



Board of Administration

Agenda Item 8a4

November 20, 2024

Item Name: Proposed Decision – In the Matter of the Appeal of Reinstatement from Industrial Disability Retirement of ERIC M. JOHNSON, Respondent, and CALIFORNIA HEALTH CARE FACILITY, 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 Eric M. Johnson'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

On June 15, 2021, CalPERS received an application for industrial disability retirement based on orthopedic (lumbar, thoracic, and cervical) conditions from Respondent. CalPERS approved his application on November 22, 2021, and Respondent retired for disability effective November 30, 2021.

On August 22, 2023, Respondent was reevaluated. CalPERS determined that Respondent is no longer incapacitated from performing the duties of a Correctional Officer for California Health Care Facility, California Dept. of Corrections and Rehabilitation (Respondent CDCR). Respondent appealed this determination, and the matter was heard by the Office of Administrative Hearings on September 16, 2024. Both Respondent and Respondent CDCR failed to appear at the hearing, so the case proceeded as a default against both Respondents pursuant to Government Code section 11520, subdivision (a). A Proposed Decision was issued on September 20, 2024, affirming CalPERS' determination, and denying Respondent's 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 September 20, 2024, concerning the appeal of Eric M. Johnson; 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 September 20, 2024, concerning the appeal of Eric M. Johnson, 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 September 20, 2024, concerning the appeal of Eric M. Johnson, 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 Eric M. Johnson, 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 Eric M. Johnson.

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
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Customer Services and Support