



Board of Administration

Agenda Item 9a2

June 17, 2020

Item Name: Proposed Decision – In the Matter of the Appeal Regarding the Housing and Subsistence Allowance of CALIFORNIA MILITARY DEPARTMENT, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

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

Respondent California Military Department's (Respondent Department) position is included in Attachment C, if any.

Respondent Michele Milota's (Respondent) 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

CalPERS determined that the Basic Allowance for Housing (BAH) and the Basic Allowance for Subsistence (BAS) is not "pensionable compensation" for State Active Duty Servicemembers who are "new members" of CalPERS under the definition set forth in the Public Employees' Pension Reform Act (PEPRA) and therefore cannot be included in the calculation of their pension benefits. Respondent Department and Respondent Milota disagreed and appealed CalPERS' determinations. The appeals were consolidated, and the matter was heard by the Office of Administrative Hearings on October 10, 2019 and November 13, 2019. Respondent Milota did not appear at the hearing and the case proceeded as a default under Government Code section 11520, as to Respondent Milota only. A Proposed Decision was issued on March 17, 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 dated March 17, 2020, by recommending that the word “public” on page 2, line 1 of paragraph 1 of the Proposed Decision be replaced with the word “state,” so that the line reads: “The California Military Department (CMD) is a state agency comprised...,” and hereby adopts as its own Decision the Proposed Decision dated March 17, 2020 as modified, concerning the appeal of the California Military Department; 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 17, 2020, concerning the appeal of the California Military Department; 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 17, 2020, concerning the appeal of the California Military Department, 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 17, 2020, concerning the appeal of the California Military Department, 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 the California Military Department, 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 the California Military Department.

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