EMILY DANSBURY BY
WRIGHTSON T. DANSBURY,
Petitioner,

v.
BOARD OF TRUSTEES OF THE PUBLIC
EMPLOYEES' RETIREMENT SYSTEM,
Respondent.

Decided September 22, 1981

Initial Decision

SYNOPSIS

Wrightson T. Dansbury appealed from a determination of the Board of Trustees of the Public Employees' Retirement System denying his application for life insurance benefits allegedly due as the result of the death of his wife. The Board's denial was based on a claim that Dansbury's wife had died more than 31 days after the termination of her employment and that she had not exercised her life insurance conversion privilege within that required time period.

The administrative law judge found that Dansbury's wife had been enrolled in the Public Employees' Retirement System since 1972. Her last day of work was November 17, 1978, and her last pay day was January 24, 1979, at which time she began an approved official leave of absence without pay which was to have continued until September 18, 1979.

During her leave of absence, Mrs. Dansbury's son, without her knowledge or permission, notified his mother's employer of the improbability of her return to work due to her worsening physical condition. He did so by submitting a "letter of resignation" in his mother's name on August 15, 1979. Mrs. Dansbury's employer interpreted this letter as a resignation effective August 15. Yet, Mrs. Dansbury received no notice of acceptance of the resignation until September 26 when she received a copy of an updated Civil Service form which indicated that she had resigned on August 15. At the same time she received insurance conversion information from the Division of Pensions which indicated that if she did not convert her group life insurance policy within 31 days of her resignation, her insurance coverage would lapse. Mrs. Dansbury died on September 30, 1979.

Believing that Mrs. Dansbury had no insurance coverage because of the
31 day period, petitioner applied for a withdrawal of Mrs. Dansbury's pension contributions and for any benefits resulting from her death. The Board denied any claim for insurance benefits claiming that Mrs. Dansbury had resigned on August 15 and had not converted her group life insurance within the required 31 days.

The administrative law judge determined that since Mrs. Dansbury neither authorized, directed or acquiesced in her son's letter of "resignation" of August 15, 1979, that purported resignation was a nullity. Therefore, Mrs. Dansbury's term of employment continued until her official leave of absence expired on September 18, 1979. Since Mrs. Dansbury died within 31 days of the expiration of her leave of absence, the administrative law judge ordered that the amount of insurance with respect to which she could have exercised the conversion privilege should be paid as a claim under the group policy.

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Kirk B. Roose, Esq., for Petitioner

Sharon M. Joyce, Deputy Attorney General, for Respondent (James R. Zazzali, Attorney General of New Jersey, Attorney)

MONYEK, ALJ.

Wrightson T. Dansbury appealed from a determination of the Board of Trustees of the Public Employees' Retirement System, denying his application for life insurance benefits allegedly due as the result of the death of his wife, Emily Dansbury. The alleged reason for the denial was that decedent died more than 31 days after the termination of her employment and that she did not exercise her conversion privilege with respect to her life insurance coverage. Respondent granted petitioner's request for a hearing to appeal its determination and, accordingly, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Prior to the taking of testimony or the introduction of other proofs at the administrative judicial proceeding on December 5, 1980, the following stipulations were made by and between counsel for the respective parties:

1. Decedent's date of birth was February 18, 1918.

2. Decedent first became employed by the Glassboro State College on June 5, 1972, as a Senior Building Maintenance Worker and she was enrolled in the Public Employees' Retirement System, effective October 12, 1972.

3. The last date upon which decedent reported to work was November 17, 1978, and she was last paid on January 24, 1979, at which time pension deductions were last made from her earnings.

5. Decedent died on September 30, 1979, as the result of a carcinoma.

6. Petitioner, Wrightson T. Dansbury, decedent’s husband, was designated as her beneficiary by decedent on January 15, 1973.

   The operative facts are uncontroverted. Decedent was described as a conscientious, devoted and appreciated building maintenance employee for the Glassboro State College between 1972 and November 1978. On November 17, 1978, decedent was admitted into the hospital for purposes of surgery for the removal of a growth on the side of her face. Although unbeknownst to her at the time, this surgery started her unsuccessful bout with cancer. Subsequent to the surgery, she commenced radiation therapy, suffered continued debilitating pain and manifested a psychotic depressive reaction that was described by her treating physician as severe. Accordingly, on January 24, 1979, decedent was granted an official leave of absence without pay until February 23, 1979. Her condition degenerated and she was thereafter granted successive leaves of absence through April 2, 1979, April 16, 1979, July 17, 1979 and September 18, 1979.

   In addition to suffering right upper quadrant pain, loss of appetite, malaise, and fevers, she was actively being treated for her psychotic depressive reaction with anti-depressant medications. Nevertheless, during April, May, June and July 1979, representatives of her employer, apparently because of her diligence and devotion to duty, continually called decedent’s home in an effort to find out when she expected to return to work. Although it was her desire to return to work, her condition continued to grow worse.

   Grave conflicts existed between decedent’s desire to return to work, because of both her industrious attitude and the repeated requests by her fellow employees and, on the other hand, her self-evident inability to do so because of her deteriorating physical condition and depressive mental state; it was, however, felt by decedent’s husband and son that her employer should be notified of her condition and her concomitant inability to return to work in the foreseeable future. Thus on August 15, 1979, Michael Dansbury, decedent’s 24-year-old son, without decedent’s knowledge or permission, took it upon himself to notify the college of the improbability of his mother’s returning to work. When asked for what reason he contacted the college on August 15, 1979, Michael answered:

   Well, because of my mother’s health problems that she had been having and contacts from the college and I felt she was going to be going into the hospital and I didn’t see any day in the foreseeable future that she was going to be returning to work and I know that she had been
contacted about when she was going to be returning, so I took it upon myself to try to notify the college in some sort of official way that because of her health problems, she was going to be still impaired from returning to work in the foreseeable future.

What kind of contact did you make with the college? How did you make contact?

I wrote a letter, handwritten letter.

Did you sign this letter?

Yes, I did.

Whose name did you sign to the letter?

My mother's.

What was the content of that letter, if you can recall? Do you remember the words of the letter?

Not precisely. Something along the lines like because of health reasons, I might have stated her name, I, Emily Dansbury, I'm not sure, will be resigning effectively a certain date.

Did you have the purpose in writing this letter to terminate any employee benefits?

No, no.

Did you have the purpose of receiving any employee benefits?

No.

The purpose of this letter was unrelated to employee benefits?

The purpose of the letter was to protect my mother from any more contact from the college and to let the college know that if they needed to hire someone to fill her vacancy or whatever, go ahead because right now she was not in good health.

To the best of your recollection, when you wrote the letter, did you use the word "resign" in the letter?

To the best of my recollection, yes.

Upon receipt of the letter, decedent's employer apparently interpreted the language therein to be a resignation by decedent, effective August 15, 1979, in spite of the fact that she was on an authorized leave of absence until September 18, 1979. However, decedent's employer took no action by way of an attempt to notify decedent of its acceptance, rejection or other disposition of her "resignation" until September 26, 1979, when it sent to decedent a copy of an undated Civil Service Form No. 22, Report of Separation or Transfer, wherein it was indicated that decedent resigned in good standing on August 15, 1979, together with a notice form of the Division of Pensions concerning insurance conversion privileges upon termination of leave of absence or employment. The Division of Pensions notice contained the following language:
Conversion Privileges When Insurance Coverage Terminates While on Leave of Absence, or upon Termination of Employment Before Retirement

If you terminate your employment before retirement, or your insured period during an absence expires, you will continue to be protected for the next 31 days. During the 31-day period you may convert your life insurance, without a medical examination, to an individual policy issued by Prudential. You may select any type of individual policy then customarily being issued by the Prudential, except term insurance or a policy containing disability benefits. The individual policy will be effective at the end of the 31-day period. The premiums will be the same as you would ordinarily pay if you applied for an individual policy at that time. A request for an individual policy should be submitted directly to your nearest Prudential office, together with your Group Life Insurance certificate. If you have not converted your group life insurance to an individual policy by the end of 31-day period, your life insurance protection will terminate.

Immediately upon receipt of the aforesaid communication, petitioner on or about September 28, 1979, went to the college to speak with the Personnel Director as to the meaning and import of the notices received. He was advised that decedent’s insurance coverage had already terminated because more than 31 days elapsed from August 15, the date of her alleged resignation and that if decedent desired insurance coverage she would have to obtain it on a basis other than that described in the notice. Decedent died within 48 hours of the aforesaid conference.

Believing that decedent had no insurance coverage by virtue of the representations made to him by the Personnel Director of decedent’s employer, petitioner completed an application for withdrawal of decedent’s pension contributions, signed decedent’s name to the application and thereafter applied for death benefits resulting from decedent’s death, without prejudice to his claim for the insurance benefits here in question, pursuant to letter of Peter J. Tschakowski, Pension Counsellor, Death Claims, Division of Pensions. Respondent denied petitioner’s claim for insurance benefits on the basis that decedent resigned as of August 15, 1979, and, therefore, her group life insurance coverage lapsed 31 days after the date of her resignation and, therefore, she was not covered by the insurance program on the date of her death, September 30, 1979.

N.J.S.A. 43:15A-108, provides:

(a) For the purpose of sections 41 (c) . . . and section 57 of chapter 84 of the public laws of 1954, a member of the Public Employees’ Retirement System shall be deemed to be an active member . . . for a period of no more than 2 years while on official leave of absence without pay if satisfactory evidence is presented to the Retirement System
that such leave of absence without pay is due to the member's personal illness. . . .

(c) In order for a member of the Public Employees' Retirement System to be covered hereunder for the optional death benefits provided by section 57 of chapter 84 of the public laws of 1954, he shall continue to make contributions for same during the period such member is on official leave of absence without pay, except that when such official leave of absence without pay is due to illness, no contributions shall be required of the member during the period he is deemed to be an active member while on such leave of absence.

_N.J.S.A. 43:15A-7(e)_ provides:

Membership of any person in the retirement system shall cease if he shall discontinue his service for more than 2 consecutive years.

_N.J.S.A. 43:15A-41 (c)_ provides:

Upon the receipt of proper proofs of the death of a member in service on account of which no accidental death benefit is payable under section 49 there shall be paid to such member's beneficiary:

1. The member's accumulated deductions at the time of death together with regular interest; and

2. An amount equal to one and one-half times the compensation upon which contributions by the member to the Annuity Savings Fund were based in the last year of creditable service. . . .

Accordingly, the initial question to be answered involves the nature of decedent's status as a member of the Public Employees' Retirement System as of the date of her death, September 30, 1979. Regardless of whether she was deemed to have resigned on August 15, 1979, or whether her employment terminated upon the expiration of her last official leave of absence on September 18, 1979, her membership continued in the retirement system for a period of 2 years. _N.J.S.A. 43:15A-7(e)._

Furthermore, her employer certified that it made salary deductions (presumably pension contributions) through the second half of August 1979, which would have been for a period of at least 15 days subsequent to her "resignation" and up to a point less than one month prior to her death.

There is no question that if decedent's son had not written his letter, to which he signed his mother's name, on August 15, 1979, decedent's leave of absence theretofore granted would have terminated on September 18, 1979, which was just 12 days short of her date of death. Therefore, the insurance benefits here sought would have been due and payable, by virtue of decedent's dying during the 31-day insurance conversion period allowed by law and set forth in the Division of Pensions Notice of Conversion.
N.J.S.A. 43:15A-93 provides:
   Any such group policy or policies shall include, with respect to any
insurance terminating because the member ceases to be eligible for par-
ticipation under the Public Employees’ Retirement System or because
of termination of service for reasons other than retirement, the conver-
sion privilege available upon termination of employment as prescribed
by the law relating to group life insurance. . . . Any such group policy
or policies shall also provide that if a member dies during the 31-day
period during which he would be entitled to exercise the conversion
privilege, the amount of insurance with respect to which he could have
exercised the conversion privilege shall be paid as a claim under the
group policy.

N.J.S.A. 17B:27-19 provides:
   There shall be a provision that if the insurance, or any portion of it,
on a person covered under the policy ceases because of termination of
employment or of membership in the class or classes eligible for cover-
age under the policy, such person shall be entitled to have issued to
him by the insurer, without evidence of insurability, an individual pol-
icy of life insurance without disability or other supplementary benefits,
provided application for the individual policy shall be made, and the
first premium paid to the insurer, within 31 days after such termina-
tion. . .

N.J.S.A. 17B:27-24 provides:
   If any individual insured under a group life insurance policy hereaf-
fter delivered in this State becomes entitled under the terms of such pol-
cy to have an individual policy of life insurance issued to him without
evidence of insurability, subject to the making of application and pay-
ment of the first premium within the period specified in such policy,
and if such individual is not given notice of the existence of such right
at least 15 days prior to the expiration date of such period, then the indi-
vidual shall have additional period within which to exercise such right;
but nothing herein shall be construed to continue any insurance under
the policy beyond the period provided in the policy. Such additional
period shall expire 15 days next after the individual is given such
notice, but in no event shall such additional period extend beyond 60
days next after the expiration date of the period provided in such pol-
icy. Written notice presented to the individual, or mailed by the
policyholder to the last known address of the individual, or mailed by
the insurer to the last known address of the individual as furnished by
the policyholder, shall constitute notice for the purposes hereof.

Michael Dansbury and Wrightson T. Dansbury were sincere, honest, cre-
dible and convincing witnesses. Respondent offered no testimony or proofs
to contradict, controvert, dispute, or in anyway to rebut petitioner’s proofs
that decedent did not voluntarily, knowingly and intentionally resign from
her employment or that she was aware of or consented to or acquiesced in
her son’s actions. The proofs were to the contrary. Michael testified that, “At the time I wrote the letter, I don’t believe she would have wanted me to have written the letter.” Respondent concedes in its brief that, “On August 16, Mrs. Dansbury was admitted to the Cooper Medical Center and a biopsy was performed. She was discharged on September 1, 1979, her family was informed that her prognosis was poor.” It is concluded that decedent was not only unaware of her son’s unauthorized act, but probably would have been unable to comprehend the significance of it, had she been aware. Michael had no more authority to effectuate a resignation from employment on behalf of his mother than any other unauthorized officious interloper. It is thus concluded that the proofs clearly and convincingly demonstrate that petitioner did not resign from her employment on August 15, 1979, and, therefore, continued to remain on an official leave of absence without pay until September 18, 1979, in accordance with her employer’s grant thereof. Since decedent died within 31 days of the termination of her last official leave of absence, the amount of insurance with respect to which she could have exercised the conversion privilege should be paid as a claim under the group policy. N.J.S.A. 43:15A-93.

However, assuming arguendo that decedent submitted or authorized the submission of her “resignation” on or about August 15, 1979, the mere submission of a resignation does not, per se, effectuate a termination of employment. This is especially true where the existence of insurance benefits are predicated upon the existence of employment. The resignation would have had to be acted upon and accepted by the employer and, further, the employer would have had to notify the employee of its acceptance and the effective date of the termination of employment. Our courts have held that before insurance can terminate, the employment relationship must be clearly and completely severed. Novern v. John Hancock Mutual Life Insurance Co., 107 N.J. Super. 570, 575 (App. Div. 1969). The facts developed at the hearing herein clearly demonstrate that decedent’s employer did not notify her of its acceptance of her “resignation” until September 26, 1979, at which time it mailed to her an unreceived Civil Service form, mistakenly indicating that she had resigned in good standing on August 15, 1979. This form was never received or seen by decedent, but rather was received by her husband on September 28 or September 29. Petitioner, immediately upon receipt of that form, went to the employer’s personnel office to inquire as to the significance of the form and the notice of conversion privilege, at which time he was told that the conversion privilege period had already expired.

Under a somewhat comparable factual composite insofar as lack of notice of termination of employment is concerned, Wells v. Wilbur B. Driver, Co,
121 N.J. Super. 185, 199 (Law Div. 1972) set forth the applicable law as follows:

. . . It has been held that where insurance protection under a group insurance policy can be lost upon the termination of employment, there will be implied an obligation on the part of the employer to give actual or definite notice thereof to the insured. In Walker v. Occidental Life Ins. Co., Cal. 2d 518 63 Cal. Rptr. 45, 432 P. 2d 741 (Sup. Ct. 1967) the court considered a group insurance policy similar to the present one, and the California Insurance Code which contained a clause comparable to N.J.S.A. 17:34-32(9). It noted the position of a majority of jurisdictions holding:

. . . under similar policy provisions, that the employee is entitled to receive notice that the employer has terminated their relationship. [Citations omitted.] The rationale of these decisions is that the privilege of converting the policy regardless of an employee’s physical condition is a valuable property right, that it would be inequitable to hold that an employee may be deprived of this right without his knowledge at the whim of the employer, and that the inclusion of such a clause in the policy implies an intention that the employee should have knowledge of the precise date of termination of his employment. [63 Cal. Rptr. at 48. 432 P. 2d at 744; emphasis added].

In following the majority rule, the court stated:

. . . It is evident that the privilege of converting a group policy to a policy of individual insurance within 31 days after termination of employment would be of dubious value if an employee was not entitled to be notified when the employer had effected a termination. . . . We therefore hold that notice of termination is essential in order to render viable the conversion privilege contained in the certificate issued by defendant. [Id., emphasis added]

It has also been recognized that there cannot be a loss or forfeiture of coverage where there is a failure to notify an insured of pivotal events. Mau v. Union Labor Life Ins. Co., supra; cf. Elmhurst v. Prudential Life Ins. Co. of America, 48 Haw. 121, 148, 395 P. 2d 683 (1964). In Keane v. Aetna Life Ins. Co., supra, 22 N.J. Super. at 312, the court held that where there was “obfuscity” as to whether the active work of an employee had been terminated, “a duty existed in the employer to spell out plainly the position it intended to take as to the continuance of the insurance.”

Accordingly, if we construed the receipt of notice of termination of employment as having been effectuated on September 26, 1979, the date upon which decedent’s employer’s notice was mailed, the 15-day period set forth in N.J.S.A. 17B:27-24 would not have expired until October 11, 1979, or
11 days after decedent’s death. Since decedent died within said 15-day period, her beneficiary would be entitled to receive the proceeds of her insurance coverage, pursuant to N.J.S.A. 43:15A-93.

Accordingly, based upon the testimony heard and proofs adduced, I make the following:

FINDINGS OF FACT

1. Stipulations numbered 1 through 6 inclusive are hereby adopted as Findings of Fact, as though set forth at length herein.
2. Decedent did not resign from her position or her employment.
4. Decedent was neither aware of nor directly or indirectly a party to her son’s unauthorized conduct.
5. Decedent’s leave of absence expired on September 18, 1979.
7. Decedent died within 31 days of the date of the termination of her employment.
8. Decedent was a member of the Retirement System on the date of her death.

CONCLUSIONS OF LAW

1. Decedent’s son’s letter of “resignation” was a nullity.
2. The earliest effective date of notice of decedent’s termination of employment was September 26, 1979.
3. Decedent’s insurance conversion privilege was in effect at the time of her death on September 30, 1979.
4. Decedent died within the period of her insurance coverage conversion privilege.
5. Decedent’s son’s act of attempting to effectuate a resignation of behalf of his mother on August 15, 1979, was an act of mistaken, but well-intentioned, gratuitous injusticiousness.
6. Petitioner’s act of executing an Application for Withdrawal form on behalf of decedent on September 28, 1979, resulted from the mistaken representation of decedent’s employer that her conversion insurance privilege had theretofore expired.
7. Decedent’s insurance conversion privilege had not expired prior to her death.
8. At the time of her death, decedent was fully insured for such insurance
coverages as were in effect prior to her death.

It is, therefore, ADJUDGED that petitioner's application for death benefits due and payable to him by virtue of the death of the decedent on September 30, 1979, be forthwith paid to him together with all accrued interest thereon, in accordance with and pursuant to N.J.A.R. 43:15A-93.

After reviewing this Initial Decision, the Board of Trustees of the Public Employees' Retirement System on September 16, 1981, issued the following Final Decision:

The Board of Trustees of the Public Employees' Retirement System at its meeting on September 16, 1981, considered Wrightson T. Dansbury's appeal and by unanimous vote accepted the recommendation of the administrative law judge and reversed the denial of his application for insurance benefits due to the death of Emily Dansbury.