



Agenda Item 8k

June 17, 2015

ITEM NAME: Proposed Decision – In the Matter of the Cancellation of Military Leave of Absence Service Credit of STEVE RUBALCAVA, Respondent.

PROGRAM: Member Account Management Division

ITEM TYPE: Action

PARTIES' POSITIONS

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

Respondent Steve Rubalcava (Respondent Rubalcava) 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 Rubalcava contacted CalPERS to purchase Military Leave of Absence Service Credit. CalPERS mailed him an election package to purchase such service credit in 2011. While Respondent Rubalcava contended that he should get the service credit for free, he agreed to pay for the service credit via authorized deductions from his retirement allowance for 180 months, pending his administrative appeal. CalPERS adjusted his retirement allowance to add \$364.30 to his monthly allowance, and paid him a retroactive lump sum amount of \$4,735.90.

In 2012, CalPERS staff discovered that Respondent Rubalcava was not entitled to any Military Leave of Absence Service Credit, and also discovered that no deductions had ever been made to pay for the additional service credit. On February 26, 2015, the matter was heard by the Office of Administrative Hearings. A Proposed Decision was issued on May 1, 2015, finding that CalPERS' decision that Respondent Rubalcava was not entitled to any such service credit, whether paid or unpaid, was correct. The Administrative Law Judge also found that CalPERS was entitled to recoup the overpayments that had been made based on the erroneous additional service credit and adjust Respondent Rubalcava's allowance downward for the future.

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 May 1, 2015, concerning the appeal of Steve Rubalcava; 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 May 1, 2015, concerning the appeal of Steve Rubalcava, 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 May 1, 2015, concerning the appeal of Steve Rubalcava, 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 Steve Rubalcava, 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 Steve Rubalcava.

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