



## **Agenda Item 80**

December 16, 2015

**ITEM NAME:** Proposed Decision – In the Matter of the Cancellation of the Application for Industrial Disability Retirement of ERLINDA VELASQUEZ, Respondent, and SAN JOSE COMMUNITY COLLEGE DISTRICT, Respondent.

**PROGRAM:** Benefit Services Division

**ITEM TYPE:** Action

### **PARTIES' POSITIONS**

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

Respondent Erlinda Velasquez (Respondent Velasquez) 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 Velasquez submitted an application for disability retirement based on mental distress, anxiety, and depressive disorder. CalPERS denied the application for disability retirement because Respondent Velasquez filed her application after being terminated from employment. Respondent Velasquez appealed this determination and the matter was heard by the Office of Administrative Hearings on October 15, 2015. A Proposed Decision was issued on October 21, 2015, denying the application for disability retirement.

### **ALTERNATIVES**

- A. For use if the Board decides to modify and adopt the Proposed Decision, as modified, 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,

inserting the word “not” before the words “result from” on page four of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated October 21, 2015 as modified, concerning the application of Erlinda Velasquez; 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 21, 2015, concerning the application of Erlinda Velasquez, 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 21, 2015, concerning the application of Erlinda Velasquez, 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 application of Erlinda Velasquez, 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 application of Erlinda Velasquez.

**BUDGET AND FISCAL IMPACTS:** Not applicable

**ATTACHMENTS**

- Attachment A: Proposed Decision
- Attachment B: Staff's Argument
- Attachment C: Respondent(s) Argument(s)

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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support