



Agenda Item 8m

August 19, 2015

ITEM NAME: Proposed Decision – In the Matter of the Appeal of Involuntary Reinstatement from Industrial Disability Retirement of ROBERT C. PACUINAS, Respondent, by DEPARTMENT OF CALIFORNIA HIGHWAY PATROL, Respondent.

PROGRAM: Benefit Services Division

ITEM TYPE: Action

PARTIES' POSITIONS

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

Respondent Robert C. Pacuinas (Respondent Pacuinas) argues that the Board of Administration should adopt the Proposed Decision.

Department of California Highway Patrol (CHP) argues that the Board should 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 Pacuinas was a Traffic Officer with Respondent Department of California Highway Patrol (CHP). Respondent Pacuinas was approved for industrial disability retirement (IDR) in 2000. In 2011, Respondent Pacuinas was reevaluated and determined to be no longer substantially incapacitated. CHP appealed CalPERS' determination and a hearing was held on June 9, 2015.

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, 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 amending the “Order” section to read: “Respondent, California Highway Patrol’s appeal from CalPERS’ determination that Respondent Pacuinas is no longer disabled or incapacitated from performance of his usual duties as a Traffic Officer for the California Highway Patrol is GRANTED. The request of California Public Employees’ Retirement System to involuntarily reinstate respondent Robert C. Pacuinas from Disability is Denied” and hereby adopts as its own Decision the Proposed Decision dated July 3, 2015, concerning the appeal of Department of California Highway Patrol; 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 3, 2015, concerning the appeal of Department of California Highway Patrol, 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 3, 2015, concerning the appeal of Department of California Highway Patrol, 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 Department California Highway Patrol, 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 Department of California Highway Patrol.

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