



Board of Administration Educational Day

# Action Item 2– Proposed Decisions of Administrative Law Judges x. Benjie M. Cortez

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**January 17, 2023**

**Item Name:** Proposed Decision – In the Matter of the Application for Industrial Disability Retirement of BENJIE M. CORTEZ, Respondent, and SAN QUENTIN STATE PRISON, 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 Benjie M. Cortez's (Respondent) 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 Cortez submitted an application for industrial disability retirement based on orthopedic (neck and bilateral upper extremities) and psychological conditions. CalPERS denied the application. Respondent appealed this determination and the matter was heard by the Office of Administrative Hearings on October 3, 2022. Due to Respondent's and Respondent San Quentin State Prison, California Department of Corrections and Rehabilitation's (Respondent CDCR) failure to appear, the case proceeded as a default under Government Code section 11520 as to both Respondents. A Proposed Decision was issued on October 28, 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 correcting "May 21, 2021" to "May 25, 2021" in paragraph 4, under the Factual Findings section, on page 3 of the Proposed Decision; correcting "§ 22156, subd. (a)(1)" to "§ 21156, subd. (a)(1)" in paragraph 1, under the Legal Conclusions section, on page 9 of the Proposed Decision; and correcting "section 21150, subdivision (a)" to "section 21156, subdivision (a)" in paragraph 4, under the Legal Conclusions section, on page 10 of the Proposed Decision, and hereby adopts as its own Decision the Proposed Decision dated October 28, 2022, as modified, concerning the appeal of Benjie M. Cortez; 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 October 28, 2022, concerning the appeal of Benjie M. Cortez; 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 October 28, 2022, concerning the appeal of Benjie M. Cortez, 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 October 28, 2022, concerning the appeal of Benjie M. Cortez, 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 Benjie M. Cortez, 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 Benjie M. Cortez.

**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