Board of Administration

Agenda Item 9a12

April 22, 2020

Item Name: Proposed Decision – In the Matter of Accepting the Application for Industrial Disability Retirement of DUSTIN E. MORGAN, Respondent, and CALIFORNIA STATE PRISON CORCORAN, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

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 Dustin E. Morgan's (Respondent Morgan) position is included in Attachment C, if any.

Respondent California State Prison Corcoran, California Department of Corrections and Rehabilitation's (Respondent CDCR) 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 Morgan submitted an application for industrial disability retirement based on orthopedic (fracture of right orbital socket) and psychological (major depressive disorder, anxiety, and post-traumatic stress disorder (PTSD)) conditions. CalPERS determined that Respondent Morgan was ineligible for industrial disability retirement because he had been dismissed from his employment, pursuant to the legal precedent set forth in *Haywood v. American River Fire Protection District*. Respondent Morgan appealed this determination and the matter was heard by the Office of Administrative Hearings on February 4, 2020. Respondent Morgan appeared and represented himself. Respondent CDCR did not appear and the matter proceeded as a default pursuant to Government Code section 11520. A Proposed Decision was issued on March 5, 2020, affirming CalPERS' determination and denying the appeal.

Alternatives

A. For use if the Board decides to modify and adopt the Proposed Decision, as modified, 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 changing "September 11, 2018" to "September 11, 2017" on paragraph 6, page 4 of the Proposed Decision, as modified and hereby adopts as its own Decision the Proposed Decision dated March 5, 2020, as modified, concerning the appeal of Dustin E. Morgan; 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 March 5, 2020, concerning the appeal of Dustin E. Morgan; 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 March 5, 2020, concerning the appeal of Dustin E. Morgan, 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 March 5, 2020, concerning the appeal of Dustin E. Morgan, 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 Dustin E. Morgan, 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 Dustin E. Morgan.

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