



Board of Administration Agenda Item 8k

June 15, 2016

Item Name: Proposed Decision – In the Matter of the Involuntary Reinstatement from Industrial Disability Retirement of LORI GIBSON, Respondent, and CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION CALIFORNIA CORRECTIONAL CENTER, Respondent.

Program: Benefits Services Division

Item Type: Action

Parties' Positions

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

Respondent Lori Gibson (Respondent Gibson) 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

On March 12, 2003, Respondent Gibson submitted an application for Industrial Disability Retirement based on orthopedic (right thumb and arms) conditions. CalPERS approved the application for Industrial Disability Retirement and Respondent Gibson retired effective December 2, 2003. In 2014, after review of medical reports, CalPERS determined that Respondent Gibson was no longer incapacitated from her duties as a Correctional Officer. Respondent Gibson appealed this decision and the matter was heard by the Office of Administrative Hearings on February 11, 2016. A Proposed Decision was issued on April 20, 2016, denying Respondent Gibson's appeal.

Alternatives

- A. For use if the Board decides to adopt the Proposed Decision as its own Decision, as modified:

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, by inserting the word "industrial"

before the words “disability retirement” on page one in the caption, on page two in the “Issues” section, paragraphs one and two, in the “Factual Findings” section, paragraph one, on page three in first subtitle, and paragraphs four and five, on page four in the first subtitle, and in paragraph eight, on page five, paragraph twelve, on page nine, paragraph thirty-one, on page ten, paragraphs thirty-two, thirty-three and thirty-six, on page eleven in the “Legal Conclusions” section, paragraph four, and on page twelve in the “Order” section, and hereby adopts as its own Decision the Proposed Decision dated April 20, 2016, concerning the appeal of Lori Gibson; 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 20, 2016, concerning the appeal of Lori Gibson; 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 20, 2016, concerning the appeal of Lori Gibson, 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 20, 2016, concerning the appeal of Lori Gibson, 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 appeal of Lori Gibson, 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 Lori Gibson.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondents Arguments

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support