

Board Review of ALJ Decisions

January 2021

The Hearing

- Initiation: Whenever any member is dissatisfied with the action of the staff involving any right, benefit or obligation under the PERL.
- Hearings are held before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH)
- Hearings resemble court trials in most respects
- They adjudicate the individual rights of the members

The ALJ's Proposed Decision

- Within 30 days after the case is submitted for decision, the ALJ submits a Proposed Decision to CalPERS
- Within 100 days of receipt of the Proposed Decision, the CalPERS Board must choose one of four options

The Board's Decision

Board's Options

- Adopt the ALJ's Proposed Decision
- Adopt with technical amendments
- Remand to OAH
- Conduct Full Board Hearing

Independent counsel as resource

Board's Role in Reviewing Proposed Decisions

- Ex parte communications
- Recusal

After Board Adoption of Decision

A dissatisfied respondent can:

- Request reconsideration
- Petition a Superior Court to overturn the Board's decision

Making a Decision Precedential

- The Administrative Procedures Act (APA) authorizes CalPERS to designate its administrative decisions as precedential.
- In 1997, the Board adopted a policy for designating decisions as precedential

Making a Decision Precedential

- How such questions are presented to the Board
- Timing: after all administrative and judicial appeals are exhausted
- Evaluative standards
- Significance of making a decision precedential

Reasons for Designating a Decision Precedential

- Guide and inform members, stakeholders and staff in applying the PERL to recurring benefit issues
- Assist courts in interpreting the PERL
- Reduce administrative costs

Example of Effect of Precedential Decision

- Enhanced Persuasive Influence: *Martinez v. CalPERS*
- Cost Savings, Efficiency: Board's Precedential Decision in Lynda Koolish
- Streamlined Administrative Decision-Making: Board's Precedential Decision in Michael Campbell

QUESTIONS?