Board of Administration

Agenda Item 9a15

September 26, 2018


Program: Benefit Services Division

Item Type: Action

Parties' Positions
Staff argues that the Board of Administration should adopt the Proposed Decision on Remand. Respondent Clark G. Crozer’s (Respondent Crozer) position is included in Attachment C, if any.

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
On or about July 8, 2010, Respondent Crozer submitted an application for industrial disability retirement based on an orthopedic (neck) condition. CalPERS approved the application for industrial disability retirement and Respondent Crozer retired for disability effective February 1, 2011. In 2016, Respondent Crozer was reevaluated and CalPERS determined that Respondent Crozer is no longer incapacitated from performing the duties of a Laundry Supervisor II. Respondent Crozer appealed this determination and the matter was heard by the Office of Administrative Hearings (OAH) on October 12, 2017. Due to Respondent High Desert State Prison’s failure to appear, the case proceeded as a default under Government Code section 11520(a) as to that party only. A Proposed Decision was issued on January 9, 2018, granting CalPERS’ request to reinstate Respondent Crozer from industrial disability retirement.

The Board, at its March 21, 2018 meeting, voted to remand the matter back to OAH for the taking of additional evidence regarding the issue that Respondent Crozer’s IME was not able to provide testimony at the hearing. The matter was heard by OAH on June 20, 2018. The day before the hearing, counsel for Respondent Crozer filed a letter with OAH stating that neither he nor Respondent Crozer would appear at the hearing. The letter stated the reason for Respondent Crozer
not appearing at the hearing on Remand was the he could not afford to pay attorneys’ fees and/or
expert witness fees. Following a telephonic status conference, the ALJ vacated the Hearing on
Remand and directed all parties to submit written briefs. Both CalPERS and Respondent Crozer
submitted written briefs. A Proposed Decision on Remand was issued on July 27, 2018, denying
Respondent Crozer’s appeal of CalPERS’ determination that he was no longer substantially
incapacitated and should be taken off the disability retirement roll.

Alternatives
A. 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 July
   27, 2018, concerning the appeal of Clark G. Crozer; 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 on Remand, 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 on Remand dated July 27, 2018,
   concerning the appeal of Clark G. Crozer, hereby rejects the Proposed Decision on Remand
   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 on Remand dated July 27, 2018,
   concerning the appeal of Clark G. Crozer, hereby rejects the Proposed Decision on Remand
   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 Clark
      G. Crozer, 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.
RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System, hereby designates as precedential its Decision concerning the appeal of Clark G. Crozer.

**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