



## Board of Administration

# Agenda Item 8a9

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**September 21, 2022**

**Item Name:** Proposed Decision – In the Matter of the Appeal of Accepting the Late Application for Industrial Disability Retirement of DONALD W. WHITE, Respondent, and SIERRA CONSERVATION CENTER, 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.

Respondent Donald W. White's (Respondent White) position is included in Attachment C, if any.

Respondent Sierra Conservation Center, California Department of Corrections and Rehabilitation's (Respondent CDCR) 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 White submitted an application for service retirement on November 20, 2019. On April 26, 2021, Respondent White submitted an application for Industrial Disability Retirement. Because the disability retirement application was a "change in retirement status" and was not timely, CalPERS reviewed information about why the member had not claimed disability at or near the time he separated from employment. After review of applicable information, CalPERS determined that Respondent's late filing for Disability Retirement was not an excusable mistake under Government Code section 20160, and canceled his disability retirement application. Respondent White appealed this determination, and the matter was heard by the Office of Administrative Hearings on June 29, 2022. A Proposed Decision was issued on July 25, 2022, affirming CalPERS' determination and denying the appeal.

## Alternatives

- A. 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 25, 2022, concerning the appeal of Donald W. White; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

- B. 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 25, 2022, concerning the appeal of Donald W. White, 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.

- C. 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 25, 2022, concerning the appeal of Donald W. White, 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.

- D. 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 Donald W. White, 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 Donald W. White.

**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