



Board of Administration Agenda Item 9f

November 16, 2016

Item Name: Proposed Decision – In the Matter of the Reinstatement from Industrial Disability Retirement and Overpayment of TIMOTHY R. JONES, Respondent, and DEPARTMENT OF STATE HOSPITALS - COALINGA, Respondent.

Program: Benefit Services Division

Item Type: Action

Parties' Positions

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

Respondent Timothy R. Jones (Respondent Jones) 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 Jones submitted an application for Industrial Disability Retirement (IDR) based on a psychological condition. CalPERS approved the application for IDR on February 25, 2013, with an effective date of August 16, 2011. On September 17, 2014, CalPERS determined that Respondent Jones was no longer disabled from the performance of his job duties. Based on this determination, CalPERS sought to involuntarily reinstate Respondent Jones to his former position with Respondent Department of State Hospitals, Coalinga.

On June 17, 2016, CalPERS informed Respondent Jones' IDR that it was CalPERS determination that approving his IDR application was the result of mistake, surprise, inadvertence, and excusable neglect. This determination was based on Respondent Jones' plea deal in a criminal action brought against him for defrauding CalPERS, as well as the State Compensation Insurance Fund. Respondent Jones, through the plea deal he entered in the criminal action, agreed to pay as restitution to CalPERS the amount of \$126,518.00. This amount equals the total IDR benefits Respondent Jones received from August, 2011 through September, 2014, the date criminal charges were filed against Respondent Jones. On June 4, 2016, CalPERS informed Respondent Jones that CalPERS' error resulted in an anticipated overpayment in the amount of \$206,603.14. This amount reflects the total amount of IDR benefits provided to Respondent Jones from August 16, 2011, through August, 2016, the date CalPERS anticipated it would be able to cancel Respondent Jones' IDR benefits.

CalPERS amended its accusation to seek not only to reinstate Respondent Jones to his former position, but to also collect as overpayment from Respondent Jones the amount of \$77,358.54. This amount equals the total amount of IDR benefits actually and mistakenly paid to Respondent Jones minus the amount in he agreed to pay to CalPERS as restitution through the plea deal he entered in the criminal action.

Respondent Jones appealed these determinations. Prior to the hearing, Respondent Jones withdrew his appeal regarding CalPERS' determination that he was no longer disabled from the performance of his job duties. The matter, with respect to the issue regarding the overpayment of IDR benefits, was heard by the Office of Administrative Hearings on August 25, 2016. A Proposed Decision was issued on September 9, 2016, sustaining CalPERS' determination that it is entitled to reimbursement from Respondent Jones as a result of the overpayment of IDR benefits.

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 September 9, 2016, concerning the appeal of Timothy R. Jones; 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 September 9, 2016, concerning the appeal of Timothy R. Jones, 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 September 9, 2016, concerning the appeal of Timothy R. Jones, 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 Timothy R. Jones, 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 Timothy R. Jones.

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