



# Board of Administration Agenda Item 9b

November 16, 2016

**Item Name:** Proposed Decision – In the Matter of the Reinstatement from Industrial Disability Retirement of DARREN R. GUTIERREZ, Respondent, and CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION - NORTH KERN STATE PRISON, Respondent.

**Program:** Benefit Services Division

**Item Type:** Action

### **Parties' Positions**

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

Respondent Darren R. Gutierrez (Respondent Gutierrez) 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**

In 2011, Respondent Gutierrez submitted an application for Industrial Disability Retirement based on an orthopedic condition (right shoulder). CalPERS approved the application for Industrial Disability Retirement, but later reevaluated Respondent Gutierrez in 2014. After review of medical reports, CalPERS determined that Respondent Gutierrez is no longer incapacitated from his duties as a Correctional Officer. Respondent Gutierrez appealed this determination and the matter was heard by the Office of Administrative Hearings on August 2, 2016. A Proposed Decision was issued on August 24, 2016, denying Respondent Gutierrez's appeal.

### **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 dated August 24, 2016, concerning the appeal of Darren R. Gutierrez; 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 dated August 24, 2016, concerning the appeal of Darren R. Gutierrez, 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 dated August 24, 2016, concerning the appeal of Darren R. Gutierrez, 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 appeal of Darren R. Gutierrez, 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 Darren R. Gutierrez.

**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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DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support

