



Agenda Item 8k

December 17, 2014

ITEM NAME: Proposed Decision – In the Matter of the Appeal Regarding Retirement Overpayment of LUCKY LORENA MEYER, Respondent, and DEPARTMENT OF STATE HOSPITALS, NAPA, Respondent

PROGRAM: Benefit Services Division

ITEM TYPE: Action

PARTIES' POSITIONS

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

Respondent Meyer 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 Meyer appealed a determination that she owed CalPERS a net amount of \$29,942.97 under Government Code section 21198. This overpayment occurred because Respondent Meyer received pension benefits while she was contesting a medical demotion. Respondent Meyer was successful in challenging the demotion and she was awarded the difference in salary plus interest, that otherwise would have normally been paid to her during the period October 23, 2007 through March 15, 2011. As a result of receiving this back pay award, Respondent Meyer received both pay and pension benefits for the same time period. CalPERS determined that under section 21198, the pension benefits must be returned to CalPERS and her retirement date moved forward. Respondent Meyer filed a timely appeal of this determination and a hearing was held before an Administrative Law Judge of the Office of Administrative Hearings on August 5, 2014. On November 4, 2014, a Proposed Decision was issued upholding CalPERS' determination that Respondent Meyer owes the system a net amount of \$29,942.97.

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(c)(2)(C), which authorizes the Board to "make technical or other minor changes in the proposed decision," hereby modifies the Proposed Decision, by replacing the date of March 15, 2012, with the date of March 15, 2011, in the "Conclusion" paragraph on page ten and on page eleven in the "Order," and hereby adopts as its own Decision the Proposed Decision dated November 4, 2014, as modified, concerning the appeal of Lucky Lorena Meyer; RESOLVED FURTHER that this Board Decision shall be effective 30 days following the 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 November 4, 2014, concerning the appeal of Lucky Lorena Meyer; 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 November 4, 2014, concerning the appeal of Lucky Lorena Meyer, 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 November 4, 2014, concerning the appeal of Lucky Lorena Meyer, 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 Lucky Lorena Meyer, 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 Lucky Lorena Meyer.

BUDGET AND FISCAL IMPACTS: Not applicable

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