



Board of Administration Agenda Item 11a

February 15, 2017

Item Name: Further Consideration – 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 should:

1. Adopt the Proposed Decision on Remand's ruling that Mast's benefits should be paid in accordance with the Judges' Retirement Law prospectively.
2. Adopt the Proposed Decision on Remand's ruling that Mast was not entitled to retire until he reached age 63.
3. Decline to adopt the Proposed Decision on Remand's ruling that the Judges' Retirement System (JRS) should not collect any overpayments that it previously made to Mast. Rather, the JRS should recover from Mast the overpayments the JRS made to him after December 29, 2011, with interest at 7% per annum, which totals \$21,504.73, as of March 1, 2017.

Respondent Paul G. Mast argues that the Board of Administration should decline to adopt the Proposed Decision on Remand and pay him the additional benefits he seeks (as set forth in his argument to the Board).

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.

At its December 21, 2016, meeting, the Board considered the Proposed Decision on Remand 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, 2016.

Alternatives

- A. 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 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 Paul G. Mast; 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, and shall be effective immediately upon adoption.

- 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 on Remand dated September 16, 2016, concerning the appeal of Paul G. Mast; 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 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.

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: April 20, 2016 Board Agenda Item
- Attachment E: December 21, 2016 Board Agenda Item
- Attachment F: Transcripts of November 30, 2015 Administrative Hearing, April 20, 2016 Board Meeting Transcripts, and December 21, 2016 Board Meeting Transcripts
- Attachment G: Administrative Hearing Exhibits Submitted by Judges' Retirement System
- Attachment H: Administrative Hearing Exhibits Submitted by Paul G. Mast
- Attachment I: Additional Pleadings Filed Prior to Closure of the Record

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support