
April 19, 2017

Item Name: Proposed Decision – In the Matter of the Reinstatement from Disability Retirement of SARAH E. STEWART, Respondent, and BOARD OF EQUALIZATION, 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 Sarah E. Stewart (Respondent Stewart) 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 Stewart submitted an application for disability retirement based on an orthopedic (lower back) condition. CalPERS approved the application for disability retirement and Respondent Stewart retired for disability effective August 23, 2012. In 2015, Respondent Stewart was reevaluated and CalPERS determined that Respondent Stewart is no longer incapacitated from performing the duties of an Office Technician. Respondent Stewart appealed this determination and the matter was heard by the Office of Administrative Hearings on December 19, 2016. A Proposed Decision was issued on February 24, 2017, finding that Respondent Stewart was still disabled and granting her appeal.

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), which authorizes the Board to "make technical or other minor changes in the proposed decision", hereby modifies the Proposed Decision, replacing the word "he" with the word "she" before the words "is incapacitated" on page six of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated February 24, 2017 as

modified, concerning the appeal of Sarah E. Stewart; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision

- 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 February 24, 2017, concerning the appeal of Sarah E. Stewart; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- C. 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 February 24, 2017, concerning the appeal of Sarah E. Stewart, 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.

- D. 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 February 24, 2017, concerning the appeal of Sarah E. Stewart, 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.

- E. 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 Sarah E. Stewart, 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 accusation against Sarah E. Stewart.

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