



Board of Administration

Agenda Item 8a2

November 20, 2024

Item Name: Proposed Decision – In the Matter of the Appeal of Accepting the Application for Industrial Disability Retirement of MICHAEL P. LILLIE, Respondent, and 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 Michael P. Lillie'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

CalPERS determined that Respondent is not eligible to apply for industrial disability retirement pursuant to *Haywood* and its progeny. CalPERS further determined that Respondent is not eligible to receive retiree health benefits. Respondent appealed both determinations. The matter was heard by the Office of Administrative Hearings on August 1, 2024. A Proposed Decision was issued on September 5, 2024, affirming CalPERS' determinations, and denying the appeals. California Department of Corrections and Rehabilitation (CDCR) did not appear at the hearing, and a default was taken as to CDCR only pursuant to Government Code section 11520, subdivision (a).

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, subdivision (c)(2)(C), which authorizes the Board to "make technical or other minor changes in the proposed decision," hereby modifies the Proposed Decision by removing the first two sentences of paragraph 10, on page 11 of the Proposed Decision: "As an initial matter, Government Code section 20160 does not apply to retiree health benefits. Although its text does not

expressly disclaim application to retiree health benefits, it is part of a different statutory scheme to PEHMCA.” and hereby adopts as its own Decision the Proposed Decision dated September 5, 2024, as modified, concerning the appeals of Michael P. Lillie; 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 September 5, 2024, concerning the appeals of Michael P. Lillie; 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 September 5, 2024, concerning the appeals of Michael P. Lillie, 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 September 5, 2024, concerning the appeals of Michael P. Lillie, 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 appeals of Michael P. Lillie, 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 appeals of Michael P. Lillie.

Budget and Fiscal Impacts: Not applicable

Attachments

Attachment A: Proposed Decision

Attachment B: Staff's Argument

Attachment C: Respondent(s) Argument(s)

Kimberly A. Malm
Deputy Executive Officer
Customer Services and Support