



Board of Administration Agenda Item 9dd

November 16, 2016

Item Name: Proposed Decision – In the Matter of the Application for Disability Retirement of SUSAN E. SCHMIDT, Respondent and STATE CENTER COMMUNITY COLLEGE DISTRICT, Respondent.

Program: Benefit Services Division

Item Type: Action

Parties' Positions

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

Respondent Susan E. Schmidt (Respondent Schmidt) 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

Respondent State Center Community College District (Respondent District) originally submitted an application for Disability Retirement on behalf of Respondent Susan Schmidt (Respondent Schmidt) based on rheumatologic (fibromyalgia) and psychological (depression) conditions. CalPERS denied the application for Disability Retirement. Respondent Schmidt appealed this determination and the matter was heard by the Office of Administrative Hearings on September 15, 2016. Neither Respondent Schmidt nor Respondent District appeared at the hearing, which proceeded as a default. A Proposed Decision was issued on October 14, 2016, denying the application for Disability Retirement.

Alternatives

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

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 removing the words " did not testify at hearing, but" before the word "examination" on pages 3 and 5 of the Proposed Decision, and replacing them with "testified at hearing and", and hereby adopts as its

own Decision the Proposed Decision dated October 14, 2016, as modified, concerning the appeal of Susan E. Schmidt; 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 October 14, 2016, concerning the appeal of Susan E. Schmidt; 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 October 14, 2016, concerning the appeal of Susan E. Schmidt, 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 October 14, 2016, concerning the appeal of Susan E. Schmidt, 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 Susan E. Schmidt, 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 Susan E. Schmidt.

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