



Board of Administration Offsite

Action Item – Proposed Decisions of Administrative Law Judges Item a

July 13, 2022

Item Name: Proposed Decision – In the Matter of the Application for Industrial Disability Retirement of ATZIRI VILLAGOMEZ, Respondent, and CALIFORNIA INSTITUTION FOR WOMEN, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, 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 Atziri Villagomez's (Respondent Villagomez) 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 Villagomez submitted an application for industrial disability retirement based on an orthopedic (left knee) condition. CalPERS denied the application. Respondent Villagomez appealed this determination and the matter was heard by the Office of Administrative Hearings on April 29, 2022. Respondent California Institution for Women, California Department of Corrections and Rehabilitation (Respondent CDCR) failed to appear. A Proposed Decision was issued on May 27, 2022, 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, by replacing “Christina” with “Cristina” on page 2; replacing the employment commencement date of “July 17, 2017” with the correct commencement date of “March 9, 2015” on page 3 paragraph 1; replacing the injury date of “April 17, 2018” with the correct injury date of “April 17, 2017” on page 3 paragraph 2; replacing “July 7, 2007” with the correct date of “October 20, 2007” on page 6 paragraph 11; replace the surgery date of “June 2017” with the correct surgery date of “August 2017” on page 7 in the final sentence of the third paragraph; replacing “June 1, 2017” with the correct application date of “January 18, 2020” on the “ORDER” section located on page 35 of the Proposed Decision; and replacing the word “lift” with the word “left” on page 32, paragraph 10 of the Proposed Decision; and hereby adopts as its own Decision the Proposed Decision dated May 27, 2022, as modified, concerning the appeal of Atziri Villagomez; 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 May 27, 2022, concerning the appeal of Atziri Villagomez; 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 May 27, 2022, concerning the appeal of Atziri Villagomez, 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 May 27, 2022, concerning the appeal of Atziri Villagomez, 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 Atziri

Villagomez, 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 Atziri Villagomez.

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