



Board of Administration

Agenda Item 9b2

November 20, 2019

Item Name: Petition for Reconsideration – In the Matter of the Appeals Regarding the Final Compensation Calculation of MARK E. BILLS and JUDI L. CUTAIA, Respondents, and CITY OF DAVIS, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should deny the Petition for Reconsideration.

Respondents Mark E. Bills and Judi L. Cutaia (Respondents Bills and Cutaia) argue that the Board of Administration grant the Petition for Reconsideration.

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

Respondents Bills and Cutaia (Respondents) retired from the City of Davis in 2012 and 2014, respectively. In October 2016, CalPERS' Office of Audit Services (OFAS) conducted an audit of the City of Davis and found that certain longevity payments, based on unused cafeteria benefits, reported as special compensation to CalPERS for the Respondents, did not qualify as reportable income. CalPERS notified Respondents that it was adjusting their final compensations in order to correct the erroneous reportings which would reduce their pensions going forward. CalPERS also calculated overpayment amounts for each of the Respondents which they were asked to repay to CalPERS.

CalPERS determined that the payments made by Respondent City of Davis to Respondents as longevity pay (cafeteria cash outs) could not be considered in determining Respondents' CalPERS retirement benefits. Respondents appealed this determination. The matter was heard by the Office of Administrative Hearings (OAH) on July 19, 2018. Due to Respondent City of Davis' failure to appear, the case proceeded as a default under Government Code section 11520 as to that party only. A Proposed Decision was issued on October 30, 2018, affirming CalPERS' determination and denying the appeals.

The CalPERS Board of Administration, at its regular meeting on December 19, 2018, voted to remand the Proposed Decision for the taking of additional evidence. Specifically, the Board requested that the ALJ receive additional evidence “to determine whether the language of the Legal Conclusion 6 is accurate.”

Parties filed a Joint Stipulation for Remand Hearing by Documentary Evidence on June 17, 2019, and an Order granting a Request for Decision on Written Submission was issued on June 21, 2019.

An Amended Proposed Decision Following Remand was issued on July 24, 2019, correcting the typographical errors in Legal Conclusion 6 and denying Respondents’ appeals and affirming CalPERS’ determination that the payments made by Respondent City of Davis to Respondents as longevity pay (cafeteria cash outs) shall not be considered in the determination of Respondents’ retirement benefits from CalPERS and that CalPERS is entitled to recoup the overpayments made to Respondents subject to the three-year statutory limitation.

The Board at its September 18, 2019, meeting adopted the Amended Proposed Decision of the Administrative Law Judge. The Decision denied Respondents’ appeal.

A Stay of Execution in the above matter has been granted so that the Petition for Reconsideration may be presented to the Board.

Respondents have been notified of the date of the Board meeting and of their opportunity to submit written argument in advance of the Board meeting on November 20, 2019.

Alternatives

A. For use if the Board decides to deny the Petition for Reconsideration:

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System denies the Petition for Reconsideration submitted by Mark E. Bills and Judi L. Cutaia concerning the Board's Decision of September 18, 2019; the Board's Decision of September 18, 2019, is effective immediately and the Respondents have 30 days to appeal to the courts.

B. For use if the Board decides to grant the Petition for Reconsideration and decide the matter upon the record. A transcript of the hearing would be provided to each Board member, and the Board would receive written and/or oral argument at a subsequent meeting and adopt a new decision upon reconsideration:

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System grants the Petition for Reconsideration submitted by Mark E. Bills and Judi L. Cutaia concerning the Board's Decision dated September 18, 2019; RESOLVED FURTHER that the reconsideration shall be made at a subsequent Board meeting, after notice is given to all affected parties, 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.

C. For use if the Board decides to grant the Petition for Reconsideration and assign the case to an Administrative Law Judge, subject to the procedures provided in Government Code

section 11517. The matter would be remanded to the Office of Administrative Hearings for taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System grants the Petition for Reconsideration submitted by Mark E. Bills and Judi L. Cutaia and concerning the Board's Decision dated September 18, 2019; RESOLVED FURTHER that the reconsideration shall be scheduled for hearing with the Office of Administrative Hearings, after notice is given to all affected parties, where the Administrative Law Judge may base his or her findings upon the record produced before the Administrative Law Judge at prior hearing(s) and any additional evidence including written and oral argument presented by the parties as may be permitted.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Respondent's Petition for Reconsideration

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Attachment D: Decision

Attachment E: Proposed Decision

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Customer Services and Support