



# Board of Administration Agenda Item 8i

June 15, 2016

**Item Name:** Proposed Decision – In the Matter of the Cancellation of the Application for Disability Retirement of GEORGE GERBER, Respondent, and SWEETWATER UNION HIGH SCHOOL DISTRICT, Respondent.

**Program:** Benefit Services Division

**Item Type:** Action

### **Parties' Positions**

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

Respondent George Gerber (Respondent Gerber) 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 Gerber submitted an application for disability retirement based on orthopedic conditions. CalPERS cancelled the application for disability retirement because it was precluded by operation of law, pursuant to *Haywood v. American River Fire Protection District*. Respondent Gerber appealed this determination and the matter was heard by the Office of Administrative Hearings on March 2, 2016. A Proposed Decision was issued on April 8, 2016, cancelling 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, removing the word "industrial" before the words "disability retirement" on page two, paragraph three, and page nine, paragraph one of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated April 8, 2016, as modified, concerning the application of

George Gerber; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. 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 April 8, 2016, concerning the application of George Gerber, RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- C. 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 April 8, 2016, concerning the application of George Gerber, 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.

- D. 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 April 8, 2016, concerning the application of George Gerber, 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.

- E. 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 George Gerber, 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 George Gerber.

**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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Deputy Executive Officer  
Customer Services and Support