



Board of Administration Agenda Item 9h

November 16, 2016

Item Name: Proposed Decision – In the Matter of the Appeal of the Forgiveness of Retirement Benefit Overpayment of JOSEPH R. POINDEXTER, Respondent.

Program: Benefit Services Division

Item Type: Action

Parties' Positions

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

Respondent Joseph R. Poindexter (Respondent Poindexter) 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

On September 1, 2004, the Superior Court of California, Sacramento County approved the Stipulation for Qualified Domestic Relations Order Re Division of California Public Employees' Retirement System Benefits in the Dissolution of Marriage of Respondent Poindexter and Sandra Poindexter. Respondent Poindexter was awarded fifty percent of Sandra Poindexter's accumulated retirement contributions and service credit during the time of their marriage. On November 4, 2004, CalPERS established Respondent Poindexter's non-member account with 8.707 years of service credit from Sandra Poindexter's account. On December 17, 2004, CalPERS notified Respondent Poindexter that his monthly benefit would be \$860.16, based on 16.414 years of service. In June 2015, CalPERS discovered an error in the benefit calculation, and notified Respondent Poindexter of his corrected monthly allowance of \$403.86 and an overpayment of \$58,411.42, of which \$18,561.48 was collectable under Government Code section 20164. Respondent Poindexter requested forgiveness of the overpayment in the amount of \$18,561.48. CalPERS denied this request. Respondent Poindexter appealed this determination and the matter was heard by the Office of Administrative Hearings on August 16, 2016. A Proposed Decision was issued on September 12, 2016, denying the 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 September 12, 2016, concerning the appeal of Joseph R. Poindexter; 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 12, 2016, concerning the appeal of Joseph R. Poindexter, 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 12, 2016, concerning the appeal of Joseph R. Poindexter, 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 Joseph R. Poindexter, 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 Joseph R. Poindexter.

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