

**BEFORE AN ADMINISTRATIVE LAW JUDGE
FOR THE INDIANA PUBLIC RETIREMENT SYSTEM**

IN THE MATTER OF)	PUBLIC EMPLOYEES'
SHARON D. SMITH,)	RETIREMENT FUND
By Interested Party,)	
Kelly R. Guffey)	
)	
Petitioner.)	

FINAL ORDER

The Board of Trustees ("Board") of the Indiana Public Retirement System ("INPRS") is the ultimate authority in administrative appeals brought by members of the Public Employees' Retirement Fund ("PERF") under IC 4-21.5-3-28 and 35 IAC 1.2-7-3. In the Statement of Board Governance, the Board delegates to the Executive Director the authority to conduct a final authority proceeding, or a review of decision points by the administrative law judge ("ALJ"), to issue a final order in this matter.

1. The ALJ entered a Decision and Order on Motion for Summary Judgment ("Order") in this matter on November 4, 2013, affirming INPRS' initial determination that [REDACTED] Sharon Smith's son, was properly designated as Ms. Smith's beneficiary and is entitled to receive survivor benefits.
2. Copies of the Order have been served upon the parties.
3. On November 15, 2013, Petitioner filed with the ultimate authority Petitioner's Objection to Order Administrative Law Judge.
4. Pursuant to IC 4-21.5-3-29(d)(2), 35 IAC 1.2-7-3(b)(7), and Indiana Trial Rule 4.17(B)(2), it has been more than fifteen (15) days since the ALJ served the Order upon the parties.

NOW THEREFORE the Decision and Order on Motion for Summary Judgment of the Administrative Law Judge is affirmed.

DATED December 11, 2013



Steve Russo, Executive Director
Indiana Public Retirement System
One North Capitol, Suite 001
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

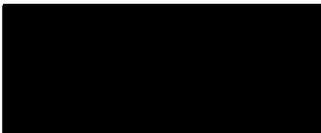
I certify that on *the 11th* day of *December*, 2013, service of a true and complete copy of the foregoing was made upon each party or attorney of record herein by depositing same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

Distribution:

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A handwritten signature in black ink, appearing to read "Steve Russo".

Steve Russo, Executive Director
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Smith identified [REDACTED] as her husband, [REDACTED] as her children, [REDACTED] as her father, and [REDACTED] as her mother. (INPRS Ex. A).

3. On the Membership Record form, under the Nomination of Beneficiary section, Smith nominated [REDACTED] as her beneficiary. (INPRS Ex. A).

4. The Nomination of Beneficiary section included the following statement:

If the beneficiary herein nominated does not survive me, and no other written nomination shall have been filed by me, then the beneficiary shall be my estate.

I reserve the right to change the beneficiary at any time by filing written notice of such change, duly acknowledged, with the Board of Trustees of the Public Employees' Retirement Fund of Indiana.

(INPRS Ex. A.) (emphasis added)

5. At some point, Smith communicated with PERF and expressed her intent to retire on [REDACTED] (INPRS Ex. C; INPRS Ex. F).³

6. On or about [REDACTED] Smith completed an Application for Disability Benefits. Smith elected Option [REDACTED] as her retirement option, which provided [REDACTED] a monthly benefit of [REDACTED] of her benefit being paid to her beneficiary for his or her life, after her death. (INPRS Ex. B).

7. On Smith's Application for Disability Benefits, she designated [REDACTED] as her beneficiary. (INPRS Ex. B).

8. [REDACTED] predeceased Smith, and died on [REDACTED] (INPRS Ex. D).

9. On [REDACTED] Smith married [REDACTED] (INPRS Ex. E).

10. On June 28, 2001, PERF sent a letter to Smith acknowledging [REDACTED] death. (INPRS Exhibit D).

11. Smith never changed her beneficiary designation to [REDACTED] (INPRS Statement of Undisputed Material Facts, paragraphs 7 and 8; Guffey Fact No. 6).⁴

12. On December 27, 2007, [REDACTED] executed a property settlement agreement. (Exhibit E).⁵ The agreement stated that each party would, "retain exclusive title to and benefit of

³ INPRS Exhibit C reflects a note made on Smith's PERF account. The copy of the note is very dark and hard to decipher. Exhibit C does not indicate whether Smith called PERF, wrote a letter to PERF, or specify the manner in which the communication transpired. However, this issue is immaterial to the determination of this case.

⁴ INPRS identified Statement of Undisputed Material Facts Nos. 1-19. Petitioner Guffey did not dispute any of the material facts identified by INPRS.

⁵ The property settlement agreement submitted as INPRS Exhibit E does not include a copy of the final divorce decree between Smith and her former husband, [REDACTED]. Similarly, INPRS Exhibit I, contains an account note

all retirement benefits to which [he/she] is, or may be entitled. [Husband/Wife] shall make no claim whatsoever to any such benefits." (INPRS Ex. E).

13. On January 14, 2008, Smith contacted PERF and expressed an interest in changing her option as she was going through a divorce. The PERF representative explained that the option could not be changed unless "he" (presumably her spouse) died. (INPRS Ex. G).

14. On September 3, 2008, PERF advised Smith that she would have to send a copy of her divorce papers to the agency to determine if she could change her beneficiary information. (INPRS Ex. H).

15. On September 14, 2009, Smith submitted a copy of her legal divorce decree to PERF. (See Footnote 4).

16. On or about [REDACTED] Smith completed a Retiree Application for Change of Beneficiary and/or Pension Option (hereinafter referred to as "change of beneficiary form"). The change of beneficiary form was notarized on [REDACTED] and PERF received the form on October 30, 2009. On the form, Smith authorized an immediate change. (INPRS Ex. J).

17. On November 17, 2009, December 17, 2009, and September 22, 2010, PERF sent letters to Smith advising her that in order to complete the requested change, it needed a death certificate for [REDACTED] her former beneficiary, and a copy of the birth certificate for the new named beneficiary, [REDACTED] (INPRS Ex. K). It does not appear that Smith ever responded to INPRS' request for additional information. (INPRS Ex. F).

18. On [REDACTED] Smith died. (INPRS Ex. L).

19. On [REDACTED] PERF terminated Smith's member account status. PERF acknowledged that [REDACTED] (presumably [REDACTED]) was deceased, that there was no paperwork indicating a new beneficiary, and that no additional benefits were due. (INPRS Ex. M).

20. On or about October 7, 2011, PERF decided to honor the change request naming Smith's son, [REDACTED] as the beneficiary. (INPRS Ex. F, See also INPRS Statement of Undisputed Material Fact No. 18).⁶

indicating INPRS received a copy of Smith's legal divorce decree; however, the actual decree was not submitted as part of any of the exhibits attached to either INPRS' Motion for Summary Judgment or Petitioner's Objection to Respondent's Motion for Summary Judgment. The omission of the divorce decree is immaterial since all parties agree that Smith and [REDACTED] were divorced at the time of her death and Smith never changed her beneficiary designation to [REDACTED] (See INPRS Statement of Undisputed Material Facts Nos. 6 and 7; Petitioner's Fact Nos. 6 and 7).

⁶ INPRS' Statement of Undisputed Material Fact No. 18 states, "After contact with [REDACTED] and [REDACTED] PERF reviewed the account. (Exhibit F)." Undisputed Material Fact No. 18 references Exhibit F, which is an affidavit from R. Thomas Parker, INPRS Legal Benefits Analyst. Mr. Parker's affidavit does not indicate that PERF's decision to honor the beneficiary was after communications with Smith's family members. Also, [REDACTED] was deceased by [REDACTED], so it is assumed that this was a typographical error and that INPRS meant to identify [REDACTED]. Petitioner did not dispute or address this issue in her objection, so it is accepted

21. In [REDACTED] [REDACTED] began receiving survivor benefits. (INPRS Ex. F and INPRS Ex. O).

22. On [REDACTED] INPRS sent an initial determination letter to Petitioner Kelly Guffey, informing her that it believed Smith's survivor benefits were being paid to the correct designated beneficiary.

23. On or about February 21, 2013, Kelly Guffey requested an administrative review of INPRS' initial determination based on the belief that her brother, [REDACTED] had fraudulently completed the change of beneficiary forms. Ms. Kelly alleged that Smith had named her former husband, [REDACTED] as the beneficiary. She advised INPRS that any forms it received after her mother's death were not legal, as Smith did not fill them out.⁷ (See Kelly Guffey's appeal, received by INPRS on February 21, 2013).

24. Any Conclusion of Law that should have been deemed a Finding of Undisputed Material Fact is hereby adopted as such.

Conclusions of Law

1. Summary judgment is proper if the designated evidentiary material demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); IC 4-21.5-3-23. The party moving for summary judgment bears the burden of making a *prima facie* case showing there are no genuine issues of material fact, and once the burden is met, the non-moving party must then show the existence of a genuine issue of material fact by setting forth specifically designated facts. *Indiana-Kentucky Electric Corp. v. Comm'r, Indiana Dept. of Environmental Management*, 820 N.E.2d 771, 776 (Ind. Ct. App. 2005).

2. An ALJ's review of an agency's initial determination is *de novo*, without deference to the initial determination. *Indiana Dept. of Natural Resources v. United Refuse Co. Inc.*, 615 N.E. 2d 100, 103 (Ind. 1993).

3. The issue to be decided is whether Smith completed a valid change of beneficiary such that [REDACTED] should be receiving survivor benefits.

4. "Indiana adheres to the rule that in order to have a valid change of beneficiary, there must be substantial compliance with the requirements of the policy." *Borgman v. Borgman*, 420 N.E.2d 1261 (1981)(citing *Salter v. Miller*, 27 N.E.2d 900 (Ind. 1940)). An insured can make a valid change of beneficiary without completing the ministerial acts involved if the insured has

as true. See *French v. State*, 778 N.E.2d 816, 826 (Ind. 2002)(appellant waived issue by not addressing it within his principal brief).

⁷ It appears Kelly Guffey has since abandoned this argument as it does not appear in Petitioner's Objection to Respondent's Motion for Summary Judgment. (See Footnote 6). More importantly, [REDACTED] was never a designated beneficiary, and PERF received the change of beneficiary forms before Smith's death.

done everything in his power to effect such a change. *Borgman*, 420 N.E.2d 1261, 1263 (Ind. Ct. App. 1981)(citing *Elliot v. Metropolitan Life Ins. Co.*, 64 N.E.2d 911 (Ind. 1946)).

5. Whether a participant did “everything within his power” to effect a change is a question of fact. *Quinn v. Quinn*, 498 N.E.2d 1312 (Ind. Ct. App. 1986).

6. The PERF statutes do not set out a specific procedure that must be followed in order to effect a change in beneficiary. The Indiana Administrative Code provides minimal requirements for designating a beneficiary. The relevant parts of the Beneficiary Designation section are 35 IAC 1.2-5-13(b) and (e), which state:

“Members electing a joint survivor option at retirement shall designate only one (1) person as beneficiary of their joint survivor benefits. The beneficiary must be a named individual.” (35 IAC 1.2-5.13(b)).

“The designated beneficiary’s right to a benefit vests upon the death of the member. A change of beneficiary designation must be made in a manner and form approved by the board and must be filed with the fund before the time and date of death of the member. If the beneficiary designation form was received by the fund on or before the time and date of death of the member, and is otherwise acceptable, it shall be deemed to have met this requirement.” (35 IAC 1.2-5-13(e)).

7. Smith met the requirements of 35 IAC 1.2-5.13(b) and (e) by designating her son, [REDACTED] one beneficiary, to replace her former designation of [REDACTED]. Smith also filed the notarized change of beneficiary form more than a year before her death. The form, which PERF received on [REDACTED], again more than a year before Smith’s death, met the Beneficiary Designation requirements. Moreover, it is insignificant whether INPRS processed the change request in [REDACTED] or in [REDACTED], as long as the change of beneficiary form was “otherwise acceptable.” There has been no argument, within the briefs submitted to this ALJ, that the change of beneficiary form, as submitted, was unacceptable.

8. Smith took the following actions to effect a change in beneficiary: (1) she contacted PERF on [REDACTED] to gather information about changing her benefit option; (2) she communicated with PERF on [REDACTED] to determine how to change her beneficiary, and was advised that she needed to send in her divorce papers; (3) on or about [REDACTED] Smith sent copies of her divorce papers to PERF; (4) on [REDACTED] Smith completed a Retiree Application for Change of Beneficiary and/or Pension Option, authorizing an immediate change of beneficiary to her son, [REDACTED].

9. One of the leading Indiana cases to address the issue of substantial compliance is *Borgman v. Borgman*, 420 N.E.2d 1261 (Ind. Ct. App. 1981). In *Borgman*, the participant failed to formally change his beneficiary designation from his father to his new wife. Although the actual beneficiary forms were never completed, the participant verbally expressed his desire to designate his wife (then his fiancée) as beneficiary at his initial meeting with the insurance agent. In a subsequent face to face meeting with the agent, the participant again reiterated his intent to change the beneficiary designation to his wife. The participant later made several unsuccessful

phone calls to the agent in an attempt to effect the change. The court found that although the participant did not complete the forms, the agent knew all along of the participant's intent to designate his wife as the beneficiary, and the participant made efforts to do the act he intended to do, but was unsuccessful. The court ultimately determined that equity would allow the wife to receive the benefits. See *Borgman*, 420 N.E.2d 1261, 1265 (Ind. Ct. App. 1981).

10. In *Quinn v. Quinn*, 498 N.E.2d 1312 (Ind. Ct. App. 1986), the beneficiary dispute arose between the participant's mother and his wife. The participant completed the change of beneficiary forms at the local insurance office, with two signed witnesses. All that needed to be accomplished was sending the completed form to the company's home office, which was never done. The court determined that the change was valid even though it had not been sent to the home office, as this ministerial act was the only act that remained. *Quinn*, 498 N.E.2d 1312, 1313-1314 (Ind. Ct. App. 1986).

11. Cases on pension and insurance benefits are commonly decided under the Employee Retirement Security Income Act (ERISA), 29 U.S.C. §§ 1001 et seq. ERISA does not apply to pension plans administered by states or their political subdivisions; but these cases are instructive because they either apply the state law substantial compliance theory or apply federal common law derived from state law. 29 U.S.C. §§ 1002(32), 1003(b)(1). See *Bank America Pension Plan v. McMath*, 206 F.3d 821 (9th Cir. 2000); *Metropolitan Life Ins. Co., v. Johnson*, 297 F.3d 558, 566-67 (7th Cir. 2002); See also *In the Matter of John A. Masengale*, (PERF Decision on Motion for Summary Judgment, September 23, 2008).

12. Two ERISA Seventh Circuit cases provide guidance for analyzing the theory of substantial compliance as it relates to beneficiary designations. In *Metropolitan Life Ins. Co. v. Johnson*, 297 F.3d 558 (7th Cir. 2002), the court determined that the participant's designation of beneficiary form, despite its several errors, was nonetheless valid under substantial compliance, because the participant had attempted to effectuate the change by undertaking positive action similar to the action full compliance required. See *Burns v. Orthotek Inc. Employees Pension Plan and Trust*, 695 F. Supp. 2d 859 (N.D. Ind. 2010)(citing *Metropolitan Life Ins. Co. v. Johnson*, 297 F.3d 558 (7th Cir. 2002)). In *Davis v. Combes*, 294 F.3d 931 (7th Cir. 2002), the plan participant filled out a change of beneficiary form but failed to sign or date the form. The life insurance plan received and processed the form. The court held that the form exhibited valid substantial compliance because it "unequivocally establish[ed] that the policy holder intended to make the new beneficiary designation and took positive action to effectuate that intent." See *Burns v. Orthotek Inc. Employees Pension Plan and Trust et al.*, 695 F. Supp. 2d 859, 866; 2010 U.S. Dist. LEXIS 12256 **13 (N.D. Ind. 2010)(quoting *Davis v. Combes*, 294 F.3d 931, 942 (7th Cir. 2002)).

13. Substantial compliance requires that Smith express an intent to make the beneficiary change and undertake positive action to effect the change. *Fox v. Special Agents Mutual Benefit Assoc.*, 2006 U.S. Dist. Lexis 74487 (S.D. Ind. 2006). Smith expressed her intent to make the change and undertook positive action to effect the change by contacting PERF to gather information on how to change the beneficiary, by submitting the divorce papers, and by submitting the notarized change of beneficiary form.

14. Certainly if the cases cited in this decision found substantial compliance, then Smith did everything within her power to effect a change of beneficiary.

15. Petitioner has asked the ALJ to distribute Smith's survivor benefits to her estate, in accordance with 35 IAC 1.2-5-13(c). This particular section, 35 IAC 1.2-5-13(c) relates to annuity savings accounts and does not apply to retired members who choose a joint and survivor retirement option. In fact, the section specifically states,

"Retired members who choose a retirement option other than a joint and survivor option and who do not elect to withdraw the total balance of their annuity savings account may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive the unpaid balance, if any, of the member's annuity savings account upon the death of the member....If no primary and no contingent beneficiaries survive the member, the beneficiary shall be the member's estate. 35 IAC-1.2-5-13(c).

Therefore, 35 IAC 1.2-5.13(c) is inapplicable to Smith's circumstances. If Smith died without a named beneficiary, there would be no survivor benefits to be paid. See 5-10.2-4-7 and 5-10.2-4-7.2.

16. On [REDACTED] Smith executed a Membership Record, which allowed Smith to change her beneficiary at any time, by filing written notice, duly acknowledged, with PERF. (See Finding of Undisputed Material Fact No. 4).⁸ Smith completed the change of beneficiary as outlined in the Membership Record.

17. Petitioner argues that Smith's failure to complete the PERF authorization form in addition to the change of beneficiary form was not compliance, and therefore makes the change invalid. Indiana law does not require full compliance, but substantial compliance. There would be no need for a substantial compliance standard if all participants were required to fully comply with policy requirements.

18. INPRS' repeated requests that Smith complete an authorization form was simply a ministerial act that would have provided additional processing information, but did not otherwise negate the validity of Smith's change of beneficiary. INPRS requested [REDACTED] death certificate, although it already had proof of his death, as evidenced by its [REDACTED] letter. (See INPRS Ex. D). INPRS also wanted to verify [REDACTED] date of birth, although it had his birth date on the original Membership Record, executed in [REDACTED] and as part of the recalculation of benefits attached to each of the three letters sent November 17, 2009, December 17, 2009, and September 22, 2010. (See INPRS Ex. K).

⁸ The Membership Record also states, "If the beneficiary herein nominated does not survive me, and no other written nomination shall have been filed by me, then the beneficiary shall be my estate." (See INPRS Ex. A). However, the Membership Record may be completed years before the member actually elects their retirement option by completing their application for retirement benefits. For example, Smith completed the Membership Record in [REDACTED] and did not apply for retirement until [REDACTED]. It appears the estate is not the default beneficiary in all retirement options.

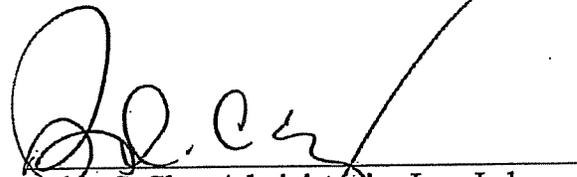
19. Under certain circumstances, equity will apply equitable principles to aid in completing an incomplete change of beneficiary. *Elliott v. Metropolitan Life Ins. Co.*, 64 N.E. 2d 911 (1946). In the case at bar, Smith clearly “did everything within her power” to effect a change of beneficiary. Her inability, negligence, or oversight, in completing additional forms, should not bar her designated beneficiary from receiving benefits. Therefore, to deny Smith the change of beneficiary under the circumstances, would be inequitable.

20. Any Finding of Undisputed Material Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

Order

Based on the Findings of Undisputed Material Fact and the Conclusions of Law stated above, INPRS’ summary judgment motion is granted. Ms. Smith demonstrated substantial compliance in effecting a change of beneficiary. [REDACTED] Smith’s son, has been properly designated as Smith’s beneficiary and is entitled to receive survivor benefits.

ORDERED: November 4, 2013



Robin C. Clay, Administrative Law Judge
310 N. Alabama Street, Suite 300
Indianapolis, IN 46204

PROCEDURES FOR REVIEW

The administrative law judge is not the ultimate authority in this case, but was designated by INPRS to hear this proceeding pursuant to I.C. § 4-21.5-3-(9)(a). The order issued in this matter becomes a final order when affirmed under I.C. § 4-21.5-3-29, which provides, in pertinent part:

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:

- (1) affirming;
- (2) modifying; or
- (3) dissolving;

the administrative law judge’s order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:

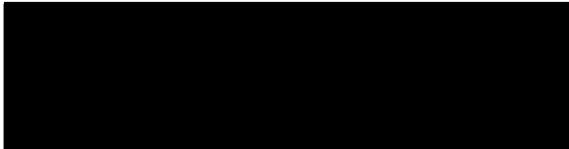
- (1) identifies the basis of the objection with reasonable particularity; and
- (2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described in section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document, by U.S. First Class mail, postage prepaid, certified mail with return receipt requested, on this 4th day of November, 2013, upon:

John R. Panico
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A handwritten signature in black ink, appearing to read "R. C. Clay", written over a horizontal line.

Robin C. Clay
Administrative Law Judge