



## Board of Administration

# Agenda Item 9a12

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December 18, 2019

**Item Name:** Proposed Decision – In the Matter of the Reinstatement from Disability Retirement of SARAH A. ZUNIGA, Respondent, and CORRECTIONAL TRAINING FACILITY, 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 Sarah A. Zuniga's (Respondent Zuniga) position is included in Attachment C, if any.

Respondent Correctional Training Facility, California Department of Corrections & 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 November 19, 2015, Respondent Zuniga submitted an application for disability retirement based on orthopedic (bilateral upper extremities and low back) conditions. CalPERS approved the application for disability retirement and Respondent Zuniga retired for disability effective March 1, 2014. In 2018, Respondent Zuniga was reevaluated and CalPERS determined that Respondent Zuniga is no longer incapacitated from performing the duties of an Office Technician. Respondent Zuniga appealed this determination and the matter was heard by the Office of Administrative Hearings on October 30, 2019. Due to Respondent CDCR's 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 November 18, 2019, denying Respondent Zuniga's appeal and granting CalPERS' request to reinstate Respondent Zuniga from disability retirement.

### **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 correcting the definition for Government Code section 20026 from ". . . mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion" to ". . . mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board . . . on the basis of competent medical opinion" on page 16, paragraph 3, of the Proposed Decision, replacing "April 8, 2018" with "April 9, 2018" on page 3, paragraph 4, of the Proposed Decision, and correcting Respondent Zuniga's effective retirement date from "effective on the first day of the month CalPERS received her application" to "effective the day following her last day on pay" on page 3, paragraph 3, line 2, of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated November 18, 2019, as modified, concerning the appeal of Sarah A. Zuniga; 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 November 18, 2019, concerning the appeal of Sarah A. Zuniga; 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 November 18, 2019, concerning the appeal of Sarah A. Zuniga, 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 November 18, 2019, concerning the appeal of Sarah A. Zuniga, 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.

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 Sarah A. Zuniga, 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 Sarah A. Zuniga.

**Budget and Fiscal Impacts:** Not applicable

### **Attachments**

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Donna Ramel Lum  
Deputy Executive Officer  
Customer Services and Support