
Program: Benefit Services Division

Item Type: Action

Parties’ Positions
Staff argues that the Board of Administration should adopt the Proposed Decision After Second Remand.

Respondent Justin Z. Hendee’s (Respondent Hendee) position is included in Attachment C, if any.

Respondent California State University San Bernardino’s (Respondent CSUSB) 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 5, 2011, Respondent Hendee submitted an application for industrial disability retirement based on orthopedic (back, neck, and left shoulder) conditions. CalPERS approved the application for industrial disability retirement and Respondent Hendee retired for disability effective in January 2011. Respondent Hendee was reevaluated in 2015 and CalPERS determined that Respondent Hendee is no longer incapacitated from performing the duties of a Police Officer. Respondent Hendee appealed this determination and the matter was heard by the Office of Administrative Hearings on July 10, 2017. A Proposed Decision was issued on September 27, 2017, denying Respondent Hendee’s appeal, finding him no longer disabled, and ordering Respondent CSUSB to reinstate Respondent Hendee to his former position.

CalPERS timely received Petitions for Reconsideration from Respondent Hendee and Respondent CSUSB. Respondent Hendee’s Petition for Reconsideration, relating to the issue of his substantial incapacity, was denied. The Board at its December 20, 2017 meeting granted
Respondent CSUSB’s Petition for Reconsideration and remanded the matter to the Office of Administrative Hearings. The sole issues on remand were to take additional evidence regarding Respondent Hendee’s permanent separation from employment while on probation, before he applied for industrial disability retirement; and whether the Administrative Law Judge (ALJ) had the power to order Respondent CSUSB to reinstate a former employee who had been permanently separated from service prior to applying for industrial disability retirement.

The remanded matter was heard by the Office of Administrative Hearings on April 19, 2018. A Proposed Decision on Remand was issued on May 17, 2018. In the Proposed Decision on Remand, the ALJ determined that he could not order Respondent CSUSB to reinstate Respondent Hendee because he had permanently separated from Respondent CSUSB before applying for industrial disability retirement. Therefore, Respondent Hendee had no position to which he could reinstate. However, the Proposed Decision on Remand did not incorporate the ALJ’s findings from the September 27, 2017 Proposed Decision stating that Respondent Hendee was no longer substantially incapacitated based on his orthopedic condition. Therefore, the Board again remanded the matter back to the ALJ, requesting the September 27, 2017 Proposed Decision regarding Respondent Hendee’s lack of substantial incapacity be consolidated with the conclusions in the Proposed Decision on Remand dated May 17, 2019.

A Proposed Decision After Second Remand was issued on May 15, 2019, denying Respondent Hendee’s appeal, affirming CalPERS’ determination that Respondent Hendee is no longer substantially incapacitated based on his orthopedic condition, and finding he cannot be reinstated to his former position since he had permanently separated from Respondent CSUSB before applying for industrial disability retirement.

Alternatives

A. For use if the Board decides to adopt the Proposed Decision After Second 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 After Second Remand dated May 15, 2019, concerning the appeal of Justin Z. Hendee; 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 After Second 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 After Second Remand dated May 15, 2019, concerning the appeal of Justin Z. Hendee, hereby rejects the Proposed Decision After Second 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 After Second Remand dated May 15, 2019, concerning the appeal of Justin Z. Hendee, 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 Justin Z. Hendee, 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 Justin Z. Hendee.

**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
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