



Board of Administration

Agenda Item 9a1

September 21, 2019

Item Name: Proposed Decision, as modified – In the Matter of the Reinstatement from Industrial Disability Retirement of EDWARD G. KELLY, Respondent, and CALIFORNIA STATE PRISON CORCORAN, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondent.

Program: Disability and Survivor Benefits Division

Item Type: Action

Parties' Positions

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

Respondent Edward G. Kelly's (Respondent Kelly) position is included in Attachment C, if any.

Respondent California State Prison Corcoran, California Department of Corrections and Rehabilitation's (Respondent CDCR) 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 September 4, 2012, Respondent Kelly submitted an application for industrial disability retirement based on an orthopedic (low back) condition. CalPERS approved the application for industrial disability retirement and Respondent Kelly retired for disability effective in 2012. Respondent Kelly was reevaluated, and CalPERS determined that Respondent Kelly is no longer incapacitated from performing the duties of a Correctional Officer. Respondent Kelly appealed this determination and the matter was heard by the Office of Administrative Hearings on June 11, 2019. Due to the failure to appear by Respondent CDCR, the matter proceeded as a default under Government Code section 11520 as to that party only. A Proposed Decision was issued on July 10, 2019, affirming CalPERS' determination and denying the appeal.

Modified 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, by changing "respondent is still incapacitated" to "respondent is no longer substantially incapacitated" on paragraph 2, page 8 of the Proposed Decision, as modified and hereby adopts as its own Decision the Proposed Decision dated July 10, 2019, as modified, concerning the appeal of Edward G. Kelly; 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 modified 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, as modified dated July 10, 2019, concerning the appeal of Edward G. Kelly; 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, as modified, 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, as modified dated July 10, 2019, concerning the appeal of Edward G. Kelly, hereby rejects the Proposed Decision, as modified 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, as modified 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, as modified dated, July 10, 2019, concerning the appeal of Edward G. Kelly, hereby rejects the Proposed Decision, as modified 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, as modified (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 modified 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 Edward G. Kelly, as well as interested parties, to submit written argument regarding whether the Board's Decision, as modified in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision, as modified as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision, as modified 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, as modified concerning the appeal of Edward G. Kelly.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision, as modified

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Donna Ramel Lum
Deputy Executive Officer
Customer Services and Support