



## Board of Administration

# Agenda Item 9a10

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June 16, 2021

**Item Name:** Proposed Decision – In the Matter of the Appeal of Accepting the Application for Disability Retirement of DUANE D. REED II, Respondent, and FRANCHISE TAX BOARD, Respondent.

**Program:** Disability and Survivor Benefits Division

**Item Type:** Action

### **Parties' Positions**

Staff argues that the Board of Administration should adopt the Proposed Decision.

Respondent Duane D. Reed II's (Respondent Reed) 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 Reed submitted an application for disability retirement based on psychological conditions. CalPERS determined that Respondent Reed was ineligible for disability retirement because he had been dismissed from his employment with Respondent Franchise Tax Board, pursuant to the legal precedent set forth in *Haywood v. American River Fire Protection District* and its progeny. Respondent Reed appealed this determination and the matter was heard by the Office of Administrative Hearings on March 4, 2021. Due to Respondent Franchise Tax Board's failure to appear, the case proceeded as a default under Government Code section 11520 as to that party only. A Proposed Decision was issued on April 5, 2021, affirming CalPERS' determination that Respondent Reed is ineligible to apply for disability retirement and denying his appeal.

### **Alternatives**

A. 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 April 5, 2021, concerning the appeal of Duane D. Reed II; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. 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 April 5, 2021, concerning the appeal of Duane D. Reed II, 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.

- C. 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 April 5, 2021, concerning the appeal of Duane D. Reed II, 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.

- D. 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 Duane D. Reed II, 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 Duane D. Reed II.

**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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Anthony Suine  
Deputy Executive Officer  
Customer Services and Support