



Board of Administration Offsite

Action Item – Proposed Decisions of Administrative Law Judges Item e

July 13, 2022

Item Name: Proposed Decision – In the Matter of the Appeal of Reinstatement from Disability Retirement of MICHAEL D. LEMBERGER, Respondent, and ANTIOCH UNIFIED SCHOOL DISTRICT, 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 Michael D. Lemberger's (Respondent Lemberger) 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 2, 2017, Respondent Lemberger submitted an application for disability retirement based on an orthopedic condition. CalPERS approved Respondent Lemberger's application for disability retirement, and he retired for disability effective July 1, 2017. In 2020, CalPERS informed Respondent Lemberger that it was reviewing his disability retirement benefits to ensure continued eligibility. CalPERS reevaluated Respondent Lemberger and determined that that he is no longer incapacitated from performing the duties of a Custodian for the District. Respondent Lemberger appealed this determination and the matter was heard by the Office of Administrative Hearings on May 9, 2022. Due to Respondent Antioch Unified School District's (District) failure to appear, the case proceeded as a default under Government Code section 11520, as to the District only. A Proposed Decision was issued on June 8, 2022, affirming CalPERS' determination and denying Respondent Lemberger's 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 deleting "and uncertain" between the words extended and duration and adding "which is expected to last at least 12 consecutive months or will result in death," after the word duration in paragraph 4 under the Legal Conclusions section, on page 12 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated June 8, 2022, as modified, concerning the appeal of Michael D. Lemberger; 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 June 8, 2022, concerning the appeal of Michael D. Lemberger; 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 June 8, 2022, concerning the appeal of Michael D. Lemberger, 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 June 8, 2022, concerning the appeal of Michael D. Lemberger, 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 Michael D. Lemberger, 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 Michael D. Lemberger.

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