



Agenda Item 9a

November 18, 2015

ITEM NAME: Petitions for Reconsideration -- 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 deny the Petitions for Reconsideration.

Respondents Robert B. Paxton, M.D. and Danilo V. Lucila, M.D. (Respondents) argue that the Board of Administration should grant the Petitions for Reconsideration.

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

The Board at its September 17, 2015, meeting adopted the Proposed Decision of the Administrative Law Judge. The Decision upheld CalPERS' determination that Medical Consultant bonus pay did not qualify as "compensation earnable" and would not be used in retirement calculations.

A Stay of Execution in the above matter has been granted so that the Petitions for Reconsideration may be presented to the Board.

Respondents have been notified of the date of the Board meeting and of their opportunity to submit written argument in advance of the Board meeting on November 18, 2015.

ALTERNATIVES

A. For use if the Board decides to deny the Petitions for Reconsideration:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System denies the Petitions for Reconsideration submitted by Respondents Robert B. Paxton, M.D. and Danilo V. Lucila, M.D., concerning the Board's decision of September 17, 2015; the Board's Decision of September 17, 2015, is effective immediately and the Respondents have 30 days to appeal to the courts.

- B. For use if the Board decides to grant the Petitions for Reconsideration and decide the matter upon the record. A transcript of the hearing would be provided to each Board member, and the Board would receive written and/or oral argument at a subsequent meeting and adopt a new decision upon reconsideration:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, grants the Petitions for Reconsideration submitted by Respondents Robert B. Paxton, M.D. and Danilo V. Lucila, M.D., concerning the Board's decision dated September 17, 2015; RESOLVED FURTHER that the reconsideration shall be made at a subsequent Board meeting, after notice is given to all affected parties, 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.

- C. For use if the Board decides to grant the Petitions for Reconsideration and assign the case to an Administrative Law Judge, subject to the procedures provided in Government Code section 11517. The matter would be remanded 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 grants the Petitions for Reconsideration submitted by Respondents Robert B. Paxton, M.D., and Danilo V. Lucila, M.D., and concerning the Board's decision dated September 17, 2015; RESOLVED FURTHER that the reconsideration shall be scheduled for hearing with the Office of Administrative Hearings, after notice is given to all affected parties, where the administrative law judge may base his or her findings upon the record produced before the administrative law judge at prior hearing(s) and any additional evidence including written and oral argument presented by the parties as may be permitted.

BUDGET AND FISCAL IMPACTS: Not applicable

ATTACHMENTS

- Attachment A: Respondents' Petitions for Reconsideration
- Attachment B: Staff's Argument
- Attachment C: Respondent(s) Argument(s)
- Attachment D: Decision
- Attachment E: Proposed Decision

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support