



## Consent

### Agenda Item 5c2

November 15, 2012

**ITEM NAME:** Proposed Decision – In the Matter of the Industrial Disability Retirement Application of MARK ANTHONY RODRIGUEZ-FAZ, Respondent, and DEPARTMENTAL OF DEVELOPMENTAL SERVICES (PORTERVILLE STATE HOSPITAL), Respondent.

**PROGRAM:** Benefit Services Division

**ITEM TYPE:** Action Consent

#### **PARTIES' POSITIONS**

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

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

#### **STRATEGIC PLAN**

This item is not a specific product of either the Strategic or Annual Plans. The conduct of administrative hearings and determination of appeals is a power reserved to the Board of Administration.

#### **PROCEDURAL SUMMARY**

Respondent Mark Anthony Rodriguez-Faz submitted an application for Industrial Disability Retirement (IDR), based on orthopedic (left shoulder, mid-back and right hand) conditions. Because Respondent had been terminated for cause, CalPERS determined that he was ineligible to apply for disability retirement and rejected his application for IDR. Respondent appealed this decision and the matter was heard by the Office of Administrative Hearings on August 15, 2012. A Proposed Decision was issued on September 11, 2012, denying the application for Industrial Disability Retirement.

## **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 September 11, 2012, concerning the application of Mark Anthony Rodriguez-Faz; 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 September 11, 2012, concerning the application of Mark Anthony Rodriguez-Faz, 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 September 11, 2012, concerning the application of Mark Anthony Rodriguez-Faz, 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 application of Mark Anthony Rodriguez-Faz, 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 application of Mark Anthony Rodriguez-Faz.

### **ATTACHMENTS**

- Attachment A: Proposed Decision
- Attachment B: Staff's Argument
- Attachment C: Respondent's Argument

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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support