

Opinion No. 75-24

April 4, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Leonard T. Valdes Executive Secretary Public Employees Retirement Association
P.E.R.A. Building Santa Fe, New Mexico 87503

QUESTIONS

FACTS

Mr. George F. Jaramillo at the time of his death was a member of the Public Employees Retirement Association in the employ of an affiliated public employer. His death was the result of an accidental injury arising solely and exclusively out of and in the course of his employment with his affiliated public employer. Mr. George Jaramillo, at the time of his death, had a minor son, Matthew. Matthew is the son of George and Patsy Jaramillo. Prior to his death, Patsy and George had divorced, and Patsy had married Mr. Joseph Seligman. George Jaramillo, at the time of his death, was married to Helen Jaramillo but there were no minor children from this marriage. Mr. Joseph Seligman is contemplating adopting Matthew.

QUESTIONS

1. What statutory benefits or funds are payable to Patsy Jaramillo Seligman and Helen Jaramillo?
2. If Matthew is adopted by Joseph Seligman will the statutory death benefits payable to him pursuant to the provisions of the Public Employees Retirement Act cease?

CONCLUSIONS

1. See analysis.
2. No.

OPINION

{*80} ANALYSIS

1. Section 5-5-20, NMSA, 1953 Comp. provides that in the case of a member who dies as the result of accidental injury arising solely and exclusively out of and in the course of his employment with his affiliated public employer, the applicable benefits provided for in subsections 2, 3, 4 and 5 of this section shall be paid, subject to the provisions of

subsection 6 of this section. The benefits with which we are concerned are the refund of contributions paid in by the decedent and the annuity payable to the surviving spouse.

Subsection 2 provides that the "accumulated deductions standing to the said deceased person's credit in the employees' savings fund at the time of his death shall be paid in accordance with the provisions of subsection 4 of Section 5-5-9, NMSA, 1953 Comp." {*81} Subsection 4 of Section 5-5-9, **supra**, provides that:

Upon the death of a member, and no annuity becomes payable on account of his death except as provided in section 5-5-20 NMSA 1953 his accumulated deductions standing to his credit in the employees' savings fund, at the time of his death, shall be paid to such person or persons as he shall have nominated by written designation duly executed and filed with the retirement board. . . .

We are informed that George Jaramillo, at the time of his death, had on file with the Retirement Board a nomination by written designation of Patsy Jaramillo as the individual entitled to receive his accumulated deductions standing to his credit in the employees' savings fund. Patsy is, therefore, entitled to receive a refund of the total contributions paid in by Mr. George Jaramillo.

Helen Jaramillo, at the time of the death of George, was married to George. Helen, therefore, is the "surviving spouse" within the terms of Section 5-5-20, **supra**. See 5-5-20 (6), **supra**. Subsection 3 of Section 5-5-20, **supra** provides that:

An annuity of one-third [1/3] of the final salary of the said deceased person shall be paid to a surviving spouse to continue until his remarriage. . . .

Helen, therefore, is entitled to receive this annuity.