Board of Administration

Agenda Item 9a13

April 22, 2020

Item Name: Proposed Decision – In the Matter of the Appeal of Mandatory Contribution Adjustment (Tier Enrollment) of LARRY D. PEOPLES, Respondent, and DEPARTMENT OF CONSUMER AFFAIRS, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent Larry D. Peoples' (Respondent Peoples) 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 Peoples was mistakenly enrolled in Second Tier benefits when he began working for Respondent Department of Consumer Affairs. Pursuant to relevant statutes, Respondent Peoples should have been enrolled in First Tier benefits, which would have required that he make monthly contributions to CalPERS. When Respondent Peoples applied for retirement benefits, CalPERS began paying him First Tier benefits. Subsequently, CalPERS discovered that Respondent Peoples paid contributions into CalPERS as a Second Tier member and therefore informed him that he owed CalPERS $27,123.58 in unpaid contributions. Respondent Peoples appealed CalPERS' determination and the matter was heard by the Office of Administrative Hearings on March 2, 2020. Due to Respondent Peoples' failure to appear, the case proceeded as a default under Government Code section 11520. A Proposed Decision was issued on March 11, 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 March 11, 2020, concerning the appeal of Larry D. Peoples; 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 March 11, 2020, concerning the appeal of Larry D. Peoples, 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 March 11, 2020, concerning the appeal of Larry D. Peoples, 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 Larry D. Peoples, 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 Larry D. Peoples.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
Deputy Executive Officer
Customer Services and Support