



Board of Administration

Agenda Item 9a7

February 15, 2022

Item Name: Proposed Decision – In the Matter of the Appeal Regarding the Final Compensation Calculation of STEPHEN M. LECOUBE, Respondent, and COUNTY OF SACRAMENTO, Respondent.

Program: Employer Account Management Division

Item Type: Action

Parties' Positions

Staff argues that the Board of Administration should adopt the Proposed Decision, as modified. Respondent Stephen M. Lecouve'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 Lecouve received compensation identified as Vacation Paid Over Max, Animal Allowance and 10% K-9 Handler while he was an employee of Sacramento County and a member of the Sacramento County Employees' Retirement System (SCERS). CalPERS determined that these items of compensation did not comply with the Public Employees' Retirement Law and could not be included in Respondent's final compensation for purposes of determining his monthly CalPERS retirement allowance. Respondent submitted an appeal regarding CalPERS' determination that his 10% K-9 Handler pay could not be included in his final compensation amount. The matter was heard by the Office of Administrative Hearings on August 30, 2021. Respondent County of Sacramento (County) did not appear at the hearing and the matter proceeded as a default hearing against the County pursuant to Government Code section 11520, subdivision (a). A Proposed Decision was issued on January 10, 2022, affirming CalPERS' determination and denying Respondent's 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 page five, paragraph 10 and footnote two as well as page six, paragraph 13 of the proposed decision by substituting "CCR 571" in place of "CCR 570," and hereby adopts as its own Decision the Proposed Decision dated January 10, 2022, as modified, concerning the appeal of Stephen M. Lecouve; 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 January 10, 2022, concerning the appeal of Stephen M. Lecouve; 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 January 10, 2022, concerning the appeal of Stephen M. Lecouve, 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 January 10, 2022, concerning the appeal of Stephen M. Lecouve, 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 Stephen M. Lecouve, 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 Stephen M. Lecouve.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Anthony Suine
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Customer Services and Support