



Board of Administration

Agenda Item 9a7

September 15, 2021

Item Name: Proposed Decision – In the Matter of the Reinstatement from Industrial Disability Retirement of RICHARD BRAZIL, Respondent, and CALIFORNIA SUBSTANCE ABUSE TREATMENT FACILITY AND STATE PRISON - CORCORAN, 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.

Respondent Richard Brazil's (Respondent Brazil) position is included in Attachment C, if any.

Respondent California Substance Abuse Treatment Facility & State Prison - Corcoran, California Department of Correction's (Respondent CDCR) 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

On May 31, 2017, Respondent Brazil submitted an application for industrial disability retirement based on (left thumb, hand, and wrist) conditions. CalPERS approved the application for industrial disability retirement and Respondent Brazil retired for disability effective October 3, 2017.

In 2020, Respondent Brazil was reevaluated and CalPERS determined that he is no longer substantially incapacitated from performing the duties of a Correctional Officer. Respondent Brazil appealed this determination and the matter was heard by the Office of Administrative Hearings on May 27, 2021. A Proposed Decision was issued on June 21, 2021, affirming CalPERS' determination and denying the 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 June 21, 2021, concerning the appeal of Richard Brazil; 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 June 21, 2021, concerning the appeal of Richard Brazil, 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 June 21, 2021, concerning the appeal of Richard Brazil, 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 Richard Brazil, 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 Richard Brazil.

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