Board of Administration

California Public Employees' Retirement System

Agenda Item 8c

May 21, 2014

ITEM NAME: Proposed Decision – In the Matter of the Application for Industrial Disability for JACOB BERGHORST, Respondent, and CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, DEUEL VOCATIONAL INSTITUTION.

PROGRAM: Benefit Services Division

ITEM TYPE: Action

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

PROCEDURAL SUMMARY

Respondent Jacob Berghorst submitted an application for Industrial Disability Retirement, based on an orthopedic (herniation of lumbar disc/lumbar radiculopathy) injury. CalPERS rejected the application because Respondent was terminated for cause and the discharge was neither the ultimate result of a disabling medical condition nor preemptive of any otherwise valid claim for disability retirement. Respondent appealed this decision and the matter was heard by the Office of Administrative Hearings on March 13, 2014. A Proposed Decision was issued on March 26, 2014, denying Respondent's right to apply 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 March 26, 2014, concerning the application of Jacob Berghorst; 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 26, 2014, concerning the application of Jacob Berghorst, 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 26, 2014, concerning the application of Jacob Berghorst, 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 Jacob Berghorst, 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 Jacob Berghorst.

BUDGET AND FISCAL IMPACTS: Not applicable

ATTACHMENTS

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

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support