



Board of Administration
Agenda Item 10a
(AMENDED)

December 21, 2016

ITEM NAME: Further Consideration – In the Matter of the Calculation of the Final Compensation of DESI ALVAREZ, Respondent, and CHINO BASIN WATERMASTER, Respondent.

PROGRAM: Employer Account Management Division

ITEM TYPE: Action

PARTIES' POSITIONS

Staff argues that the Board of Administration should adopt the Proposed Decision, in part, as to the compensation earnable finding and decline to adopt the Proposed Decision, in part, as to the employment status finding and as to the finding regarding payments constituting final settlement pay.

Respondent Desi Alvarez (Respondent Alvarez) argues that the Board of Administration should adopt the Proposed Decision, in part, as to the service credit finding and decline to adopt the Proposed Decision, in part, as to the payrate finding.

Respondent Chino Basin Watermaster (Respondent Watermaster) argues that the Board of Administration should adopt the Proposed Decision, in part, as to the service credit finding and decline to adopt the Proposed Decision, in part, as to the payrate finding.

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 Watermaster entered into an “at will” employment agreement with Respondent Alvarez effective May 3, 2011, as the Chief Executive Officer (CEO) of Respondent Watermaster. Respondent Alvarez, however, was terminated on November 9, 2011, and received Severance Compensation from November 9, 2011 to May 4, 2012. [Respondent Watermaster reported an annual salary of \$228,000, which calculates to a monthly salary of \$19,000, from May 3, 2011 through May 4, 2012.]

CalPERS determined the reported compensation, for the entire year, did not qualify as “payrate” because the compensation was not provided pursuant to a publicly available pay schedule.

CalPERS used the payrate for Respondent Alvarez's previous employer to calculate the amount of his final compensation. CalPERS also determined the Severance Compensation, paid from November 9, 2011 to May 4, 2011, did not qualify as "compensation earnable" and is not reportable because it constitutes "final settlement pay."

Respondent Alvarez appealed this determination and the matter was heard by the Office of Administrative Hearings on April 11, 12 and 13, 2016. A Proposed Decision was issued on September 7, 2016, finding that the \$228,000 reported as annual compensation did not qualify as "payrate" because it was not provided pursuant to a publicly available pay schedule, and denying that part of the appeal. The Proposed Decision, however, held that Respondent Alvarez remained an employee after November 11, 2011, thereby granting that part of the appeal.

At its November 16, 2016, meeting, the Board considered the Proposed Decision of the Administrative Law Judge and concluded not to adopt it, but instead to decide the matter itself on the record after affording the parties the opportunity for further argument. The complete hearing record is attached, along with any written arguments submitted by the parties. Additionally, all parties have been notified of their right to present oral argument at the meeting on December 21, 2016.

ALTERNATIVES

- A. 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 reviewing the record produced before the Administrative Law Judge and considering written and oral argument presented by the parties, hereby determines to adopt its own decision concerning the appeal of Desi Alvarez; RESOLVED FURTHER that this Board Decision shall be prepared in accordance with the Board's direction and presented to the Board for adoption at the Board's next monthly meeting.

- 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 September 7, 2016, concerning the appeal of Desi Alvarez; RESOLVED FURTHER that this Board's Decision shall be effective immediately.

- C. 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 Desi Alvarez, 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 Desi Alvarez.

ATTACHMENTS

- Attachment A: Staff's Argument
- Attachment B: Respondent(s) Arguments(s)
- Attachment C: Procedures for Full Hearing, Notice of Hearing and Proof of Service
- Attachment D: November 16, 2016 Board Agenda Item
- Attachment E: Transcripts of Administrative Hearing and November 16, 2016 Board Meeting
- Attachment F: Administrative Hearing Exhibits Submitted by CalPERS
- Attachment G: Administrative Hearing Exhibits Submitted by Desi Alvarez
- Attachment H: Administrative Hearing Exhibits Submitted by Chino Basin Watermaster

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support