



Board of Administration

## Agenda Item 9a6

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**September 16, 2020**

**Item Name:** Proposed Decision – In the Matter of the Application for Disability Retirement of LLOYD A. GETCHELL JR., Respondent, and CALIFORNIA HIGHWAY PATROL, Respondent.

**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 Lloyd A. Getchell Jr.'s (Respondent Getchell) position is included in Attachment C, if any.

Respondent California Highway Patrol's (Respondent CHP) 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 CHP submitted an employer-originated application for disability on Respondent Getchell's behalf. Respondent Getchell also submitted an application for disability retirement based on right acetabulum fracture, fractured pelvis, low back injury, right hip, right thigh, right knee, right ankle and foot, numb right thigh, numb toes, nerve damage, severe pain standing, sitting and walking, brain injury due to Xanax withdrawal, memory problems, possible PTSD, high blood pressure, anxiety, migraine headaches, low body extremity (legs, back, right hip and leg), head injury (Jacksonian seizure) and Valley fever (lungs) conditions. CalPERS denied the application. Respondent Getchell appealed this determination and the matter was heard by the Office of Administrative Hearings on June 24, 2020. Due to Respondents Getchell and CHP's failure to appear, the case proceeded as a default under Government Code section 11520. A Proposed Decision was issued on July 24, 2020, affirming CalPERS' determination and denying Respondent Getchell's 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, by correcting the definition of Government Code section 20026 from ". . . mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion" to ". . . mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board . . . on the basis of competent medical opinion" on page 6, paragraph 1 in the "Legal Conclusions" section of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated July 24, 2020, as modified, concerning the appeal of Lloyd A. Getchell Jr.; 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 July 24, 2020, concerning the appeal of Lloyd A. Getchell Jr.; 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 July 24, 2020, concerning the appeal of Lloyd A. Getchell Jr., 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 July 24, 2020, concerning the appeal of Lloyd A. Getchell Jr., 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 Lloyd A. Getchell Jr., 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 Lloyd A. Getchell Jr.

**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