



## Board of Administration

# Agenda Item 9a9

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November 17, 2021

**Item Name:** Proposed Decision – In the Matter of Accepting the Application for Industrial Disability Retirement of JASON J. BEMOWSKI, Respondent, and CITY OF CHINO, Respondent.

**Program:** Disability and Survivor Benefits Division

**Item Type:** Action

### **Parties' Positions**

Staff argues that the Board of Administration should decline to adopt the Proposed Decision.

Respondent Jason J. Bemowski's (Respondent Bemowski) position, if any, is included in Attachment C.

Respondent City of Chino's (Respondent City) position, if any, is included in Attachment C.

### **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 Bemowski submitted an application for industrial disability retirement (IDR). In processing the application, CalPERS learned that Respondent Bemowski had been terminated for cause because he had sexually harassed a supervisee, solicited a prostitute, and had sex with a 16-year old child. Based on this evidence, CalPERS determined that Respondent Bemowski was ineligible for IDR because he had been dismissed from his employment for cause pursuant to the legal precedents set forth in *Haywood v. American River Fire Protection District*, et al. Respondent Bemowski appealed this determination and the matter was heard by the Office of Administrative Hearings on July 26, 2021. Due to Respondent City's failure to appear, the case proceeded as a default as to it under Government Code section 11520 as to Respondent City only. A Proposed Decision was issued on August 26, 2021, rejecting CalPERS' determination and granting Bemowski's 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 August 26, 2021, concerning the appeal of Jason J. Bemowski; 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 August 26, 2021, concerning the appeal of Jason J. Bemowski, 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 August 26, 2021, concerning the appeal of Jason J. Bemowski, 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 Jason J. Bemowski, 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 Jason J. Bemowski.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Anthony Suine  
Deputy Executive Officer  
Customer Services and Support