
September 21, 2016

Item Name: Proposed Decision – In the Matter of the Application for Disability Retirement of MEINERT C. TOBERER, Respondent, and DEPARTMENT OF VETERANS AFFAIRS, YOUNTVILLE VETERANS HOME, Respondent.

Program: Benefit Services Division

Item Type: Action

Parties' Positions

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

Respondent Meinert C. Toberer (Respondent Toberer) argues that the Board of Administration should adopt the Proposed Decision on Remand.

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 Toberer submitted an application for disability retirement based on orthopedic (low back and knees) and neurologic (peripheral neuropathy) conditions. CalPERS denied the application for disability retirement. Respondent Toberer appealed this determination and the matter was heard by the Office of Administrative Hearings (OAH) on June 30, 2015 and August 19, 2015. A Proposed Decision was issued on October 9, 2015, granting the application for disability retirement.

At its December 21, 2015 meeting, the CalPERS Board rejected the Administrative Law Judge's (ALJ) Proposed Decision and remanded the matter back to the OAH for the purpose of obtaining additional evidence. The hearing on remand occurred on July 1, 2016. Additional evidence was presented to the ALJ. A Proposed Decision on Remand was issued on July 29, 2016, granting the disability retirement.

Alternatives

A. 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 on Remand dated July 29, 2016, concerning the application of Meinert C. Toberer; 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 on Remand dated July 29, 2016, concerning the application of Meinert C. Toberer, 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 on Remand dated July 29, 2016, concerning the application of Meinert C. Toberer, 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 Meinert C. Toberer, 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 Meinert C. Toberer.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support