



Board of Administration Agenda Item 8j

March 15, 2017

Item Name: Proposed Decision – In the Matter of the Membership Reclassification of STEVE H. TSUMURA, Respondent, and CITY OF EL SEGUNDO, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should decline to adopt the Proposed Decision and remand the matter back to the Office of Administrative Hearings for the taking of additional evidence.

Respondent Steve H. Tsumura (Respondent Tsumura) argues that the Board of Administration should adopt the Proposed Decision.

Respondent City of El Segundo (Respondent City) 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 Tsumura was employed by Respondent City as an Environmental Safety Coordinator in the safety classification. On several occasions, CalPERS notified Respondent City that the position of Environmental Safety Coordinator did not include active firefighting in its duties, and should therefore be reported under the miscellaneous classification.

Respondent Tsumura retired for service effective November 14, 2014. On July 1, 2015, CalPERS notified Respondent Tsumura that his original retirement benefit was calculated with an incorrect benefit formula and that CalPERS would be making an adjustment to correct the formula and retirement allowance, resulting in a decrease of \$2,580.65 in Respondent Tsumura's monthly allowance and an overpayment of \$19,526.92.

Following a membership review, CalPERS determined that Respondent Tsumura's position of Environmental Safety Coordinator did not qualify him for safety membership, as the principal duties did not include active firefighting. The position is therefore considered miscellaneous.

Respondent Tsumura appealed this determination and the matter was heard by the Office of Administrative Hearings on December 14, 2016. A Proposed Decision was issued on January 11, 2017, granting the appeal.

Alternatives

- A. 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 January 11, 2017, concerning the appeal of Steve H. Tsumura; 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 January 11, 2017, concerning the appeal of Steve H. Tsumura, 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 January 11, 2017, concerning the appeal of Steve H. Tsumura, 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 Steve H. Tsumura, 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 Steve H. Tsumura.

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