Board of Administration

Agenda Item 9a1

June 17, 2020

Item Name: Proposed Decision – In the Matter of Accepting the Late Application for Industrial Disability Retirement of MARILYN ROWE, Respondent, and DEPARTMENT OF STATE HOSPITALS - PATTON, 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 Marilyn Rowe's (Respondent Rowe) 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 Rowe service retired effective June 28, 2011. On May 4, 2018, Respondent Rowe submitted an application for industrial disability retirement retroactive to the commencement of her service retirement in 2011. CalPERS cancelled Respondent Rowe's industrial disability retirement application because she did not provide all of the requested information and documents. Respondent Rowe submitted a second application for industrial disability retirement on July 23, 2018. Because there was no correctable mistake causing the seven-year delay between Respondent's service retirement and application for industrial disability retirement, CalPERS cancelled the July 23, 2018 industrial disability retirement application by letter dated October 4, 2018. Respondent Rowe appealed the determination and the matter was heard by the Office of Administrative Hearings on March 2, 2020. A Proposed Decision was issued on March 26, 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 26, 2020,

concerning the appeal of Marilyn Rowe; 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 26, 2020, concerning the appeal of Marilyn Rowe, 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 26, 2020, concerning the appeal of Marilyn Rowe, 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 Marilyn Rowe, 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 Marilyn Rowe.

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