



Board of Administration

Agenda Item 9a1

June 16, 2021

Item Name: Proposed Decision – In the Matter of the Appeal of Accepting the Application for Industrial Disability Retirement of GARY THOMPSON, Respondent, and CITY AND COUNTY OF SAN FRANCISCO, 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 Gary Thompson's (Respondent Thompson) position is included in Attachment C, if any.

Respondent City and County of San Francisco's (CCSF) 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 February 22, 2011, CCSF sent Respondent Thompson notice that it proposed to terminate his employment. On the same date, Respondent Thompson submitted a service pending industrial disability retirement application with an effective retirement date of June 10, 2011. The service retirement portion of the application was approved, and Respondent Thompson has been receiving service retirement benefits since June 10, 2011. The industrial disability retirement portion of the application was cancelled due to Respondent Thompson's failure to provide CCSF with medical records necessary for it to make a determination regarding his disability.

On February 25, 2019, Respondent Thompson submitted an application for industrial disability retirement based on a heart condition. After reviewing documents provided by CCSF, CalPERS determined that Respondent Thompson had been dismissed from his employment with CCSF for cause. Pursuant to the legal precedent set forth in *Haywood v. American River Fire Protection District*, CalPERS determined that Respondent Thompson was ineligible for industrial disability retirement. Respondent Thompson appealed this determination, and the matter was heard by the Office of Administrative Hearings on February 18, 2021. A Proposed Decision was issued on March 18, 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 March 18, 2021, concerning the appeal of Gary Thompson; 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 March 18, 2021, concerning the appeal of Gary Thompson, 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 March 18, 2021, concerning the appeal of Gary Thompson, 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 Gary Thompson, 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 Gary Thompson.

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