



Board of Administration

Agenda Item 9a12

June 16, 2021

Item Name: Proposed Decision – In the Matter of the Appeal of the Cancellation of Industrial Disability Retirement Benefits and Change to Service Retirement of FINN O. McCLAFFERTY; RICHARD B. CEJA; BRIAN WEIR; and MARION E. WEIR, Respondents, and CITY OF BEVERLY HILLS, 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 Finn O. McClafferty's (Respondent McClafferty) position is included in Attachment C, if any.

Respondent Richard B. Ceja's (Respondent Ceja) position is included in Attachment C, if any.

Respondent Brian Weir's (Respondent Weir) position is included in Attachment C, if any.

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

Respondent City of Beverly Hills' (Respondent City) 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

Respondents Finn McClafferty, Richard Ceja and Brian Weir (Respondent Members) submitted applications for industrial disability retirement based on orthopedic conditions.

CalPERS initially accepted Respondent Members' application, and since Respondent Members were local safety members, CalPERS requested Respondent City determine whether they were substantially incapacitated. Respondent City passed resolutions certifying that Respondent Members were substantially incapacitated, and CalPERS approved the applications and began providing Respondent Members with industrial disability retirement benefits.

Later, CalPERS received an ethics complaint regarding Respondent Members. Following an investigation into the matter, CalPERS discovered documents demonstrating Respondent Members entered into settlement agreements, agreeing to resign from employment and

relinquishing their reinstatement rights in return for resolving all claims against Respondent City. For this reason, CalPERS determined that Respondent Members were ineligible for industrial disability retirement pursuant to the legal precedent set forth in *Haywood v. American River Fire Protection District*. CalPERS determined that it was a mistake to approve Respondent Members' applications and pay them industrial disability retirement benefits. CalPERS sought to correct the mistake by cancelling Respondent Members' applications and recovering the amount of benefits Respondents Ceja and Weir had improperly received. Respondent Members appealed the determinations and the matter was heard by the Office of Administrative Hearings on December 21 through December 23, 2020. A Proposed Decision was issued on April 28, 2021, affirming CalPERS' determinations that Respondent Members were ineligible to receive industrial disability retirement benefits and denying their appeals.

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 deleting the phrase "...if less than six months from compulsory retirement age..." on page 33, paragraph 8, of the Proposed Decision, and inserting "...if he or she is at least six months less than the age of compulsory retirement"; and by inserting the word "not" after the words "To ensure an employer does" on page 39, paragraph 16 of the Proposed 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 April 28, 2021, concerning the appeals of Finn O. McClafferty; Richard B. Ceja; Brian Weir; and Marion E. Weir, 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 April 28, 2021, concerning the appeals of Finn O. McClafferty; Richard B. Ceja; Brian Weir; and Marion E. Weir, 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 April 28, 2021, concerning the appeals of Finn O. McClafferty; Richard B. Ceja; Brian Weir; and Marion E. Weir, 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 appeals Finn O. McClafferty; Richard B. Ceja; Brian Weir; and Marion E. Weir, 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 appeals Finn O. McClafferty; Richard B. Ceja; Brian Weir; and Marion E. Weir.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
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Customer Services and Support