



## **Agenda Item 8d**

September 17, 2015

**ITEM NAME:** Proposed Decision – In the Matters of the Calculation of Final Compensation of ROBERT B. PAXTON, M.D., HOWARD M. SKOPEC, M.D., and DANILO V. LUCILA, M.D. Respondents, and CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, Respondent.

**PROGRAM:** Employer Account Management Division

**ITEM TYPE:** Action

### **PARTIES' POSITIONS**

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

Respondent Robert B. Paxton (Respondent Paxton), Respondent Howard M. Skopec (Respondent Skopec), and Respondent Danilo V. Lucila (Respondent Lucila) argue 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 California Department of Social Services (CDSS) employed Respondent Skopec and Respondent Lucila as Medical Consultants. Respondent Skopec retired for service effective August 11, 2012, with 20.725 years of service credit, and has been receiving his retirement allowance. Respondent Lucila retired for service effective May 1, 2012, with 24.546 years of service credit, and has been receiving his retirement allowance. During a review of Respondent Lucila and Respondent Skopec's payroll records, CalPERS' Compensation Review Unit (CRU) determined that CDSS had been reporting Medical Consultant bonus pay as special compensation to CalPERS, which did not qualify as "compensation earnable" under the law and therefore could not be counted in calculating Respondents Skopec and Lucila's final compensation.

Respondent CDSS currently employs Respondent Paxton as a Medical Consultant. On or about November 27, 2012, Respondent Paxton submitted a Request for Service Credit Cost Information – Additional Retirement Service Credit (ARSC).

CalPERS based the ARSC purchase on Respondent Paxton's payrate (\$11,712 per month, or \$140,544 per year) without including his Medical Consultant bonus pay. Respondent Paxton disputes this action and is claiming CalPERS should have included the Medical Consultant bonus pay in its calculations, which would have yielded a highest yearly salary of \$459,000.

Respondent Paxton, Respondent Lucila, Respondent Skopec, and Respondent CDSS were notified of CalPERS' determination that the Medical Consultant bonus pay did not qualify as "compensation earnable" and could not be used in the calculation of retirement benefits.

Respondents appealed the determinations. The cases were consolidated and the matter was heard by the Office of Administrative Hearings on April 13, 14, 15, and 16, 2015. A Proposed Decision was issued on July 22, 2015, upholding CalPERS' determination that Medical Consultant bonus pay did not qualify as "compensation earnable" and would not be used in retirement calculations.

## **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 22, 2015, concerning the appeals of Robert B. Paxton, M.D., Howard M. Skopec, M.D., and Danilo Lucila, M.D.; 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 22, 2015, concerning the appeals of Robert B. Paxton, M.D., Howard M. Skopec, M.D., and Danilo Lucila, M.D., hereby rejects the Proposed Decision and determines to decide the matters themselves, 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 matters 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 22, 2015, concerning the appeals of Robert B. Paxton, M.D., Howard M. Skopec, M.D., and Danilo Lucila, M.D., hereby rejects the Proposed Decision and refers the matters 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 matters concerning the appeals of Robert B. Paxton, M.D., Howard M. Skopec, M.D., and Danilo Lucila, M.D., as well as interested parties, to submit written argument regarding whether the Board's Decision in these matters 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 appeals of Robert B. Paxton, M.D., Howard M. Skopec, M.D., and Danilo Lucila, M.D..

**BUDGET AND FISCAL IMPACTS:** Not applicable

**ATTACHMENTS**

- Attachment A: Proposed Decision  
Attachment B: Staff's Argument  
Attachment C: Respondents' Arguments

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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support