



# Board of Administration Agenda Item 9b

August 17, 2016

**ITEM NAME:** Petition for Reconsideration -- In the Matter of the Application for Reinstatement from Industrial Disability Retirement of KERRI A. HAWKINS, Respondent, and CALIFORNIA HIGHWAY PATROL, Respondent.

**PROGRAM:** Benefit Services Division

**ITEM TYPE:** Action

## **PARTIES' POSITIONS**

Staff argues that the Board of Administration should deny the Petition for Reconsideration.

Respondent Kerri A. Hawkins (Respondent Hawkins) argues that the Board of Administration should deny the Petition for Reconsideration.

Respondent California Highway Patrol (CHP) argues that the Board should grant the Petition for Reconsideration.

## **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 Hawkins applied for and was approved for Industrial Disability Retirement. Approximately three (3) years after being approved for Industrial Disability Retirement, Respondent Hawkins submitted a request to be reinstated to her former position as a Sergeant for Respondent CHP. CalPERS staff determined that Respondent Hawkins was no longer substantially incapacitated and notified both Respondent Hawkins and CHP that she was no longer eligible for Industrial Disability Retirement and should be reinstated to her position as a Sergeant with CHP.

CHP appealed Staff's determination that Respondent Hawkins should be reinstated. The matter was the subject of a four (4) day hearing before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH). The ALJ issued a Proposed Decision granting CHP's appeal. At its June 15, 2011 meeting, the CalPERS Board rejected the ALJ's Proposed Decision and remanded the matter back to the OAH for the purpose of obtaining additional evidence. The hearing on remand occurred on May 12, 2015. Additional evidence was presented to the ALJ.

A different ALJ issued a Proposed Decision After Remand on or about July 23, 2015. The Proposed Decision After Remand denied CHP's appeal and upheld the determination made by CalPERS staff that Respondent Hawkins was no longer substantially incapacitated and was entitled to mandatory reinstatement to her position as a Sergeant with CHP. The OAH mailed the Proposed Decision After Remand to the CalPERS Legal Office in late July 2015; however, it was misplaced and never found. CalPERS did not learn that the Proposed Decision had been issued until February 2016. By then, the Proposed Decision After Remand had been deemed adopted by the Board by operation of law (Gov. Code §11517). Accordingly, the Proposed Decision After Remand, denying CHP's appeal of Staff's determination to reinstate Respondent Hawkins to her former position, is the Board's Decision.

When the CalPERS Legal Office became aware of the Proposed Decision After Remand, it advised both Respondent Hawkins and CHP. Copies of the Proposed Decision After Remand were mailed to Respondent Hawkins and CHP. CHP elected to challenge the Proposed Decision After Remand (now the Board's Decision) by filing a Petition for Reconsideration. Respondent Hawkins has filed an Opposition to CHP's Petition for Reconsideration.

Respondents Hawkins and CHP have been notified of the date of the Board meeting and of their opportunity to submit written argument in advance of the Board meeting on August 17, 2016.

## **ALTERNATIVES**

A. For use if the Board decides to deny the Petition for Reconsideration:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System denies the Petition for Reconsideration submitted by California Highway Patrol concerning the Board's Proposed Decision deemed adopted as a Decision of the Board on November 1, 2015; the Board's Decision of November 1, 2015, is effective immediately and the Respondent has 30 days to appeal to the courts.

B. For use if the Board decides to grant the Petition for Reconsideration and decide the matter upon the record. A transcript of the hearing would be provided to each Board member, and the Board would receive written and/or oral argument at a subsequent meeting and adopt a new decision upon reconsideration:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, grants the Petition for Reconsideration submitted by California Highway Patrol concerning the Board's Proposed Decision deemed adopted As a Decision of the Board on November 1, 2015; RESOLVED FURTHER that the reconsideration shall be made at a subsequent Board meeting, after notice is given To all affected parties, 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.

C. For use if the Board decides to grant the Petition for Reconsideration and assign the case to an Administrative Law Judge, subject to the procedures provided in Government Code section 11517. The matter would be remanded 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 grants the Petition for Reconsideration submitted by California Highway Patrol and concerning the Proposed Decision deemed adopted as a Decision of the Board on November 1, 2015; RESOLVED FURTHER that the reconsideration shall be scheduled for hearing with the Office of Administrative Hearings, after notice is given to all affected parties, where the Administrative Law Judge may base his or her findings upon the record produced before the Administrative Law Judge at prior hearing(s) and any additional evidence including written and oral argument presented by the parties as may be permitted.

**BUDGET AND FISCAL IMPACTS:** Not applicable

**ATTACHMENTS**

- Attachment A: Respondent's CHP's Petition for Reconsideration
- Attachment B: Staff's Argument
- Attachment C: Respondent(s) Argument(s)
- Attachment D: Proposed Decision

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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support