
December 21, 2016

Item Name: Proposed Decision After Remand – In the Matter of the Recalculation of Benefits of PAUL G. MAST, Respondent.

Program: Judges' Retirement System

Item Type: Action

Parties' Positions

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

Respondent Paul G. Mast (Respondent Mast) 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 Mast is a retired Superior Court judge and a member of the Judges' Retirement System (JRS). In 2010, Respondent Mast claimed that JRS was paying him too little under a 1996 settlement agreement that was signed by Respondent Mast and a former JRS Manager. In 2011, JRS rejected Respondent Mast's claim. In 2011, JRS also determined that the settlement agreement was not, and had never been, enforceable and therefore Respondent Mast had been overpaid since 1996. As a result, JRS sought to (1) reduce Respondent Mast's benefit payments prospectively to comply with law, and (2) recover the past overpayments JRS made to Respondent Mast. Respondent Mast appealed JRS' determinations to the Office of Administrative Hearings (OAH), but the parties agreed to put the matter on hold while other related litigation Mast had initiated, *Staniforth v. JRS (Staniforth)*, worked its way through the courts. On March 25, 2015, after prevailing in the Court of Appeal in the *Staniforth case*, JRS filed a Statement of Issues in Respondent Mast's OAH appeal. In the course of the OAH appeal, in addition to claiming that JRS had underpaid him under the settlement agreement, Respondent Mast also claimed that he should have been permitted to retire when he turned age 60, instead of having to wait until he turned age 63. Thus, he additionally claimed that JRS owed him those three years of allegedly missed benefit payments, plus interest.

All matters were heard by OAH on November 30, 2015. A Proposed Decision was issued on February 10, 2016, recommending that JRS reduce Respondent Mast's benefit payments prospectively to comply with law, but not recover any past overpayments from Respondent

Mast. On April 20, 2016, the Board of Administration opted not to adopt the Proposed Decision, but rather to remand the matter to OAH for the taking of additional evidence on the issue concerning whether the Board should collect any of the overpayments incurred by Respondent Mast. A Proposed Decision on Remand was issued on September 16, 2016, recommending again that JRS reduce Respondent Mast's benefit payments prospectively to comply with the law, but not recover any past overpayments from Respondent Mast.

Alternatives

- A. For use if the Board decides to adopt the Proposed Decision on Remand, 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 and adopts as its own Decision the Proposed Decision dated September 16, 2016, concerning the appeal of Paul G. Mast, as follows: (1) in Legal Conclusion 5 on page 24, delete the last sentence of the paragraph; (2) in Legal Conclusion 6a on page 24, delete the third sentence; (3) in Legal Conclusion 11b on page 29, delete the phrase "(Legal Conclusion 13)", and replace the phrase "from the date of this decision" with the phrase "effective April 2016"; (4) in Legal Conclusion 13c on page 30, delete the last four sentences of that paragraph; (5) delete paragraphs 13d-g; (6) in Legal Conclusion 14, delete the phrase, "Even if JRS were not limited in its recovery (as set forth in Legal Conclusion 13)"; and (7) correct Order No. 2 on page 35, by replacing the phrase "from the effective date of this order" with "effective April 2016." 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 on Remand 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 16, 2016, concerning the appeal of Paul G. Mast ; 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 on Remand, 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 16, 2016, concerning the appeal of Paul G. Mast , 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. 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 Paul G. Mast , 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 Paul G. Mast .

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