Board of Administration

Agenda Item 9a10

March 18, 2020

Item Name: Proposed Decision – In the Matter of Accepting the Application for Industrial Disability Retirement of WILLIAM C. BAILEY, Respondent, and CITY OF SAN FERNANDO, Respondent.

Program: Disability and Survivor Benefits Division

Item Type: Action

Parties' Positions

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

Respondent William C. Bailey's (Respondent Bailey) position is included in Attachment C, if any.

Respondent City of San Fernando's (Respondent City) 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

In March 2014, Respondent Bailey submitted an application for industrial disability retirement based on orthopedic (back and knee) conditions. CalPERS initially accepted Respondent Bailey's application, and since Respondent Bailey is a local safety member, requested that Respondent City determine whether he was substantially incapacitated. Respondent City passed a resolution certifying Respondent Bailey was substantially incapacitated. Pursuant to an audit, CalPERS received information that Respondent Bailey's employment with Respondent City had been terminated for cause, and for this reason determined that Respondent Bailey was actually ineligible for industrial disability retirement pursuant to the legal precedent set forth in *Haywood v. American River Fire Protection District*. CalPERS determined that it was a mistake to approve Respondent Bailey's application and pay him industrial disability retirement benefits. CalPERS sought to correct the mistake by cancelling Respondent Bailey's application and recovering the amount of benefits Respondent Bailey improperly received. Respondent Bailey appealed this determination and the matter was heard by the Office of Administrative Hearings on November 7, 2019. A Proposed Decision was issued on February 4, 2020, affirming CalPERS' determination and denying the appeal.

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 February 4, 2020, concerning the appeal of William C. Bailey; 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 February 4, 2020, concerning the appeal of William C. Bailey, 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 February 4, 2020, concerning the appeal of William C. Bailey, 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 William C. Bailey, 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 William C. Bailey.

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