Education Code section 22171. At the time of Ms. Lowe's death, Mr. Stisser and Ms. Lowe had been married less than a year and the marriage had taken place after she was diagnosed with the illness that caused her death.²

3. On June 21, 2013, CalSTRS received Mr. Stisser's request for Executive Review. Mr. Stisser requested that CalSTRS apply Education Code section 22308 provisions for the correction of errors and omissions to grant him either a 100% option beneficiary status or a refund of contributions and interest from Ms. Lowe's defined benefit account.

4. On July 24, 2014, after an Executive Review, CalSTRS sent correspondence to Mr. Stisser denying his request for either a 100% option beneficiary status or a refund of contributions and interest from Ms. Lowe's defined benefit account.

5. Mr. Stisser appealed the CalSTRS action. Complainant filed the Statement of Issues in her official capacity on February 27, 2015, pursuant to the authority of Government Code section 11504. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et.seq.

FACTUAL FINDINGS

1. Lynn Lowe married Richard Lowe in 1965. She became a member of CalSTRS in 1969. On October 11, 1998, Ms. Lowe legally separated from Mr. Lowe. In

² The CalSTRS correspondence also explained that Mr. Stisser would receive the balance of Ms. Lowe's defined benefit supplement account and 65.70% of her death benefit.

1999, the Lowes began legal proceedings to dissolve their marriage in the Superior Court, County of Santa Clara (Court). At Mr. Lowe's attorney's request, the Court issued an Order of Joinder, joining CalSTRS as a party claimant to the dissolution proceeding, which gave the Court jurisdiction to issue a Qualified Domestic Relations Order (QUADRO) to CalSTRS, directing the division of Ms. Lowe's retirement benefits.

2. After CalSTRS received the Court's Order of Joinder, CalSTRS Legal Office sent Mr. Lowe's attorney a letter dated August 17, 1999, with a copy to Ms. Lowe. The letter advised that as a result of the Joinder, a legal hold was placed on Ms. Lowe's CalSTRS account, which may affect her benefits. The letter included a pamphlet entitled "Community Property Information," and stated that the pamphlet "should be read for guidance in matters of dissolution of marriage as they relate to the System." The letter went on to advise, "If you still have specific questions after reviewing this information and the law, please contact me."

3. Ten years later, the dissolution was still pending, and the Lowes were discussing division of Ms. Lowe's retirement benefits. In April 2009, Ms. Lowe requested that CalSTRS provide her with a statement of her account and an estimate of the monthly benefit amounts she and Mr. Lowe would receive if she elected Mr. Lowe as an option beneficiary for his community property share. The form she completed to request this estimate advised, "The member may elect additional option beneficiaries for his/her remaining share." CalSTRS provided Ms. Lowe with a statement of her account contributions and interest from the date of marriage to the date of separation, as well as estimates for the division of her defined benefits between herself and Mr. Lowe. The estimates were based on two methods of dividing community property interests in pensions: the "Brown Division/Time Rule" and "Benefits Segregation Method."

4. The estimates Ms. Lowe received indicated that, under the "Brown Division/Time Rule," were she to retire on June 11, 2010, she would have a total monthly unmodified benefit of \$7,260; \$2,587 of which was payable to Mr. Lowe, and \$4,673 to Ms. Lowe. Under the "Benefits Segregation Method," Ms. Lowe's total monthly unmodified benefit would be \$4,815, while Mr. Lowe's total monthly unmodified benefit would be \$1,801. Mr. Lowe then requested an estimate of the "Brown Division/Time Rule" divisions, with Mr. Lowe's benefits to continue if Ms. Lowe died before he did. The Lowes were provided with this estimate, which identified Mr. Lowe's current interest in the benefits as 36% and Ms. Lowe's interest as 64%. The estimate took into consideration that Ms. Lowe would elect a compound option, giving Mr. Lowe 100% of his 36% interest in the account. Upon retirement, Ms. Lowe would receive \$4,602, and Mr. Lowe would receive \$ 2,589. Mr. Lowe's benefits would continue, were Ms. Lowe to predecease him.

5. While Mr. and Ms. Lowe continued their property settlement negotiations, Ms. Lowe received a 2010- 2011 "Personal Report" (annual statement) from CalSTRS, setting out her service credit and the balances in her accounts. The annual statement contained a "Special Message" stating:

You are eligible to select a pre-retirement option. For more information visit my.calstrs.com and select 'complete and submit forms' or contact us... . A legal hold exists on your account which may be due to a community property claim. This issue must be resolved prior to your receiving benefits. If your benefits are subject to court order that has already been acknowledged by CalSTRS, the legal hold will remain on your account and this message will appear on your statement each year. For more information call us at 800-228 -5453.

6. During their property settlement negotiations, the Lowes hired a neutral attorney to prepare the QUADRO dividing Ms. Lowe's retirement benefits. Mr. and Ms. Lowe had their own attorneys as well. CalSTRS provided the parties with a "Community Property Guide for California Educators Involved in Divorce or Legal Separation." (Guide) The 59 page Guide explained the QUADRO process. The Guide specifically advised that CalSTRS, "does not provide any type of legal advice to members or nonmember spouses concerning the division of the member's account or assist with the drafting of a court order." The Guide explained that CalSTRS complies with acceptable certified court orders, when CalSTRS has been properly joined as a party to the court action,

7. The Guide explained that a legal hold was placed on the member's account until all determinations of community property had been made. Under Section 12, entitled "Frequently Asked Questions" the Guide answers the question "Legal Hold (Flags) What Does the Legal Hold Mean?" as follows:

The legal hold is a flag placed on an account when a certain legal condition exists. When an account has a legal hold, the member cannot make any account or beneficiary changes without legal review and approval. CalSTRS places a legal hold on a member's account for one or more of the following reasons... CalSTRS is monitoring the account for future benefits to be paid upon the member's retirement or death pursuant to court order on file... . CalSTRS cannot pay a former spouse a community property share of the monthly benefit until the member retires...

8. Section 7 of the Guide is entitled "Benefits Payable after the Member's Death" provides information about, "the benefits that can be paid in the event of a member's death and how the benefits may be affected by divorce, annulment or legal separation." That section provides:

The defined benefit program provides benefits when a member dies before or after retirement. The benefits payable can be in the form of one-time benefit payment, a monthly benefit or both. A lifetime option benefit is payable only when the

member has made an option election for one or more persons before retirement, at the time of retirement, or in certain rare circumstances, after retirement.... *When a member's death occurs prior to retirement ... the one-time death benefit may include the accumulated contributions and interest in the member's account unless one of the following conditions exist: ... the member has a pre-retirement election of an option beneficiary on file...* (Italics added)

9. The Guide, under a section entitled "Option Election" discusses a compound election which:

[A]llows the member to elect one or more option beneficiaries for specifically allocated percentage of the member's benefit. This option gives the member the ability to apply for an option benefit for a nonmember spouse and a current spouse... The compound election option is required if the member is required to provide a nonmember spouse with only the community property percentage share of an option benefit ... the member must select a Compound Option... . *The member may choose to elect other option beneficiaries, or retain the balance as a member only benefits to receive the highest possible benefit.* An actuarially calculated cost will be assessed based on the date of birth of each option beneficiary the member elected. (Italics added)

10. The Guide furnishes an example of the member's ability to name an ex-spouse and a current spouse as option beneficiaries.

Example: the nonmember spouse is awarded a community property share of the member's monthly retirement benefits and must be named as an option beneficiary for the community property share only. The member must elect the Compound Option and name the nonmember spouse as the option beneficiary for the community property share of the benefit. The member retains control of the remaining percentage and can elect a current spouse as an additional option beneficiary for any part of the remaining share or retain the balance as a Member – Only benefit. (Guide page 20) (Italics added)

11. The property settlement negotiations continued. On April 25, 2011, Ms. Lowe and her attorney signed a Stipulation and Order. Mr. Lowe and his attorney signed as well. The Court entered a Judgment of Dissolution on July 5, 2011.

12. On October 10, 2011, CalSTRS received the Stipulation and Order Dividing Ms. Lowe's CalSTRS benefit. The Order awarded Mr. Lowe an interest in Ms. Lowe's defined benefit account, defined benefit supplement account and cash balance account. The Order directed, inter alia, that:

At the earliest date possible Member is ordered to pre-elect a retirement option that provides a continuing monthly benefit to the Nonmember Spouse if the Member becomes deceased. Member shall be required and is responsible to complete all forms necessary to elect this option. Member may elect any option, as long as the option permits Nonmember Spouse to continue to receive his community interest in the same monthly amount that was received prior to Member's death. This scenario requires the Compound Option election, and will automatically apply the actuarial calculated cost to the Nonmember Spouse's share only and does not effect the Member's remaining benefit. The Member may name additional option beneficiaries ... Should Nonmember Spouse predecease Member, his awarded interest as defined ... shall revert to member... . Each party, including CalSTRS, is ordered to comply with all of the provisions of this Order.

13. The Stipulation and Order agreed to a Time Rule Division of Ms. Lowe's monthly retirement allowance, with an ongoing option payment for the benefit of Mr. Lowe as to his community property share. The account bearing Ms. Lowe's name would not be divided into two separate accounts, as it would have been had the parties employed the Segregation method. Ms. Lowe and her attorney signed the Stipulation and Order on September 22, 2011, after Mr. Lowe and his attorney signed it. The Court issued the Order on September 30, 2011.

14. During the pendency of the dissolution proceedings, Ms. Lowe was living with Mr. Stisser. During this time she obtained several additional estimates of the benefits she would receive upon projected retirement dates. On October 18, 2011, she had a benefit counseling session with counselor Janice Bruner. Ms. Bruner gave her estimates of her final compensation, and estimates of Ms. Lowe's and Mr. Stisser's benefits if she were to elect a 50% option, a 75% option and 100% option for Mr. Stisser. She explained the costs involved in selecting an option and, that if the beneficiary passes away before the member, the member may be assessed a fee for the duration of the benefit. Ms. Bruner also advised that it may cost less to elect an option beneficiary before retirement. She also encouraged Ms. Lowe to put a beneficiary designation on file for the one-time death benefit and lump sum payment, and told Ms. Lowe she did not have one on file.

15. Ms. Bruner went through the "if/then" analysis, which is included on the Disability and Survivor Benefits Form. The form states that if the member is active at the time of death and has a pre-retirement election of an option in place, the option takes effect.

If there is no option in place and there is an eligible spouse, the eligible spouse may receive a monthly benefit at age 60, or refund of defined benefit contributions and interest in the member's account. If Ms. Lowe had asked Ms. Bruner for advice in selecting an option, she would have told her she is not a financial planner and that members can go to a financial planner or a CPA for advice.

16. Ms. Bruner told Ms. Lowe that there was a legal flag on her account and that she would have to contact the Legal Department in order to obtain the estimates she would need to determine how much she and Mr. Stisser would receive, given that Mr. Lowe had a Court ordered community property interest. Ms. Bruner gave Ms. Lowe written estimates as well. The written estimates contained a statement advising that there was a legal flag on Ms. Lowe's account and that her estimate did not reflect any community property interest a former spouse may have in the account or benefit. The statement advised Ms. Lowe to contact CalSTRS's legal office for more information. Ms. Lowe and Ms. Bruner discussed the election of pre-retirement options, and Ms. Bruner reminded her that there was no pre-retirement option beneficiary on file. It appears that Ms. Lowe wrote in the margin of the estimate documents, "wait for legal estimate before deciding on an option."

17. While they were meeting, Ms. Lowe took notes on option beneficiary amounts. Ms. Bruner left Ms. Lowe with documents, including a Pre-Retirement Election of an Option, and the "Community Property Guide for California Educators Involved in Divorce or Legal Separation" (discussed above in Findings 6 through 10). Ms. Bruner made notes in the CalSTRS system that she had referred Ms. Lowe to the Legal Department and that Ms. Lowe would be requesting a community property estimate when her divorce was final. Ms. Lowe did not contact the Legal Department for an estimate.

18. Ms. Bruner and Ms. Lowe had met on October 18, 2011. Shortly thereafter, in December 2011, Ms. Lowe was diagnosed with pancreatic cancer and was not given much hope for survival. She married Mr. Stisser on December 24, 2011.

19. On January 3, 2012, Ms. Lowe executed a Revocable Trust, prepared by her attorney, Richard Guggenheim. She also executed a Power Of Attorney for Management of Property and Personal Affairs. On January 14, 2011 she executed her Last Will. Pursuant to these documents, Mr. Stisser was the trustee and beneficiary of her estate and held her power of attorney.

20. On January 4, 2012, Ms. Lowe contacted CalSTRS and requested a benefit counselor see her at the hospital because she, "was ill and wanted to get her paperwork going." David Gillies, an experienced CalSTRS benefits counselor, employed by Santa Clara Unified School District, was assigned to provide benefits counseling to Ms. Lowe in her hospital room on January 5, 2012. Mr. Gillies does not recall the details of his meeting with Ms. Lowe. He does recall that she was capable of giving information and following along with the information he gave her. He was not aware of her medical condition, and had been trained not to inquire about a member's medical condition. He was aware that there was a "legal flag" on her account because of the community property interest of a former

spouse, and he advised her of this. He also advised her to contact CalSTRS's Legal Office for more information. The comment section of the written Service Retirement Estimates he provided her included this information as well. Ms. Lowe requested that Mr. Gillies give her retirement benefit estimates for herself only, and for Mr. Stisser as an option beneficiary of 100%, 75% and 50% options. His estimates were based on two projected dates of retirement she gave him, one in February and one in June 2012. Mr. Gillies provided the estimates to her, along with the caveat that the estimates did not reflect any community property interest that Mr. Lowe might have, that there was a legal hold on her account and she needed to contact the Legal Department to get estimates that reflected Mr. Lowe's interest in her defined benefit account.

21. Mr. Gillies gave Ms. Lowe a Recipient Designation Form for One-Time Death Benefit/Cash Balance Lump – Sum Payment (Designated Beneficiary Form) for her use in designating beneficiaries for her death benefits. The Designated Beneficiary Form is specifically for one-time death benefit payable upon death and states, "I understand this form does not designate a recipient to receive a continuing monthly retirement benefit." Mr. Gillies also gave Ms. Lowe a blank Pre-Retirement Election of an Option form.

22. Mr. Gillies explained the forms to Ms. Lowe. He explained the differences between a designated beneficiary and an option beneficiary. He did not fill out any of the forms for her or take forms with him when he left. Benefit counselors are specifically trained not to write on or fill out forms for members, or to give advice on choices or to submit forms for members. Ms. Lowe took some notes relating to option beneficiaries.

23. Mr. Stisser was transporting documents back and forth to the hospital for Ms. Lowe and was present sporadically during the meeting between Mr. Gillies and Ms. Lowe. Mr. Stisser and Ms. Lowe signed the Designated Beneficiary Form on January 5, 2012, the same date as her counseling meeting with Mr. Gillies. According to the form, Ms. Lowe designated Mr. Stisser as a 100% beneficiary of her portion of her death benefit and Mr. Lowe as the 100% beneficiary of his community property share. The form was received by CalSTRS' San Jose office on January 12, 2012. Ms. Lowe never submitted the Pre-Retirement Election of an Option form to CalSTRS.

24. On January 5, 2012, Linda Marshall, Senior Legal Analyst, CalSTRS, wrote to Ms. Lowe advising that, pursuant to the certified Court Order, she was required to name her non-member spouse as a primary beneficiary for her community property share of the one-time lump sum death benefit. The letter advised that Ms. Lowe may also name additional primary beneficiaries for the one-time lump sum death benefit. The letter advised that, pursuant to the Court Order, Ms. Lowe was required to pre-elect Mr. Lowe as an option beneficiary so that he would receive his community property share in the event she predeceased him. The letter advised, "Member may also name additional beneficiaries for this benefit; or maintain the balance as member only." The letter enclosed the appropriate forms for a pre-retirement election of a compound beneficiary, and noted, "[S]ince the completion of these forms is required per Court Order, you must submit these forms as soon as possible in order to be in compliance with Court's Order." The letter noted that either

party may request in writing directly from the Legal Office community property estimates reflecting the distribution of benefits payable to each party at time of retirement.

25. When CalSTRS received the One-Time Death Benefit Designated Beneficiary form from Ms. Lowe, CalSTRS sent a letter February 3, 2012, confirming that Richard Lowe and Eugene Stisser were the one-time death benefit recipients. On February 15, 2012, Ms. Lowe called the CalSTRS Legal Department, and spoke with Ms. Marshall. She was upset that Mr. Lowe was included as her beneficiary. Ms. Marshall explained that per the Court Order, he was a beneficiary of the one-time death benefit. She told Ms. Lowe where to find that information on the Order.

26. On February 26, 2012, a Sunday, Mr. Stisser called Mr. Gillies on his cell phone and spoke to him. Mr. Gillies has no memory or record of this conversation. Phone records verify that a five-minute phone call was placed to Mr. Gillies' number, followed by a seven minute phone call. Mr. Stisser testified that he was concerned because in reviewing Ms. Lowe's records, he, "did not see any directions from CalSTRS as to what to do with her retirement." Ms. Lowe had told him, "everything was taken care of," and he called Mr. Gillies in her presence to inquire. Mr. Stisser told Mr. Gillies that he saw nothing in Ms. Lowe's paperwork that, "directs CalSTRS to do anything with her retirement benefits." He asked Mr. Gillies, "for help to determine what documents I needed to look for and direction what to do with her retirement benefits." According to Mr. Stisser, Mr. Gillies responded that they should not worry about it, it was taken care of and when she died, she would retire. This discussion went on for about seven minutes. Mr. Stisser got off the phone and went through Ms. Lowe's documents. He called Mr. Gillies again and Mr. Gillies only said not to worry about it, when she dies she will retire, and it's all taken care of. "He was no help and provided no information."

27. Mr. Gillies testified that he did not recall Mr. Lowe's two telephone calls on a Sunday. Mr. Gillies testified persuasively that he never would have given a general assurance that, "everything was taken care of." He testified he would not even have been able to check on a Sunday to make sure that the forms he had left with Ms. Lowe had been submitted to CalSTRS. He did not have the authority to determine if her forms were filled out correctly and he was not responsible for accepting or processing CalSTRS forms.

28. Ms. Lowe died on March 12, 2012. After her death, Mr. Lowe found a partially completed Pre-Retirement Election of an Option, which Ms. Lowe had filled out, with her identifying information and Mr. Stisser's birthdate under the option selection. There was no option selected on the form, nor was Mr. Stisser's name or address included on the form. Someone had highlighted the advantages and disadvantages of the pre-retirement election option on the instruction sheet and had highlighted the information regarding reduction of payment if the beneficiary was to die before the retirement date. Someone had placed an arrow by the explanation of the 100% beneficiary option and inserted a note indicating that a copy of Gene Stisser's birth certificate would have to be attached. The form was unsigned, undated and had never been submitted to CalSTRS.

29. Mr. Stisser called the CalSTRS ombudsman, Carmela Sasaki, and told her he had found the Pre-Retirement Election of an Option form in Ms. Lowe's documents. He said he had called Mr. Gillies a few times asking follow-up questions about the 100% benefit.

30. After Ms. Lowe's death, CalSTRS filled out a Pre-Retirement Compound Election form for the benefit of Mr. Lowe, pursuant to the court Order. As a result of CalSTRS putting this option into effect, Mr. Lowe receives his community property share (34.30 percent) of Ms. Lowe's retirement allowance.

31. CalSTRS paid Mr. Stisser the entire balance of Ms. Lowe's Defined Benefit Supplement Account, \$24,575.87, since this account was established after Mr. and Ms. Lowe's date of separation. CalSTRS paid Mr. Stisser a death benefit in the amount of \$4,049, approximately 65.70% of Ms. Lowe's total death benefit amount, as she had completed and submitted the Recipient Designation Form for the One-Time Death Benefit/Cash Balance Lump-Sum Payment.

Mr. Stisser's Claims for Benefits

32. *Monthly Allowance:* Mr. Stisser requested that he be paid an ongoing monthly allowance of Ms. Lowe's defined benefit contributions and interest. CalSTRS denied the request, because Ms. Lowe had not elected him as an option beneficiary by completing and submitting a Pre-Retirement Election of an Option form.

33. *Family Allowance:* Mr. Stisser requested that CalSTRS provide him with a family allowance if it would not grant his request for an ongoing monthly allowance. CalSTRS advised Mr. Stisser that in the event a member fails to designate an option beneficiary before death, Education Code section 23804 defines when a family allowance is payable to the beneficiaries of the member. One of the requirements of that statute is that a pre-retirement election of an option is not in effect. Here, CalSTRS established a pre-retirement election of an option in favor of Mr. Lowe, pursuant to Court Order. Additionally, Mr. Stisser did not qualify for a family allowance, because Education Code section 22171 defines a spouse as being continuously married to the member, beginning at least 12 months prior to the death of the member. There is an exception to that definition, if the couple has been married less than 12 months, where the member's death was due to an accident or illness, and the marriage took place prior to the occurrence of the accident or diagnosis of the illness. Ms. Lowe was diagnosed with pancreatic cancer on December 15, 2011, married Mr. Stisser on December 24, 2011, and died on March 12, 2012. Accordingly, Mr. Stisser did not meet the statutory definition of spouse.

34. *Refund of Contributions and Interest:* Mr. Stisser requested that, in the event CalSTRS denied him an ongoing monthly allowance of Ms. Lowe's defined benefit contributions and interest, or a family allowance, CalSTRS refund to him Ms. Lowe's community property share of her defined benefit contributions and interest. CalSTRS advised Mr. Stisser that Education Code section 23802, subdivision (a), prohibits payment of accumulated retirement contributions and interest where a pre-retirement option is in effect.

Mr. and Ms. Lowe had both stipulated, and the Court ordered, that a pre-retirement option would be in effect on Ms. Lowe's account for Mr. Lowe. After her death, CalSTRS filed the option on Mr. Lowe's behalf, pursuant to the Court Order. Thus, an option is in place that bars a refund of defined contributions and interest.

Discussion of Mr. Stisser's Claims

35. Mr. Stisser maintains that CalSTRS representative David Gillies made mistakes by giving Mr. Stisser false assurances that "everything was taken care of" and by telling him that Ms. Lowe's intentions to name him as a 100% beneficiary had been accomplished. In addition, Mr. Stisser maintains that CalSTRS only advised Ms. Lowe that she "could" name additional option beneficiaries, in addition to Mr. Lowe, and did not advise her that she "must" name additional beneficiaries in order to avoid "losing her benefits upon her death." Mr. Stisser also argues that Ms. Lowe was not given proper advice or warnings that if she did not have a pre-election option on file for Mr. Stisser, he would be unable to collect her "share" of her contributions and interest because an option would be in place for Mr. Lowe, pursuant to Education Code section 23802, subdivision (a). He claims Ms. Lowe was never advised that a failure to name her husband as beneficiary of the defined benefit program, "could result in a complete loss of benefits to her estate and her intended beneficiary upon death."

36. Mr. Stisser argues that at no time did Mr. Gillies or CalSTRS advise Ms. Lowe that the proper documentation was not in place to name her husband as a beneficiary of her defined benefit program. In addition, Mr. Stisser argues that any misunderstanding on the part of Ms. Lowe was reasonable under the circumstances, and that CalSTRS should give effect to her "intent" and make Mr. Stisser a 100% option beneficiary of her defined program benefits. He argues that CalSTRS should grant relief for errors or omissions under Education Code Section 22308, and grant Mr. Stisser the 100% option. In the alternative, at a minimum, CalSTRS should refund Ms. Lowe's share of the contributions to the defined benefit program.

37. Mr. Stisser also argues that CalSTRS did not have the authority to process an option benefit for Mr. Lowe. Accordingly, if there had not been an option beneficiary election on file for Mr. Lowe on Ms. Lowe's death, Mr. Stisser would be entitled to receive her community property share of contributions and interest under Education Code section 23802, subdivision (a).

38. CalSTRS maintains that Mr. Stisser is arguing he is entitled to an option benefit, based on facts he failed to establish at hearing and based on various misunderstandings of law. Specifically, Mr. Stisser failed to establish that Ms. Lowe intended to elect him as 100% option beneficiary for her monthly benefit. Mr. Gillies provided Ms. Lowe with a form for electing Mr. Stisser as an option beneficiary, and she failed to fill it out or submit it. And Mr. Stisser failed to establish that Mr. Gillies assured him that Ms. Lowe had submitted a form for electing him as an option beneficiary.

39. CalSTRS maintains that Ms. Lowe's account was not divided into two separate accounts, as it would have been had she and Mr. Lowe employed the Segregation method in their divorce. Rather, they chose the Time Rule Division, with an ongoing option payment for the benefit of Mr. Lowe as to his community property share. Accordingly, there remains one account in Ms. Lowe's name, and that account funds all options in place (here Mr. Lowe's) and would have funded any other option, had Ms. Lowe submitted one. Currently, Ms. Lowe's contributions and interest are estimated to fund Mr. Lowe's monthly benefit until the funds are expended in November, 2022. ~~If Mr. Lowe dies before that time, any remaining contributions and interest would be returned to Mr. Stisser, because there would no longer be an option payment.~~

40. CalSTRS argues that Ms. Lowe was very familiar with option beneficiaries, as she requested numerous statements of accounts and estimates during the 12 year dissolution of her marriage, and she ultimately agreed to the terms of the Order dividing her retirement benefits. She chose the Time Rule method of division upon advice of counsel. And she and Mr. Lowe had a neutral attorney prepare their QUADRO Order. She also was advised by both benefit counselors, Ms. Bruner and Mr. Gillies, that because she had a legal hold due to community property interests, they could not provide estimates of what Mr. Stisser would receive as an option beneficiary of only Ms. Lowe's community property portion. Ms. Lowe was aware that she needed to contact the Legal Department, as she had in the past, to get estimates of what Mr. Stisser would receive of her community property share under the various options available. The estimates she did receive from Ms. Bruner and Mr. Gillies clearly pertained only to Ms. Lowe's retirement benefit, without a reduction for Mr. Lowe's option portion. Ms. Lowe never obtained estimates of what she and Mr. Stisser would receive when Mr. Lowe's portion was paid. All estimates Ms. Lowe received contained "red flags," advising her to contact the Legal Department if she wanted estimates that took the former spouse's interest into account. She never did this, and, although she started to insert information about Mr. Stisser on an option election form, she never completed the form or selected an option.

41. In addition, Lynn Marshall sent Ms. Lowe a letter January 5, 2012, with the option beneficiary designation form, telling her she needed to submit these forms as soon as possible, in order to be in compliance with the Court's Order. She enclosed forms for electing a one-time death beneficiary and one or more compound option beneficiaries. The letter advised that the option beneficiary form allowed her to elect option beneficiaries in addition to Mr. Lowe, or to retain a member only benefits estimates community share of their allowance. She did not comply.

42. CalSTRS argues that it did not fail to properly advise Ms. Lowe. "Mr. Stisser erroneously concludes that CalSTRS has a fiduciary duty to advise its members as to what decisions to make regarding their benefits." CalSTRS has no duty to make sure a member completes option beneficiary documents. In addition, Mr. Stisser's arguments assume that there was only one proper course of action for Ms. Lowe to take regarding her benefits, and that CalSTRS knew which course of action was appropriate for her, given her health, interpersonal relationships and financial situation.

43. CalSTRS notes that a pension plan has a duty only to inform its members of the core elements of the pension plan. The California Supreme Court in *Hittle v. Santa Barbara County Employees Retirement Association* (1985) 39 Cal. 3d 374, provides that,

[O]rdinarily when an employee becomes a member of the pension plan he is provided with a booklet or other materials describing the plan in some detail. If the booklet fully and fairly describes the plan and its various options and procedures, and the copies are made available, the obligation of the trustee toward a terminating employee may be satisfied by appropriate reference to the booklet itself, supplemented by a provision of forms pertaining to all available choices.” (*Hittle, supra*, 39 Cal. 3d at p. 394)

44. CalSTRS maintains its actions “far exceeded the threshold requirements of *Hittle*.” Ms. Lowe was provided hard copies of numerous CalSTRS publications relating to pre-retirement election options including one entitled, “Addressing Option Benefits in a Court Order,” and “Refund, Consider the Consequences.” She was also provided the Community Property Information Guide which advised that it should be read “for guidance in matters of dissolution of marriage as they relate to the System.” As set forth in Findings 9 and 10, Section 7 of the Guide explains:

A lifetime option benefit is payable only when the member has made an option election for one or more persons before retirement, at the time of retirement, or in certain rare circumstances, after retirement... When a member's death occurs prior to retirement... the one-time death benefit may include the accumulated contributions and interest in the member's account unless one of the following condition exists: ... the member has a pre-retirement election of an option beneficiary on file...

(Italics supplied)

45. Finally, CalSTRS points out that it repeatedly gave Ms. Lowe forms for the pre-retirement election of her former spouse and for the optional election of an additional option beneficiary or beneficiaries, and advised her she could name additional beneficiaries.

46. The arguments of CalSTRS are persuasive. With all of this information before her, with legal representation and with a “clear and sound mind,” Ms. Lowe did not complete and submit the form for pre-election of an option beneficiary. Mr. Gillies gave her this form at the same time he gave her the beneficiary designation form. She deliberately named Mr. Stisser as a beneficiary for the one-time death benefits, by completing and submitting that form. Although it is evident that Ms. Lowe was *considering* naming Mr. Stisser as an option beneficiary, the evidence does not support a finding that she *intended* to name him at that

time, or that she intended to select a certain percentage of option benefit for him. There were complications and drawbacks to pre-electing an option for Mr. Stisser. Ms. Lowe had never obtained estimates as to how much she and Mr. Stisser would receive, given that Mr. Lowe was entitled to a community property share. She was aware of the procedure she had to go through with the CalSTRS Legal Office to obtain these estimates. Designation of an option would significantly reduce her share of the benefits. She was not comfortable with complying with the Court Order to designate Mr. Lowe as an option beneficiary, or even as a beneficiary for the one-time death benefits. She was considering retiring in the near future, after her accumulated sick leave of approximately one year was exhausted. If she chose a pre-retirement election of an option, rather than waiting for retirement, there were repercussions, including costs and possible penalties, should she change the option. She would be able to take a larger retirement allowance by not having an option beneficiary. Ms. Lowe was aware that pre-retirement elections of options cannot generally be changed after retirement, and members may incur permanent reductions to their monthly benefits for canceling them prior to their retirements. Ms. Lowe was also pursuing alternative remedies for her condition, and she still hoped to recover from her illness. Finally, Ms. Lowe's notes on the incomplete pre-retirement option election form indicate she was holding it until she obtained further information to make a determination.

47. With this set of circumstances, there is no clear evidence of Ms. Lowe's intent to name Mr. Stisser as an option beneficiary by a certain date, or with a certain option selection. There is only evidence that Ms. Lowe was considering naming Mr. Stisser as an option beneficiary, and was unsure whether to do it, when to do it, what amount of an option she should select for him and how much she, Mr. Stisser and Mr. Lowe would each receive in retirement, once the option elections were in place for Mr. Lowe and Mr. Stisser. CalSTRS cannot put an option into effect for Mr. Stisser, having never received anything whatsoever from Ms. Lowe evidencing her decision to elect him as an option beneficiary and the amount of that option. CalSTRS cannot speculate as to Ms. Lowe's intentions. As noted above, Ms. Lowe had multiple reasons to defer making a pre-retirement option beneficiary election. It is just as speculative to consider these reasons as it is to try to infer her intentions from an incomplete, un-submitted form.³

48. And, as CalSTRS points out, Ms. Lowe never submitted anything to CalSTRS, such as an incorrect form or letter evidencing a decision to name Mr. Stisser as an option beneficiary. CalSTRS has only received one document evidencing Ms. Lowe's decision to place an option on her account, a Court-approved stipulation between her and Mr. Lowe agreeing to grant him an option benefit as to his community share of their allowance.

³ Mr. Stisser also introduced in evidence testimony that Ms. Lowe had told her family that Mr. Stisser would get everything she would have gotten were she to die. This evidence was admitted as hearsay. It was not considered herein as it was unreliable hearsay and unsupported by non-hearsay evidence. Additionally, this evidence was provided by witnesses who testified that Ms. Lowe had told them other things, things that were clearly untrue. For instance Ms. Lowe allegedly told her sister that Mr. Gillies had taken all the forms she had completed with him when he left the hospital.

49. Mr. Stisser did not establish any errors or omission on the part of Mr. Gillies or CalSTRS. CalSTRS has no duty to inquire about Ms. Lowe's prognosis and its employees were properly trained not intrude on members' privacy by asking about their medical conditions. Only the member is legally responsible for determining her own health, financial obligations, current and expected future income sources, desire to provide a monthly benefit for one or more prospective beneficiaries at her own expense, and the health of her prospective option beneficiaries. Members who try to obtain financial advice from benefit counselors are directed to seek help from financial advisors of their own choosing. Ms. Lowe was provided all necessary forms and information as to her benefits. She was advised of only a partial picture of her estimate allowance because of the legal flag reflecting her former spouse's community property interest.

50. Mr. Gillies was credible when he explained he could not have confirmed for Mr. Stisser that Ms. Lowe had filed the pre-election option (Findings 26 and 27). The only other information that Mr. Stisser testified to receiving from Mr. Gillies on February 26, 2012, was that, "when she dies, she retires," and, "can't change it." As CalSTRS points out, Mr. Gillies could have been explaining any number of things to Mr. Stisser. He could have been explaining that if Ms. Lowe died before she retired, her pre-retirement elections would take effect as if she retired. Mr. Gillies could have assumed that Ms. Lowe filed the pre-retirement election of an option form. He could have been explaining that if a member chose not to file a pre-retirement election option, the CalSTRS death benefit and/or option payment and/or family allowances were available. He could have also been explaining that Mr. Stisser could not change Ms. Lowe's benefits after death. All of these statements would have been proper and accurate. Mr. Stisser did not testify that Mr. Gillies or CalSTRS misrepresented that Ms. Lowe had filed the pre-election option.

51. There was insufficient evidence that Ms. Lowe intended to elect an option for Mr. Stisser, or a 100% option. Even assuming there was such evidence of her intent, statutory requirements require the member to file a written election of option beneficiary. (Education Code section 24307, subdivision (a)). (See Legal Conclusion 2) The member must submit the appropriate form prescribed by CalSTRS, complete with her signature and her spouses' signature, and the date of signature. The form must be received by CalSTRS within 30 days of the dates of both signatures. Here, Ms. Lowe did not submit the CalSTRS form electing an option for one person, or the CalSTRS form for pre-retirement election of compound option. Thus the requirements of Education Code section 24307 for electing Mr. Stisser as an option beneficiary were not met.

Conclusion

52. Mr. Stisser failed to prove that Ms. Lowe attempted to make him a option beneficiary of her defined benefit account. Without establishing this, he cannot establish that she made an error or omission which is correctable under Education Code section 22308. Mr. Stisser failed to prove that Mr. Gillies or CalSTRS misled him or Ms. Lowe. He failed to prove that Mr. Gillies or CalSTRS had a duty to advise Ms. Lowe that if she died without electing an option for Mr. Stisser, Mr. Stisser might not be eligible for a refund of her

contributions and interest in her defined benefit account. Without establishing this, Mr. Stisser cannot establish that CalSTRS or Mr. Gillies made an error or omission which is correctable under Education Code section 22308.

LEGAL CONCLUSIONS

Burden of Proof

~~1. Mr. Stisser bears the burden of proof in this matter. "As in ordinary civil action, the party asserting the affirmative at an administrative action has the burden of going forward and the burden of persuasion by a preponderance of the evidence." (McCoy vs. Board of Retirement (1986) 183 Cal. App. 3d 1044, 1051 fn 5.)~~

2. Education Code section 24307, provides in pertinent part.

(a) A member who qualifies to apply for retirement under Section 24201 or 24203 may make a preretirement election of an option, as provided in Section 24300.1 without right of revocation or change after the benefit effective date, except as provided in this part. The preretirement election of an option shall become effective as of the date of the member's signature on a properly executed form prescribed by the system, subject to the following requirements:

(1) The form includes the signature of the member's spouse or registered domestic partner, if applicable, and the signature is dated.

(2) The date the form is received at the system's headquarters office is within 30 days after the date of the member's signature and, if applicable, the spouse's or registered domestic partner's signature.

(b) A member who makes a preretirement election of an Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 pursuant to Section 24300, or an election as described in paragraph (1), (2), or (3) of Section 24300.1 may subsequently make a preretirement election of the compound option described in paragraph (4) of subdivision (a) of Section 24300.1. The member may retain the same option and the same option beneficiary as named in the prior preretirement election for a designated percentage within the compound option.

(c) Upon the member's death prior to the benefit effective date, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, under the assumption that the member retired for service pursuant to Chapter 27 (commencing with Section 24201) on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804, the payment provided in paragraph (1) of subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in subdivisions (a) and (b) of Section 23852, except that if the beneficiary dies before all of the member's accumulated retirement contributions are paid, the balance, if any, shall be paid to the estate of the person last receiving or entitled to receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Sections 23801 and 23851 shall be paid to the beneficiary in a lump sum.

(d) If the member subsequently retires for service, and the elected option has not been canceled pursuant to Section 24309, a modified service retirement allowance computed under Section 24300 or 24300.1 and the option elected shall be paid.

[¶] ... [¶]

Correction of Errors or Omissions

3. CalSTRS has the statutory authority to correct certain errors under Education Code section 22308. That section provides, in pertinent part:

(a) Subject to subdivision (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any member or beneficiary of the Defined Benefit Program, and of any participant or beneficiary of the Cash Balance Benefit Program, if all of the following facts exist:

(1) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(2) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

(b) Failure by a member, participant or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(c) Subject to subdivision (d), the board may correct all actions taken as a result of errors or omissions of the employer or this system.

(d) The duty and power of the board to correct errors and omissions, as provided in this section, shall terminate upon the expiration of obligations of the board, system, and plan to the party seeking correction of the error or omission, as those obligations are defined by Section 22008.

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a), (b), and (c) are adjusted to be the same that they would have been if the act that was taken or would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a), (b), and (c) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a), (b), and (c) cannot be adjusted to be the same as they would have been if the error or omission had not occurred.

4. As set forth in the Findings, particularly Finding 52, Mr. Stisser failed to meet his burden of proving that CalSTRS should correct errors or omissions of Ms. Lowe and/or CalSTRS pursuant to Education Code section 22308.

5. All other arguments advanced by the parties were considered and rejected as unsupported by the evidence.

ORDER

1. The request of Eugene Stisser for an entitlement to Lynn Lowe's defined benefit account is DENIED.

2. The appeal of Eugene Stisser from the CalSTRS July 24, 2014, determination after Executive Review is DISMISSED.

Dated: November 5, 2015

DocuSigned by:

Ann Sarli

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ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings