

ATTACHMENT C

**NOTICE OF HEARING, PROCEDURES FOR
FULL HEARINGS, AND PROOF OF SERVICE**



California Public Employees' Retirement System
Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
TTY: (877) 249-7442
(916) 795-3675 phone • (916) 795-3659 fax
www.calpers.ca.gov

Ref No. 2015-0243

December 23, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sheldon Scarber
[REDACTED]
[REDACTED]

Subject: In the Matter of the Cancellation of the Application for Industrial Disability Retirement of SHELDON K. SCARBER, Respondent, and CALIFORNIA HIGHWAY PATROL, Respondent.

Dear Mr. Scarber:

Enclosed is a copy of the Proposed Decision of the administrative law judge in the above matter.

The Board of Administration, at its meeting on December 21, 2016, considered the Proposed Decision and concluded not to adopt it, but instead to decide the matter itself on the record after affording the parties an opportunity for argument at a subsequent meeting. The full board hearing is scheduled for February 15, 2017, at CalPERS headquarters in Sacramento, California. A copy of the procedures for the conduct of full hearings before the Board, as revised in September 2005, is enclosed for your reference.

A recent change made by the Board is that both CalPERS and Respondent will be allowed 10 minutes each to present his or her position and the supporting arguments to the Board of Administration. If more than one party shares the same position of CalPERS or the Respondent, the affected parties shall share the 10-minute allocation. The rebuttal time allowed for CalPERS and Respondent will be three minutes each.

The parties are advised that Board members may interrupt a presentation to ask questions.

If you have any questions about this procedure, you may contact me at (916) 795-1101.

Sincerely,

Marguerite Seaborn
for ELIZABETH YELLAND
Senior Staff Attorney

EAY:amm

Enclosures

cc: Disability and Retirement Section, California Highway Patrol
Tim Castle, California Highway Patrol



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Ref No. 2015-0243

December 23, 2016

TO: ALL PARTIES AND THEIR ATTORNEY OF RECORD

SUBJECT: Procedures for Full Hearings Before the Board of Administration,
California Public Employees' Retirement System

**The attached document describes the procedures for the
conduct of full hearings before the Board of Administration.**

**Please note that these procedures were revised by the
Board in September 2005 and contain information regarding
allocation of time for oral argument. If you have any
questions or concerns about these procedures please
contact Elizabeth Yelland, Senior Staff Attorney, who is the
attorney assigned to represent CalPERS in this matter. You
should contact Ms. Yelland at your earliest possible
convenience at (916) 795-1101.**

A handwritten signature in blue ink, appearing to read "Allyson McCain", written over a horizontal line.

ALLYSON MCCAIN
Secretary to Elizabeth Yelland

Enclosure: Procedures for Full Hearings

**BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**STATEMENT OF POLICY & PROCEDURES
PROCEDURE FOR FULL HEARINGS BEFORE THE BOARD**

This document is effective immediately upon adoption, and is adopted pursuant to California Government Code sections 11517 and 20120, and California Constitution, article XVI, section 17.

I. PURPOSE

This policy establishes procedures for conducting full hearings before the Board of Administration (Board) where the Board has elected to suspend action on a proposed decision of an Administrative Law Judge (ALJ) so that it can evaluate the entire record itself and hear the parties argue the merits of the case on the record.

II. OBJECTIVE

The objectives of this policy are to:

- a. Establish consistent procedures for conducting full hearings before the Board; and
- b. To provide advance notice of those procedures to the parties involved;

III. POLICY & PROCEDURES

- A. Applicability: This policy applies to full hearings before the Board where the Board has declined to adopt the Proposed Decision of an Administrative Law Judge (ALJ) but rather has determined to evaluate the entire Administrative Record itself, and hear the parties argue the merits of the case on the record. Pursuant to Government Code section 11517, subsection (c)(2)(E), the Board has the authority to decide such cases upon the record, "with or without taking additional evidence."
- B. Procedure for Full Hearings Before the Board:
 - a. Board President announces agenda item for hearing.
 - b. Parties seat themselves at presentation table.
 - c. CalPERS counsel introduces parties.

- d. CalPERS counsel:
 - a. states the nature of the proceeding,
 - b. notes compliance with notice requirements, and
 - c. states brief procedural history of the case:
 - a. date of the administrative hearing,
 - b. date Proposed Decision presented to Board, and
 - c. Board's action on Proposed Decision.
- e. CalPERS counsel reminds Board and parties of procedural requirements, and announces that the parties have received a copy of this document, entitled *Procedures for Full Hearings Before the Board of Administration*, and, in the case of an unrepresented member, that the member has been offered assistance in understanding the procedural requirements for a full hearing.
- f. CalPERS counsel presents staff's position and supporting arguments. This presentation shall not normally exceed 15 minutes. (See 8, below, regarding allocation of time among more than one party.) (See section III.C., below, regarding exceptions to this time limit.)
- g. Respondent, or respondent's counsel, presents respondent's position. This presentation shall not normally exceed 15 minutes. (See 8, below, regarding allocation of time among more than one party.) (See section III.C., below, regarding exceptions to this time limit.)
- h. If more than one party shares the position of CalPERS staff or the respondent, these parties shall split the time allocated to CalPERS staff or the respondent. The total time for each position shall be allocated on a pro rata basis among all the parties presenting argument for that position, unless those parties agree among themselves to allocate their time differently. (See section III.C., below, regarding exceptions to this time limit.)

- i. Upon conclusion of the last presentation of respondent's position, there will be a maximum of 5 minutes to offer rebuttal argument for the staff and the respondent, in the same order as the original presentations. If there is more than one party who shares the same position, the 5 minutes will be allocated on a pro rata basis among them, unless those parties agree among themselves to allocate their time differently.
- j. The Board Secretary shall keep track of time allotted to all presenters, and shall notify each speaker when he or she has two minutes remaining, and when time has expired.
- k. Upon conclusion of arguments, Board Members may question the parties or their counsel.
- l. CalPERS counsel states the alternatives which are available to the Board for action and the consequences of each alternative.
- m. Upon a majority vote, the Board President will recess the hearing for the purpose of holding a closed session to consider facts and legal arguments presented, and to deliberate. The Board shall provide appropriate notice in advance of a full hearing that a closed session may take place. The closed session will be attended by Board members only. Following its deliberations in closed session, the Board shall re-convene in open session for the purpose of making a decision in the matter before it. The closed session will be recorded; the record will be kept confidential unless a court action is filed in which case the record will be transcribed and released upon request by a party to the action.
- n. Board makes its decision by voting to adopt one of the resolutions formulated by staff, or another alternative of its choice.
- o. CalPERS counsel announces that the Legal Office will prepare a formal decision based on the Board's vote, for its adoption at the next meeting of the Board.
- p. Board President announces conclusion of agenda item.

C. Requests for Exceptions to Time Limitations

It is the Board's intent to provide scheduling flexibility while maintaining a measure of oversight of these proceedings. In accordance with the goals of the Board, the following will be the Board's policy with respect to exceptions of time limitations.

- a. Some flexibility is possible in the relatively simple case in regard to the 15-minute time limitation in that it is subject to extension by the presiding officer of the Board at any time. However, in the interest of efficiency, parties should inform the Board and other parties of any need for additional time at the earliest opportunity.
- b. In addition to the above exception, if a matter is unusually complex, a party may request a greater allotment of time in advance. The Board requests that in this type of case, requests for additional time should be handled as follows:
 - a. The request should be filed no later than 5 days prior to the hearing, with:

Chief Executive Officer
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701
 - b. The request should specify the amount of time needed.
 - c. The request should be supported by a clear, written justification of the need for additional time.
 - d. A copy of the request should be served concurrently on each party or their attorney of record.

The party requesting additional time and all parties or their counsel will be notified prior to the hearing whether the request has been granted or denied. If granted, the total time designated for the parties who share the opposing position will also automatically be extended so that each position has the same total amount of time for oral presentation, allocated among the parties as provided in these policies and procedures.

- D. **Scope of Review:** The scope of the Board's review in full hearings will normally be limited to the Administrative Record of the hearing before the ALJ as it stands. In rare circumstances, however, the interest of achieving a just result may require the consideration of newly discovered documentary evidence which could not, with reasonable diligence, have been discovered and produced at the hearing, and which is therefore not part of the Administrative Record.
- E. **Requests for Introduction of Evidence Which is not Contained in the Administrative Record:**
- a. This policy applies only to documentary evidence. Under no circumstances will the Board accept new witness testimony at a full hearing.
 - b. A party who wishes to introduce evidence before the Board which is not contained in the Administrative Record must submit a written request to that effect on or before the due date for written arguments. Such a request must be served on all parties and filed, by fax to (916) 795-3659 or by mail to:

Board Secretary
California Public Employees' Retirement System
Post Office Box 942701
Sacramento, CA 94229-2701
 - c. All requests for introduction of evidence not included in the Administrative Record must be accompanied by a complete and legible copy of any documentary evidence to be offered. In addition, the request must:
 - a. Show good cause why the evidence could not, with reasonable diligence, have been discovered and produced at the hearing;
 - b. Show the relevance of the evidence offered; and
 - c. Show that the evidence is otherwise admissible under the evidentiary rules of the Administrative Procedure Act.
 - d. After reviewing the written request and oral argument, if any, the Board may, in its discretion, decide to admit the evidence at the hearing.

IV. RESPONSIBILITIES

- A. Except as otherwise specified within this document, CalPERS' Chief Executive Officer is responsible for implementing these policies and procedures. The Chief Executive Officer may delegate responsibilities to subordinate staff as may be necessary.
 - a. The term "Parties" means CalPERS counsel, counsel for any litigant, and any member or employer representative, whether or not represented by counsel.

1 MATTHEW G. JACOBS, GENERAL COUNSEL
ELIZABETH YELLAND, SENIOR STAFF ATTORNEY, SBN 160740
2 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811
3 P. O. Box 942707, Sacramento, CA 94229-2707
Telephone: (916) 795-3675
Facsimile: (916) 795-3659

4 Attorneys for California Public
5 Employees' Retirement System

6
7 BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

8 In the Matter of the Cancellation of the) CASE NO. 2015-0243
Application for Industrial Disability) OAH NO. 2016050434
9 Retirement:)
) **NOTICE OF FULL BOARD**
10 SHELTON K. SCARBER,) **HEARING**
)
11 Respondent,) Date: February 15, 2017
) Time: 9:00 a.m.
12 and) Location: Robert F. Carlson
) Auditorium, CalPERS Lincoln Plaza
13 CALIFORNIA HIGHWAY PATROL,) North, Sacramento, CA
)
14 Respondent.)

15 To respondent Sheldon K. Scarber; and to his attorney of record, and to
16 respondent California Highway Patrol, and to their Personnel:

17 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Board of
18 Administration of the California Public Employees' Retirement System, at its meeting of
19 12/21/2016, voted to decline to adopt the administrative law judge's Proposed Decision
20 dated 10/24/2016, but to instead decide the matter itself on the hearing record
21 produced before the administrative law judge without admission of any further
22 evidence. This matter has been placed on the agenda to be considered by the Board
23 of Administration at its regular meeting scheduled for **February 15, 2017, beginning**
24 **at 9:00 a.m., or as soon thereafter as the matter can be heard on the calendar of**
25 **agenda items, at CalPERS Headquarters, Robert F. Carlson Auditorium, Lincoln**

1 Plaza North, 400 Q Street, Sacramento, CA 95811.

2 In accordance with section 11517(c) of the Government Code, arguments either
3 oral or written, or both, may be submitted to the Board. **Written argument, if any,**
4 **must be received by CalPERS by Insert Date Respondents' Arguments Due, and**
5 **sent to: Cheree Swedensky, Board Secretary, Post Office Box 942701,**
6 **Sacramento, CA 94229-2701,** in order to be mailed to the Board members with
7 the agenda item package. Please note that if you miss this date, the Board may
8 consider this matter without your argument. Any written argument submitted to
9 the Board Secretary should be titled as "Respondent's Argument."

10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
11 SYSTEM

12 Dated: 12/23/16

13 BY for *Maquette Seaborn*
14 ELIZABETH YELLAND,
15 Senior Staff Attorney

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On **December 23, 2016**, I served the foregoing document described as:

NOTICE OF FULL BOARD HEARING - In the Matter of the Cancellation of the Application for Industrial Disability Retirement of SHELDON K. SCARBER, Respondent, and CALIFORNIA HIGHWAY PATROL, Respondent.; Case No. 2015-0243; OAH No. 2016050434.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and or e-filed as follows:

Sheldon Scarber

[REDACTED]
[REDACTED]

Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231
Via e-file - sacfilings@dgs.ca.gov;

Disability and Retirement Section
California Highway Patrol
P.O. Box 942898
Sacramento, CA 94298-0001

Tim Castle
California Highway Patrol
Disability and Retirement Section
P.O. Box 942898
Sacramento, CA 94298-0001

- [**XX**] **BY CERTIFIED MAIL** -- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.
- [**XX**] **BY ELECTRONIC FILING:** I caused such documents to be e-filed to the email address(es) shown above.

Executed on **December 23, 2016**, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Allyson McCain
NAME


SIGNATURE