



Board of Administration

# Action Item – Proposed Decisions of Administrative Law Judges Item g

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**July 14, 2021**

**Item Name:** Corrected Proposed Decision – In the Matter of the Appeal Regarding the Final Compensation Calculation of DONNA WHITMORE, Respondent, and OAKLAND CITY HOUSING AUTHORITY Respondent.

**Program:** Employer Account Management Division

**Item Type:** Action

## **Parties' Positions**

Staff argues that the Board of Administration should adopt the Corrected Proposed Decision, as modified.

Respondent Donna Whitmore's (Respondent Whitmore) position is included in Attachment C, if any.

Respondent Oakland City Housing Authority's (Respondent Authority) 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 Whitmore submitted an application for service retirement. CalPERS determined that the five percent salary increase reported by her employer Respondent Authority on behalf of Respondent Whitmore as special compensation should not be included in the calculation of Respondent Whitmore's final compensation. Respondent Whitmore appealed CalPERS' determination. The matter was heard by the Office of Administrative Hearings on April 27, 2021. A Corrected Proposed Decision was issued on June 16, 2021, affirming CalPERS' determination and denying the appeal.

## **Alternatives**

- A. For use if the Board decides to modify and adopt the Corrected 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 Corrected Proposed Decision, by replacing the word "Employee" before "Retirement Law" with "Employees'" on page 2, in paragraph 2 of the Corrected Proposed Decision and replacing the date "August 28, 2017" with "September 28, 2017" on page 3, in paragraph 6 of the Corrected Proposed Decision, and hereby adopts as its own Decision the Corrected Proposed Decision dated June 16, 2021, as modified, concerning the appeal of Donna Whitmore; 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 Corrected 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 Corrected Proposed Decision dated June 16, 2021, concerning the appeal of Donna Whitmore; 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 Corrected 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 Corrected Proposed Decision dated June 16, 2021 concerning the appeal of Donna Whitmore, hereby rejects the Corrected 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 Corrected Proposed Decision dated June 16, 2021, concerning the appeal of Donna Whitmore, hereby rejects the Corrected 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 Donna Whitmore, 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 Donna Whitmore.

**Budget and Fiscal Impacts:** Not applicable

**Attachments**

Attachment A: Corrected Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

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Customer Services and Support