



Consent

Agenda Item 6a2

May 15, 2013

ITEM NAME: Proposed Decision – In the Matter of the Appeal of the Denial of the Redeposit of Withdrawn Contributions for JAMES D. GATES, Respondent; KATHLEEN J. GATES, Respondent; and the EASTERN MUNICIPAL WATER DISTRICT, Respondent.

PROGRAM: Customer Account Services Division

ITEM TYPE: Action Consent

PARTIES' POSITIONS

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

Respondents argue 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 determination of administrative appeals is a power reserved to the Board of Administration.

PROCEDURAL SUMMARY

In 2009, pursuant to a dissolution of marriage court order, service credit was transferred from CalPERS member James D. Gates to a nonmember account for ex-wife, Kathleen J. Gates. In 2010, Mr. Gates requested, and CalPERS mistakenly allowed, redeposit of the funds for the previously transferred years of service. In 2011, CalPERS discovered the error and notified Mr. Gates that his purchase would be voided and the funds returned to him. Mr. Gates appealed this determination and a hearing was heard by the Office of Administrative Hearings on February 13, 2013. A Proposed Decision was issued on March 13, 2013, denying the appeal and granting return of the lump sum contribution with interest.

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 13, 2013, concerning the appeal of James D. Gates; 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 13, 2013, concerning the appeal of James D. Gates, 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 13, 2013, concerning the appeal of James D. Gates, 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 James D. Gates, 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 James D. Gates.

ATTACHMENTS

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

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support