



## Board of Administration

# Agenda Item 8a4

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**February 14, 2023**

**Item Name:** Proposed Decision on Remand – 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 adopt the Proposed Decision on Remand.

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

Respondent City of Chino's (Respondent City) 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**

Respondent Bemowski submitted an application for industrial disability retirement (IDR) based on orthopedic (bilateral shoulders, back) conditions. CalPERS determined that Respondent Bemowski was ineligible for IDR because he had been terminated from his employment. Pursuant to the legal precedents set forth in *Haywood v. American River Fire Protection District* and its progeny, Respondent Bemowski is ineligible to apply for IDR because his employer/employee relationship has been severed and he has no right to reinstatement.

Respondent Bemowski appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). An initial hearing was held on July 26, 2021; and a Proposed Decision was issued on August 26, 2021.

The Board considered the proposed decision, and on January 7, 2022, remanded the matter back to the ALJ for the taking of additional evidence on the following issues: (1) whether Respondent Bemowski's inability to reinstate into his former job precludes CalPERS from awarding an IDR regardless of the date that he submitted his IDR application; and (2) whether it is appropriate to apply judicial precedent decided under the Judges' Retirement Law to eligibility

determinations under the Public Employees' Retirement Law without citation to proper legal authority. The hearing on remand was held on October 25, 2022.

A Proposed Decision on Remand was issued on January 9, 2023, affirming CalPERS' determination and denying Respondent Bemowski's appeal.

### **Alternatives**

- A. For use if the Board decides to adopt the Proposed Decision on Remand 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 on Remand dated January 9, 2023, 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 on Remand, 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 on Remand dated January 9, 2023, concerning the appeal of Jason J. Bemowski, hereby rejects the Proposed Decision on Remand 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 on Remand dated January 9, 2023, concerning the appeal of Jason J. Bemowski, hereby rejects the Proposed Decision on Remand 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 on Remand

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Anthony Suine  
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Customer Services and Support