



## Board of Administration

# Agenda Item 8a4

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**November 15, 2023**

**Item Name:** Proposed Decision – In the Matter of the Appeal of Accepting the Application for Industrial Disability Retirement of ROBERT A. STORY, Respondent, and CALIFORNIA HIGHWAY PATROL, 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 Robert A. Story's (Respondent) 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 submitted an application for industrial disability retirement (IDR) based on orthopedic and psychological conditions. CalPERS determined that Respondent was ineligible for IDR because he was dismissed from his employment for cause. Pursuant to the legal precedents set forth in *Haywood v. American River Fire Protection District, et al.*, Respondent's application was canceled. Respondent appealed this determination, and the matter was heard by an Administrative Law Judge (ALJ) with the Office of Administrative Hearings on August 1, 2023. Due to Respondent California Highway Patrol's (Respondent CHP) failure to appear, the case proceeded as a default under Government Code section 11520 as to Respondent CHP only. A Proposed Decision was issued on August 30, 2023, affirming CalPERS' determination and denying the 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, subdivision (c)(2)(C) which authorizes the Board to "make technical or other minor changes in the proposed decision,"

hereby modifies the Proposed Decision by changing “Government Code section 20930” to “20390” on page 2, paragraph 1 and page 5, paragraph 3; and by adding the word “industrial” in front of the term “disability retirement” on page 2, “ISSUE”; page 3, paragraphs 3 (continuation), 4, 5 and 6; page 4, paragraphs 7, 8 and 1; page 5, paragraph 4; and page 6 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated August 30, 2023, as modified, concerning the appeal of Robert A. Story; 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 August 30, 2023, concerning the appeal of Robert A. Story; 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 August 30, 2023, concerning the appeal of Robert A. Story, 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 August 30, 2023, concerning the appeal of Robert A. Story, 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 Robert A. Story, 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 Robert A. Story.

**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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