Board of Administration

Agenda Item 9a7

December 18, 2019

Item Name: Proposed Decision – In the Matter of the Application for Industrial Disability Retirement of TRAVIS A. BUSCH, Respondent, and SIERRA CONSERVATION CENTER, 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 Travis A. Busch's (Respondent Busch) 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 Busch submitted an application for industrial disability retirement based on cardiovascular (hypertension, heart disease, and atrial fibrillation) and psychological (stress) conditions and requested a retirement effective date of "expiration of benefits," which was March 1, 2016. CalPERS denied the application and Respondent Busch's request for an earlier effective retirement date. Respondent Busch appealed this determination and the matter was heard by the Office of Administrative Hearings on October 7, 2019. A Proposed Decision was issued on October 24, 2019, affirming CalPERS determination and denying 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 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 15, paragraph 2 and adding "industrial" before "disability retirement" on page 2, paragraph "a", line 1; page 5, paragraph 4, line 9; page 11, paragraph 18, line 3; page 13, paragraph 23, line 2; page 13, paragraph 23, line 10; page 14, paragraph 24, line 1; page 14, paragraph 2, line 1; page 14, paragraph 2, line 2; page 15, paragraph 4, line 2; page 15, paragraph 4, line 4; page 15, paragraph 4, line 7; and page 16 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated October 24, 2019, as modified, concerning the appeal of Travis A. Busch; 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 October 24, 2019, concerning the appeal of Travis A. Busch; 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 October 24, 2019, concerning the appeal of Travis A. Busch, 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 October 24, 2019, concerning the appeal of Travis A. Busch, 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 Travis A. Busch, 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 Travis A. Busch.

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