Board of Administration

Agenda Item 9b8

April 17, 2019

**Item Name:** Proposed Decision – In the Matter of the Application for Disability Retirement of HINDA S. SILVA, Respondent, and CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION, SALINAS VALLEY STATE PRISON, Respondent.

**Program:** Benefit Services Division

**Item Type:** Action

**Parties’ Positions**

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

Hinda S. Silva’s (Respondent Silva) 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**

Respondent Silva submitted an application for industrial disability retirement based on an orthopedic (right elbow and right upper extremity) condition. CalPERS denied the application. Respondent Silva appealed this determination and the matter was heard by the Office of Administrative Hearings on August 24, 2018 and January 7, 2019. A Proposed Decision was issued on March 11, 2019, reversing CalPERS’ determination and granting the appeal.

**Alternatives**

A. For use if the Board decides to modify and adopt the Proposed Decision 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, by inserting the word “industrial” before the words “disability retirement” in the caption on page one of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated March 11, 2019, as modified, concerning the appeal
of Hinda S. Silva; 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 March 11, 2019, as modified, concerning the appeal of Hinda S. Silva; 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 March 11, 2019, concerning the appeal of Hinda S. Silva, 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 March 11, 2019, concerning the appeal of Hinda S. Silva, 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.

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 Hinda S. Silva, 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 Hinda S. Silva.
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