



Board of Administration

Agenda Item 9a9

February 19, 2020

Item Name: Proposed Decision – In the Matter of the Application for Industrial Disability Retirement of DUANE J. WHITCOMB, Respondent, and CALIPATRIA STATE PRISON, 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 Duane J. Whitcomb's (Respondent Whitcomb) 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 Whitcomb submitted an application for industrial disability retirement based on orthopedic (left elbow, left shoulder, knees, feet), cardiologic (chest pain, hypertension) and internal (diabetes and tingling fingers) conditions. CalPERS denied the application.

Respondent Whitcomb appealed this determination, and the matter was heard by the Office of Administrative Hearings on December 4, 2019. A Proposed Decision was issued on January 3, 2020, 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 as follows: (1) by replacing the word "a" with "an industrial" before the words "disability retirement" on page three, paragraph 2; page four, paragraph 3; page twenty-one, paragraph 1; page twenty-three, paragraph 10; page 26, paragraph 21; page

twenty-seven, paragraph 22 and page twenty-eight, within the "Order;" (2) by inserting the word, "industrial" before the words, "disability retirement" on page two, within the "Issue" paragraph; page three, within the "Summary of Decision;" page four, paragraph 4; page twenty, paragraph 28 and page twenty-seven, paragraph 22 of the Proposed Decision; and (3) by replacing "correctional officer" with "Correctional Counselor II, Specialist" on page twenty, paragraph 28, and hereby adopts as its own Decision the Proposed Decision dated January 3, 2020, as modified, concerning the appeal of Duane J. Whitcomb; 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 3, 2020, concerning the appeal of Duane J. Whitcomb; 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 3, 2020, concerning the appeal of Duane J. Whitcomb, 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 3, 2020, concerning the appeal of Duane J. Whitcomb, 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 Duane J. Whitcomb, 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 Duane J. Whitcomb.

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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Customer Services and Support