



Board of Administration Agenda Item 10a

February 15, 2017

ITEM NAME: Further Consideration – In the Matter of the Cancellation of the Application for Industrial Disability Retirement of SHELDON K. SCARBER, Respondent, and CALIFORNIA HIGHWAY PATROL, Respondent.

PROGRAM: Benefits Services Division

ITEM TYPE: Action

PARTIES' POSITIONS

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

Respondent Sheldon K. Scarber argues that the Board of Administration should 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 Scarber submitted an application for Industrial Disability Retirement based on cardio, epilepsy, anxiety and hypertension conditions. CalPERS rejected the application for Industrial Disability Retirement because Respondent had been dismissed from his employment for reasons which were not the result of a disabling medical condition pursuant to *Haywood v. American River Fire Protection District*. Respondent Scarber appealed this determination and the matter was heard by the Office of Administrative Hearings on September 15, 2016. A Proposed Decision was issued on October 21, 2016, granting the appeal.

At its December 21, 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 February 15, 2017.

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 Sheldon K. Scarber; 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 October 21, 2016, concerning the appeal of Sheldon K. Scarber; 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 Sheldon K. Scarber, 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 Sheldon K. Scarber.

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: December 21, 2016 Board Agenda Item
- Attachment E: Transcripts of Administrative Hearing and
December 21, 2016 Board Meeting
- Attachment F: Administrative Hearing Exhibits Submitted by CalPERS
- Attachment G: Administrative Hearing Exhibits Submitted by Sheldon K. Scarber
- Attachment H: Additional Pleadings Filed Prior To Closure of the Record

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support