

Fair Hearings/Office of Administrative Hearings Workshop

August 15, 2016

Administrative Hearings Process

- Importance of Process
- Duty to Correct Errors
- Requirement to Provide Appeal Rights
- Common Cases on Appeal
- Issuing a Determination
- Administrative Hearing
- Roles and Responsibilities

Importance of the Administrative Hearing Process

- Fiduciary duty to the members
- Board's "sole and exclusive responsibility" to administer the System fairly
- Ensure that the PERL is administered in accordance with its terms
- Ensure that benefits (trust funds) are paid in accordance with the PERL.

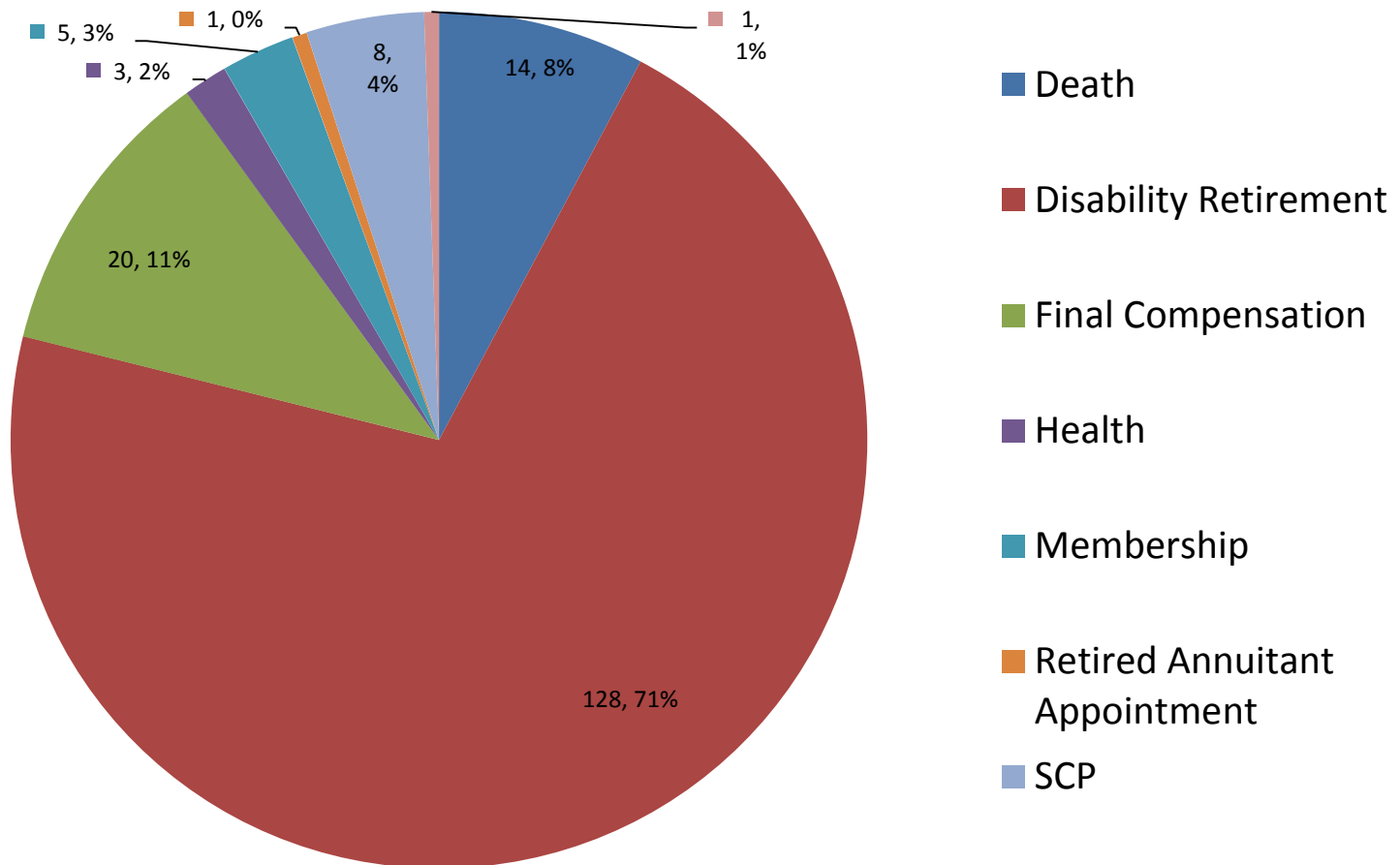
Duty to Correct Errors

- the Board “shall correct all actions taken as a result of errors or omissions of ...this system.”
- In its discretion the Board may correct errors and omissions of any active or retired member or of any beneficiary.
- Legal doctrine of equitable estoppel; rarely applies to CalPERS staff determinations.
- In Precedential Decision HARVEY H. HENDERSON, the Board approved rules and exceptions that govern the application of equitable estoppel against CalPERS
- Protecting CalPERS’ tax exempt status and the exclusive benefit rule.

Requirement to Provide Appeal Rights

- Whenever any member is dissatisfied with the action of the staff involving any right, benefit or obligation under the PERL. (Regulation 555.1, §20134)
- *Due process* must be afforded to a member or retiree who has been allegedly deprived of certain governmental benefits.

Summary of Appeals (180 total) - FY 15/16



Common Cases on Appeal

- Disability Retirement
 - 70% cases appealed last FY were disability retirement related
 - Incapacity to perform usual duties
 - Licon & CA Dept of Corrections and Rehabilitation
 - Separation due to disciplinary process
 - Vandergoot & CA Dept of Forestry and Fire Protection
 - Reinstatement from Disability
 - Bridges & CA Highway Patrol
 - Resendez & CA Dept of Justice

Common Cases on Appeal

- Death Benefit Payments
 - Dispute over prevailing beneficiary
 - Crystal Bickford
 - Phillip Garrido
 - Modification of Life Option Beneficiary
 - Jolie Caughey
 - Lee Turner Johnson
 - Christine Yapple
 - Denise Hunt-Bangoli

Common Cases on Appeal

- Calculation of Retirement Benefit (Compensation Review)
 - Less than 5% of cases move forward through formal appeal
 - Publicly Available Pay Schedules
 - Adams & City of Bell
 - Settlement Agreements
 - Lewis & City of San Bernardino
 - Compensation Types (Temp Upgrade, Stand By, Deferred Compensation, Car Allowance)
 - Ramirez & City of Indio
 - Smith & City of Needles
 - Foley & Sewer Authority Mid-Coastside

Common Cases on Appeal

- Common Law Employees
 - Employer Determinations
 - Galt Services Authority & the City of Galt
 - Kathleen King & Santa Clara County Health
 - Common Law Employee vs. Independent Contractor
 - Metropolitan Water District & Cargill
 - Tieberg & Unemployment Appeals Board
 - Neidengard & Tri-Counties Regional Center

Issuing a Determination

- Initiation of Reviews
 - Internal system processing/triggers
 - Audit
 - Ethics Helpline
 - Media

Issuing a Determination

- Review Process
 - Complete research
 - Gather documents & review
 - Conduct interviews
 - Issue draft determination
 - Independent Medical Evaluation
- Issue final determination letter
 - Appeal timeframe provided
- Transfer file to the Legal Office

Pre-Hearing Process

Legal Office

- Each appeal file assigned to a staff attorney
- Attorney drafts Statement of Issues or Accusation
- Legal staff obtains hearing date

Pre-Hearing Process

Limited Discovery

- There are no depositions
- Affidavits or Declarations may be used
- Parties exchange names of witnesses
- Documents are exchanged

The Hearing

- Hearings are held before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH)
- Hearings resemble court trials in most respects
- Burden of proof
 - On the member or employer (Respondent) in most cases
 - On CalPERS when an Accusation is issued – usually in a Reinstatement case

The Hearing

The Evidence

- Any relevant evidence may be admitted
- “Direct” evidence always admissible
- “Hearsay” evidence is admissible for limited purposes, unlike in court proceedings

The Decision

Proposed Decision

- Within 30 days after submission of the case for decision, the ALJ is required to submit a Proposed Decision to CalPERS
- Within 100 days of receipt of the Proposed Decision, at a public meeting, the CalPERS Board must choose one of four options for finalizing it

The Decision

Board's Options

- Adopt
- Adopt with technical amendments
- Remand to OAH
- Conduct its own Full Board Hearing

Post Board Meeting Proceedings

- If Respondent is unhappy with the Board's Decision he or she can:
- File a Request for Reconsideration
- Whether or not a Request for Reconsideration is filed, file a Petition for Writ of Mandate

Roles and Responsibilities

- Program Area
 - Review applicable documentation and make determination
 - Provide education to stakeholders on determination
 - Provide all necessary documentation to Legal for hearing
 - Provide Subject Matter Experts to Legal for knowledge, testimony, etc.

Roles and Responsibilities

- CalPERS Staff Attorney
- Member
- Employer
- Opposing Counsel
- Doctors
- Administrative Law Judge
- Independent Board Counsel

Board's Role in Reviewing Proposed Decisions

- Key elements of Proposed Decisions
- Independent counsel as resource
- What to consider to:
 - Adopt a Proposed Decision
 - Adopt with Technical Amendments
 - Remand a Proposed Decision
 - Conduct a Full Board Hearing
 - Designate a Decision as Precedential
 - Grant a Reconsideration

Board's Role in Reviewing Proposed Decisions

- Ex parte Communications
- Recusal

Questions