



Board of Administration

## Agenda Item 8a7

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**November 16, 2022**

**Item Name:** Proposed Decision – In the Matter of the Appeal of Accepting the Late Application for Industrial Disability Retirement of PHILIP F. KETTERLE, Respondent, and CALIFORNIA MEN'S COLONY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondent.

**Program:** Disability and Survivor Benefits Division

**Item Type:** Action

### **Parties' Positions**

Staff argues that the Board of Administration should adopt the Proposed Decision, as modified. Respondent Philip F. Ketterle's (Respondent Ketterle) position is included in Attachment C, if any.

### **Strategic Plan**

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

### **Procedural Summary**

Respondent Ketterle applied for industrial disability retirement (IDR) benefits nearly nine years after he retired for service from California Men's Colony, California Department of Corrections and Rehabilitation (Respondent CDCR). CalPERS denied Respondent's application because it was late, and because he failed to prove his late filing was due to a correctable mistake that would entitle him to change his retirement status retroactively. The matter was heard by the Office of Administrative Hearings on August 29, 2022. Due to Respondent CDCR's failure to appear, the case proceeded as a default under Government Code section 11520 as to Respondent CDCR only. A Proposed Decision was issued on September 21, 2022, affirming CalPERS' determination and denying the appeal.

## Alternatives

- A. For use if the Board decides to modify and adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517 (c)(2)(C) which authorizes the Board to "make technical or other minor changes in the proposed decision," hereby modifies the Proposed Decision, by correcting various dates: replace the no record of communication "until" date of "November 18, 2018" with the correct date of "November 14, 2018" on page 6 paragraph 14 of the Proposed Decision; and the "January 1, 2020" inquiry date with the correct date of "January 2, 2020" on page 7 paragraph 16 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated September 21, 2022, as modified, concerning the appeal of Philip F. Ketterle; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. For use if the Board decides to adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Proposed Decision dated September 21, 2022, concerning the appeal of Philip F. Ketterle; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- C. For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated September 21, 2022, concerning the appeal of Philip F. Ketterle, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; RESOLVED FURTHER that the Board's Decision shall be made after notice is given to all parties.

- D. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated September 21, 2022, concerning the appeal of Philip F. Ketterle, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

E. Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System requests the parties in the matter concerning the appeal of Philip F. Ketterle, as well as interested parties, to submit written argument regarding whether the Board's Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, hereby designates as precedential its Decision concerning the appeal of Philip F. Ketterle.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Customer Services and Support