



## Board of Administration

# Agenda Item 9a5

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September 15, 2021

**Item Name:** Proposed Decision – In the Matter of the Reinstatement from Industrial Disability Retirement of NICHOLAS E. MEGAZZI, Respondent, and CALIFORNIA CORRECTIONAL INSTITUTION, 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 Nicholas E. Megazzi's (Respondent Megazzi) 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**

On November 17, 2014, Respondent Megazzi submitted an application for industrial disability retirement based on an orthopedic (right shoulder) condition. CalPERS approved his application and he retired for disability effective January 1, 2015. In 2017, CalPERS reevaluated Respondent Megazzi's disability retirement, and determined he continued to be substantially incapacitated from his usual duties. Later, in 2019, CalPERS again reevaluated Respondent Megazzi and determined that he is no longer incapacitated from performing the duties of a Correctional Officer. Respondent Megazzi appealed this determination and the matter was heard by the Office of Administrative Hearings on April 5, 2021 and May 12, 2021. A Proposed Decision was issued on June 11, 2021, rejecting CalPERS' determination and granting 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 the date “November 5, 2020” with “November 5, 2019” on page 5, in paragraph 8 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated June 11, 2021, as modified, concerning the appeal of Nicholas E. Megazzi; 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 June 11, 2021, concerning the appeal of Nicholas E. Megazzi; 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 June 11, 2021, concerning the appeal of Nicholas E. Megazzi, 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 June 11, 2021, concerning the appeal of Nicholas E. Megazzi, 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 Nicholas E. Megazzi, 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 Nicholas E. Megazzi.

**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