September 26, 2018

Item Name: Proposed Decision – In the Matter of the Request for an Earlier Effective Retirement Date of CAROLYN TAFOYA, Respondent.

Program: Benefit Services Division

Item Type: Action

Parties’ Positions
Staff argues that the Board of Administration should adopt the Proposed Decision.
Respondent Carolyn Tafoya’s (Respondent Tafoya) 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
In June 2017, Respondent Tafoya filed an application for service retirement from her nonmember account, established by way of a Court-ordered community property settlement granting her a one-half interest in the CalPERS’ member account of her former spouse. Shortly after applying for retirement from the nonmember account, Respondent contacted CalPERS and requested that the effective retirement date for her nonmember account be backdated nearly 11 years, to October 2006. CalPERS denied the request, finding that Respondent Tafoya did not present sufficient evidence to demonstrate that her failure to apply for an earlier retirement from the nonmember account was the result of a correctable error or mistake under the Public Employees’ Retirement Law (PERL). Respondent Tafoya appealed CalPERS’ determination. The matter was heard by the Office of Administrative Hearings on July 16, 2018. A Proposed Decision was issued on August 13, 2018, affirming CalPERS’ determination and denying 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 August 13, 2018, concerning the appeal of Carolyn Tafoya; 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 August 13, 2018, concerning the appeal of Carolyn Tafoya, 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 August 13, 2018, concerning the appeal of Carolyn Tafoya, 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 Carolyn Tafoya, 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 Carolyn Tafoya.
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