



## Board of Administration Agenda Item 8u

February 15, 2017

**Item Name:** Proposed Decision – In the Matter of the Reinstatement from Industrial Disability Retirement of SCOTT M. COTTEEN, Respondent, and DEPARTMENT OF CALIFORNIA HIGHWAY PATROL, Respondent.

**Program:** Benefit Services Division

**Item Type:** Action

### **Parties' Positions**

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

Respondent Scott M. Cotteen (Respondent Cotteen) 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**

In February 2005, Respondent Cotteen submitted an application for industrial disability retirement based on several orthopedic conditions. CalPERS approved the application for industrial disability retirement December 2006. Respondent Cotteen subsequently applied for voluntary reinstatement. CalPERS sought to have Respondent Cotteen evaluated for reinstatement under Government Code section 21192. After the evaluation, CalPERS determined Respondent Cotteen was no longer substantially incapacitated from performing his usual and customary job duties. After CalPERS' determination, Respondent Cotteen sought to withdraw his request for reinstatement. Respondent Cotteen was subsequently ordered to attend POST training by Respondent California Highway Patrol (CHP), for which Respondent Cotteen did not appear. This matter was heard by the Office of Administrative Hearings on November 28, 2016. A Proposed Decision was issued on December 19, 2016, granting Respondent Cotteen's appeal and denying the decision of CalPERS to reinstate Respondent Cotteen to his position as a Sergeant for CHP.

## Alternatives

- A. For use if the Board decides to modify and adopt the Proposed Decision, 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), the Board is authorized to "make technical or other minor changes in the proposed decision." In order to avoid inconsistency and ambiguity, staff recommends that "Mr. Trejo" in Paragraph 11 on Page 3 be changed to "Mr. Cotteen.", and hereby adopts as its own Decision the Proposed Decision dated December 19, 2016 as modified, concerning the appeal of Scott M. Cotteen; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. 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 consideration of the Proposed Decision dated December 19, 2016, concerning the appeal of Scott M. Cotteen, 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.

- C. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, after consideration of the Proposed Decision dated December 19, 2016, concerning the appeal of Scott M. Cotteen, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

- 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 Scott M. Cotteen, 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 Scott M. Cotteen.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Deputy Executive Officer  
Customer Services and Support