

LEGAL SERVICES
of
NORTHERN CALIFORNIA

Monday, December 10, 2018

VIA U.S. CERTIFIED MAIL

Cement Masons Pension Trust Fund for Northern California
1600 Harbor Bay Parkway, Suite 200
Alameda, CA 94502-3035

RE: Claim for Benefits

Surviving Spouse: [REDACTED]

DOB: [REDACTED]

SSN: [REDACTED]

Dear Plan Administrator:

The Western States Pension Assistance Project, part of Legal Services of Northern California, is a law office that assists individuals with questions regarding their pension and retirement savings plan. I am writing on behalf of my client, [REDACTED] and have enclosed an authorization for your convenience. [REDACTED] is the surviving spouse of [REDACTED], a former participant in the Cement Masons Pension Trust Fund for Northern California ("The Plan").

This letter is intended as a formal claim for benefits under the Plan. This claim is made pursuant to Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and applicable Department of Labor and Department of Treasury regulations.

II. Factual background

Plan participant [REDACTED] married [REDACTED] in Reno, NV on November 10, 2001. (See Exhibit A). They never divorced and remained married until [REDACTED] death in 2008. Plan records show that [REDACTED] retired in 1995 and elected a form of benefit that did not provide for a surviving spouse benefit. (See Exhibit B). On February 15, 2007, [REDACTED] submitted a beneficiary designation form listing [REDACTED] as his beneficiary for any benefits payable upon his death. (See Exhibit C). On November 27, 2007, [REDACTED] submitted a new beneficiary designation form in which he designates his daughter, [REDACTED] as his beneficiary for any benefits payable upon his death. (See Exhibit D). On the November 27 designation [REDACTED] omits the fact that he is married at the time he made the designation.

[REDACTED] died on September 8, 2008. (See Exhibit E). [REDACTED] s death certificate lists his daughter [REDACTED] as the person who reported his death. [REDACTED] s certificate incorrectly lists his marital status as "widowed" at the time of death and does not list [REDACTED] as his surviving

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spouse. In February 2018, ██████████ submitted a written request for information to the Plan requesting a copy of the Plan documents as it was in effect during ██████████'s last hour of covered employment and a complete copy of his pension file. The Plan responded in July 2008 stating that because ██████████ waived his right to a Husband-and-Wife Pension ██████████ is not entitled to any continuing benefit at this time. The July 2008 letter goes on to say that at the time of ██████████'s death there was a \$3,475.00 lump-sum death benefit payable on his account and that the Plan distributed that benefit to ██████████'s according to Plan procedure at that time.

Please note that ██████████'s request for information letter clearly states that her request was not intended as a claim for benefits and that the Plan's July 2008 letter does not indicate that the Plan treated her request as such.

III. Governing Law and Regulations

The Employee Retirement Income Security Act (ERISA) allows individuals to "recover benefits due to him under the terms of his plan." **29 U.S.C. § 1132(a)(1)(B)**.

The Code of Federal Regulations provides that pension plan administrators have 90 days after receipt of a claim for benefits to make a determination, and may make a written request for an additional 90 days if special circumstances require. **29 C.F.R. § 2560.503-1(f)(1)**.

Cement Masons Pension Trust Fund for Northern California Plan Document

Section 1.29. "Spouse" means a person to whom a Participant is legally married. The term also includes a former spouse of a Participant to the extent required by a Qualified Domestic Relations Order or by any law of the United States.

Section 8.02. Pensioner's Lump-Sum Death Benefit

If a Pensioner dies on or after August 1, 1995, a Lump-Sum Death Benefit will be paid to his Surviving Spouse in an amount equal to \$100.00 for each full Benefit Unit, plus a proportionate part of \$100.00 for any fraction of a Benefit Unit, the Pensioner had earned under the Plan at the time of retirement.

If there is no surviving Spouse at the time of the Pensioner's death, the Lump-Sum Death Benefit will be paid to one or more of the Pensioner's relatives in the following order: child(ren), parent(s), or sibling(s).

If the Pensioner is not survived by any of the preceding relatives, the Fund will reimburse the individual responsible for the Pensioner's funeral expenses to the extent that the expenses do not exceed the amount of the Lump-Sum Death Benefit. Any portion of the Lump-Sum Death Benefit remaining will be payable to the estate of the Pensioner.

If a Lump-Sum Death Benefit is not payable under any of the above circumstances, it will be payable to the estate of the Pensioner.

IV. Discussion

██████████ was legally married to ██████████ when he died therefore ██████████ qualifies as his surviving spouse under Plan Section 1.29. Plan Section 8.02 provides that the Plan is to pay any lump-sum death benefit payable on a participant's account to the surviving spouse, unless no surviving spouse exists. Because ██████████ qualifies as the surviving spouse of ██████████ the Plan should have paid any lump-sum death benefits payable on ██████████ account to her.

According to the Plan's July 8, 2018 letter, the Plan has paid the lump-sum death benefit payable on ██████████ account to someone other than ██████████. The Plan knew or should have known of ██████████ marriage to ██████████ because ██████████ listed her as his spouse on his February 15, 2007 beneficiary designation. Therefore, the Plan had all of the necessary information to pay the correct beneficiary at the time it paid the lump-sum death benefit and failed to do so.

V. Conclusion

██████████ is legally entitled to a lump-sum death benefit from the Cement Masons Pension Trust Fund for Northern California as the surviving spouse of ██████████. Therefore, ██████████ requests that the Plan administrator recognize her entitlement to benefits and provide her with the necessary application paperwork to receive her benefit.

You may address correspondence to:

Chris McAllister, Staff Attorney
Western States Pension Assistance Project
501 12th Street
Sacramento, CA 95814

Should you have any questions or concerns regarding this claim for benefits, please direct them to me at (916) 551-2146.

Sincerely,



Chris McAllister
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Phone: (916) 551-2146
Fax: (916) 551-2197
Email: cmcallister@lsnc.net

Enclosures: Release of Information Authorization
 Exhibit A- Marriage Certificate
 Exhibit B- July 8, 2018 Plan Letter
 Exhibit C- February 15, 2007 Beneficiary Designation
 Exhibit D- November 27, 2007 Beneficiary Designation
 Exhibit E- Death Certificate