



Agenda Item 8i

March 18, 2015

ITEM NAME: Amended Proposed Decision After Hearing On Remand – In the Matter of the Application for Industrial Disability Retirement of LYNN MOLLER, Respondent, and DEPARTMENT OF CORRECTIONS & REHABILITATION, RJ DONOVAN CORRECTIONAL FACILITY, Respondent.

PROGRAM: Benefit Services Division

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should adopt the Amended Proposed Decision After Hearing On Remand, as modified.

Respondent Lynn Moller (Respondent Moller) argues that the Board of Administration should reject the Amended Proposed Decision After Hearing On Remand.

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 Moller submitted an application for industrial disability retirement (IDR) based on orthopedic (back and neck) conditions. CalPERS denied the application for IDR. Respondent appealed this determination and the matter was initially heard by the Office of Administrative Hearings (OAH) on September 15, 2011, and January 6, 2012. A Proposed Decision, denying the appeal was issued on August 3, 2012. The Board adopted the initial Proposed Decision on September 12, 2012. On January 3, 2013, Respondent filed a Petition for Writ of Mandamus in Superior Court, challenging the Board's Decision. The Superior Court issued an order which resulted in the matter being remanded back to the OAH. A hearing on remand was heard on September 2, 2014. The matter was submitted to the Administrative Law Judge (ALJ) on October 20, 2014. The ALJ issued an Amended Proposed Decision After Hearing On Remand, on January 23, 2015, again denying the application for IDR.

ALTERNATIVES

- A. For use if the Board decides to adopt the Amended Proposed Decision After Hearing On Remand, as modified, 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 Amended Proposed Decision After Hearing On Remand, inserting the word "industrial" before the words "disability retirement" on pages two and ten of the Amended Proposed Decision After Hearing On Remand, and hereby adopts as its own Decision the Amended Proposed Decision After Hearing On Remand dated January 23, 2015 as modified, concerning the application of Lynn Moller; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. For use if the Board decides to adopt the Amended Proposed Decision After Hearing On Remand as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own Decision the Amended Proposed Decision After Hearing On Remand, dated January 23, 2015, concerning the application of Lynn Moller; 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 Amended Proposed Decision After Hearing On Remand, 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 Amended Proposed Decision After Hearing On Remand dated January 23, 2015, concerning the application of Lynn Moller, hereby rejects the Amended Proposed Decision After Hearing On Remand 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 Amended Proposed Decision After Hearing On Remand dated January 23, 2015, concerning the application of Lynn Moller, hereby rejects the Amended Proposed Decision After Hearing On Remand 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 application of Lynn Moller, 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 Lynn Moller.

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