



Agenda Item 8h

December 16, 2015

ITEM NAME: Proposed Decision – In the Matter of the Reinstatement from Industrial Disability Retirement of MARCOS RIVERA, Respondent, and DEPARTMENT OF CORRECTIONS AND REHABILITATION, CALIFORNIA INSTITUTION FOR MEN, Respondent.

PROGRAM: Benefit Services Division

ITEM TYPE: Action

PARTIES' POSITIONS

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

Respondent Marcos Rivera (Respondent Rivera) 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 Rivera was approved for industrial disability retirement in 2008 on the basis of a psychological condition. In 2012, Respondent Rivera was reevaluated. The Independent Medical Examiner found that Respondent Rivera was no longer substantially incapacitated. CalPERS staff determined that Respondent Rivera was no longer disabled and should be re-instated to his former position as a Correctional Officer. CalPERS staff advised Respondent Rivera and Respondent Department of Corrections and Rehabilitation, California Institution for Men of CalPERS' determination. Respondent Rivera appealed this determination and the matter was heard by the Office of Administrative Hearings on March 9, 2015, July 30, 2015, and September 30, 2015. A Proposed Decision was issued on October 28, 2015, denying the appeal.

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 October 28, 2015, concerning the appeal of Marcos Rivera; 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 October 28, 2015, concerning the appeal of Marcos Rivera, 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 October 28, 2015, concerning the appeal of Marcos Rivera, 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 Marcos Rivera, 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 Marcos Rivera.

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