



Board of Administration

Action Item – Proposed Decisions of Administrative Law Judges Item b

July 14, 2021

Item Name: Proposed Decision – In the Matter of the Appeal Regarding Final Compensation Calculation of TIMOTHY C. ASBURY; KAREN E. BROWN; KENNETH C. DUNN; MARY E. FERNANDES; SUSAN D. HALVERSTADT-TAYLOR; MARC A. LEDONNE; REY M. LOPEZ; NOREEN M. NUNES; PHILIP A. REVOLINSKY; CHARLOTTE A. STRICKLAND; LISA C. TEETER; NANCY A. THUEMLER; M. DIANE VALK; SEAN S. ARLIN; ALMA M. CARNEY; MANUEL J. CESA; JAMES A. MIRANDA; LAURENCE R. OLSEN, Respondents, and COUNTY OF GLENN, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should decline to adopt the Proposed Decision, and instead remand the matter back to the Office of Administrative Hearings for the taking of actual evidence.

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 County of Glenn's (Respondent County) compensation reporting errors caused the overpayment of retirement benefits to 56 retirees from Respondent County. CalPERS sought collection of the overpayments from the retired members for the most recent three years of retirement benefits overpayments. Eighteen (18) retired members appealed CalPERS' determination,

CalPERS also invoiced Respondent County for the remainder of the overpayments (referred to as the Employer Liability) made outside of the most recent three years. Respondent County disputed CalPERS' collection attempts. Following the filing of the Statement of Issues (SOI), Respondent County filed a Motion to Dismiss with the Office of Administrative Hearings. The Motion disputed CalPERS' attempt to collect the Employer Liability from Respondent County. Following briefing and argument on the matter, Administrative Law Judge refused to take

evidence, and instead issued a Proposed Decision dismissing CalPERS' claim for the Employer Liability claim against Respondent County.

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 May 14, 2021, concerning the appeal of Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; 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 May 14, 2021, concerning the appeal of Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; 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 May 14, 2021, concerning the appeal of Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; 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 Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes; Susan D. Halverstadt-Taylor; 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 Timothy C. Asbury; Karen E. Brown; Kenneth C. Dunn; Mary E. Fernandes and Susan D. Halverstadt-Taylor.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
Deputy Executive Officer
Customer Services and Support