



Board of Administration

Agenda Item 9a5

February 19, 2020

Item Name: Proposed Decision – In the Matter of the Forfeiture of Benefits of SHELDON K. SCARBER, Respondent, and CALIFORNIA HIGHWAY PATROL, Respondent.

Program: Retirement Benefit Services Division

Item Type: Action

Parties' Positions

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

Respondent Sheldon K. Scarber's (Respondent Scarber) 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 Sheldon K. Scarber (Respondent) submitted an application for industrial disability retirement on February 27, 2013. CalPERS canceled his application because he had been terminated from employment. Respondent appealed the cancelation. After a Full Board Hearing on March 15, 2017, Respondent was granted the right to apply for industrial disability retirement. On April 5, 2018, Respondent's industrial disability retirement application was approved.

Respondent signed a plea agreement on June 4, 2018, wherein he pled guilty to felony charges of conspiracy. CalPERS determined the felony plea resulted in a forfeiture of 0.668 years of service credit; cancelation of his industrial disability retirement; and repayment of an overpayment reflecting Respondent's monthly benefit reduced by 0.668 years. The matter was heard by the Office of Administrative Hearings on July 23, 2019. Respondent appeared at the hearing but chose not to testify. Respondent CHP did not appear. The case proceeded as a default under Government Code section 11520 as to CHP only. A Proposed Decision was issued on November 20, 2019, granting and denying Respondent's appeal in part.

Alternatives

- A. 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 20, 2019, concerning the appeal of Sheldon K. Scarber; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. 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 20, 2019, concerning the appeal of Sheldon K. Scarber, 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.

- C. 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 20, 2019, concerning the appeal of Sheldon K. Scarber, 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.

- D. 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 Sheldon K. Scarber, 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 Sheldon K. Scarber.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
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Customer Services and Support