



## Board of Administration

# Agenda Item 9a12

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February 19, 2020

**Item Name:** Proposed Decision – In the Matter of Accepting the Application for Disability Retirement of CURT HAWKER, Respondent, and COUNTY OF BUTTE, 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 Curt Hawker's (Respondent Hawker) position is included in Attachment C, if any. Respondent County of Butte's (Respondent County) 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 Hawker submitted an application for disability retirement based on back and neck injuries, right knee and heel injuries, anxiety and depression disorders, and insomnia conditions. CalPERS determined that Respondent Hawker was ineligible for disability retirement because he had been dismissed from his employment with Respondent County, pursuant to the legal precedent set forth in *Haywood v. American River Fire Protection District*. Respondent Hawker appealed this determination and the matter was heard by the Office of Administrative Hearings on December 10, 2019. A Proposed Decision was issued on January 9, 2020, affirming CalPERS' determination that Respondent Hawker is ineligible to apply for disability retirement and denying Respondent Hawker's 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 deleting the word “industrial” prior to the word “disability” on page 2, in the “Issue” paragraph; on page 3, in paragraph 4; on page 12, in paragraph 7; on page 13, in paragraphs 8 and 9; and in the Order of the Proposed Decision and replacing “he resigned from his position” with “he was terminated from his position” on page 12, in paragraph 8, line 8 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated January 9, 2020, as modified, concerning the appeal of Curt Hawker; 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 January 9, 2020, concerning the appeal of Curt Hawker; 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 January 9, 2020, concerning the appeal of Curt Hawker, 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 January 9, 2020, concerning the appeal of Curt Hawker, 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 Curt Hawker, 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 Curt Hawker.

**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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Anthony Suine  
Deputy Executive Officer  
Customer Services and Support