Board of Administration

California Public Employees' Retirement System

Agenda Item 8c

September 17, 2014

ITEM NAME: Proposed Decision – In the Matter of the Cancellation of the Application for Industrial Disability Retirement of SERGIO GARCIA, Respondent, and DEPARTMENT OF INDUSTRIAL RELATIONS, Respondent

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 Sergio Garcia submitted an application for Industrial Disability Retirement (IDR). Because Respondent had been terminated for cause, CalPERS determined that he was ineligible to apply for IDR and rejected his application. Respondent appealed this decision and the matter was heard by the Office of Administrative Hearings on May 8, 2014. The record was left open for the submission of written closing arguments. The matter was submitted for decision on June 16, 2014. A Proposed Decision was issued on July 16, 2014, rejecting the application.

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 July 16, 2014, concerning the application of Sergio Garcia; 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 July 16, 2014, concerning the application of Sergio Garcia, 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 July 16, 2014, concerning the application of Sergio Garcia, 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 Sergio Garcia, 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 Sergio Garcia.

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