



Board of Administration Offsite

Action Item – Proposed Decisions of Administrative Law Judges Item h

July 14, 2021

Item Name: Proposed Decision – In the Matter of the Appeal in the Calculation of Final Compensation of ALAN M. KOAHOU (deceased), by LORRIE KOAHOU (heir to ALAN KOAHOU, deceased), Respondent and CITY OF COLTON, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Following an audit by CalPERS' Office of Audit Services, CalPERS determined that Respondent City improperly reported certain items of compensation. Respondent City agreed with CalPERS' audit findings. CalPERS then worked with Respondent City to determine the identity of impacted employees and determined that compensation Alan Koahou (Decedent) received while employed as a police sergeant with Respondent City did not comply with the Public Employees' Retirement Law (PERL) and was improperly reported to CalPERS. Specifically, CalPERS determined that the item of pay identified as Holiday Pay did not meet the definition of special compensation found in the PERL and therefore should not be reported. In addition, CalPERS determined that items of pay identified as Police Officer Standard Training and College Degree Incentive Pay, which amounts were partially derived from the incorrectly reported Holiday Pay, should be reduced. In addition, CalPERS determined that Decedent was paid excess benefits and that he was obligated to reimburse CalPERS the overpayment amount. Decedent appealed CalPERS' determination prior to his death. Respondent Koahou, Decedent's wife and heir, currently

receives a monthly survivor retirement benefit based on the amount of Decedent's final compensation. For this reason, CalPERS determined that she has a justiciable interest in the matter. Respondent Koahou informed CalPERS that she wanted to proceed with Decedent's appeal and the matter was heard by the Office of Administrative Hearings on May 3, 2021. A Proposed Decision was issued on May 28, 2021, 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), is authorized to "make technical or other minor changes in the proposed decision," and hereby modifies the Proposed Decision by changing "36-month period" to "12-month period" on page eight, paragraph sixteen, and by changing "(Gov. Code, §20037)" "(Gov. Code, §20042)" on page eight, paragraph sixteen of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated May 28, 2021, as modified, concerning the appeal of Lorrie Koahou; 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 May 28, 2021, concerning the appeal of Lorrie Koahou; 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 May 28, 2021, concerning the appeal of Lorrie Koahou, 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 May 28, 2021, concerning the appeal of Lorrie Koahou, 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 Lorrie Koahou, 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 Lorrie Koahou.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
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Customer Services and Support