



Appeals Committee

Item Number 2 – Open Session

Subject: Approval of Minutes for the June 14, 2021 Appeals Committee Meeting – Open Session

Presenter(s): Chairperson

Item Type: Consent Action

Date & Time: August 31, 2021 – 0 minutes

Attachment(s): None

PowerPoint(s): None

PROPOSED MINUTES

Teachers' Retirement Board – Appeals Committee Meeting

June 14, 2021

OPEN SESSION

LOCATION: Web Conference, Public Comment taken via phone, in accordance with Executive Order N-29-20 and N-33-20

COMMITTEE MEMBERS PRESENT

Denise Bradford, Chairperson
Sharon Hendricks
Karen Yamamoto

STAFF PRESENT

William Perez, Chief Benefits Officer
Teresa Shilling, Public Affairs Executive Officer
Melyssa Adams, Director, Disability and Survivor Benefits
Diane Alsup, Director, Service Retirement
Lucy Arbuckle, Director, Accounting
Cheryl Cervantes Dietz, Director, Enterprise Compliance Services
Reina G. Minoya, Assistant General Counsel
Jeff Zimmer, Director, Employer Services

Linda Chang, Pension Program Manager III
Kaitlin DuBray, Pension Program Manager III
Kimberley Petz, Pension Program Manager III
David Walton, Pension Program Manager III
Jody Cozad, Pension Program Manager II
Nicole Snyder, Staff Services Manager II
James Stassi, Pension Program Manager II
Linda Armstrong, Pension Program Manager I
Beth Ruggiero, Pension Program Manager I
Salvador Sanchez, Associate Governmental Program Analyst
Monica Sihombing, Associate Pension Program Analyst
Saideh Dadras, Senior Counsel
Kati Franck, Senior Counsel
James Lindsay, Senior Counsel
Braden Pate, Senior Counsel
Brian Sytsma, Counsel
Trevor Young, Counsel
Summer Harrison, Senior Counsel

OTHERS PRESENT

Chris Waddell, Olson Remcho, LLP (Independent Counsel to the Appeals Committee)
Kenneth Isenhardt
Sandy Keaton
Kevin Welch, CTA

A quorum being present, Chairperson Bradford called the Open Session meeting of the Appeals Committee meeting to order at 10:00 a.m.

I. APPROVAL OF COMMITTEE AGENDA (Item 1)

MOTION duly made by Ms. Hendricks, seconded by Ms. Yamamoto, and carried to approve the Committee Agenda.

Members Voting	Aye	Nay	Abstain
Ms. Hendricks	X		
Ms. Yamamoto	X		
Chairperson Bradford	X		

II. APPROVAL OF MINUTES FOR THE APRIL 2, 2021, APPEALS COMMITTEE MEETING – OPEN SESSION (Item 2)

MOTION duly made by Ms. Yamamoto, seconded by Ms. Hendricks, and carried to approve the minutes for the April 2, 2021, Appeals Committee meeting – Open Session.

Members Voting	Aye	Nay	Abstain
Ms. Hendricks	X		
Ms. Yamamoto	X		
Chairperson Bradford	X		

III. CONSIDERATION OF PROPOSED ADMINISTRATIVE DECISION (Item 3)

- a. In the Matter of the Retirement Benefits of: Kenneth Isenhart

The committee received a presentation from Mr. Lindsay and Mr. Stassi regarding the proposed decision by the administrative law judge in *In the Matter of Retirement Benefits of: Kenneth Isenhart*. The committee discussed the burden of proof and confirmed that it was on the member to establish their rights to a disability benefit. The committee also clarified that there were three separate bases for denial of the appeal as outlined by the administrative law judge – Mr. Isenhart did not meet the definition of “disability” because he was not unable to perform his duties with or without reasonable accommodation; he did not make a request to his employer for reasonable accommodations, although his employer did provide him with various accommodations; and he did not provide the necessary documentation to establish his right to a disability benefit. The committee learned about the ability of a member to receive a service retirement while their disability application is being reviewed. The committee also learned that while the administrative law judge only needed one reason to affirm denial of the disability application, she found in favor of CalSTRS on all three grounds.

The committee heard from Mr. Isenhart who expressed his issues with the proposed decision. The committee acknowledged receipt of his email.

Staff recommended the committee adopt the proposed decision, with the technical or other minor changes identified in the committee materials on Item 3a, page 3 and two additional changes: on page 11, paragraph 20, line 1 change “stopping” to “stooping” and on page 17, paragraph 44, line 2 change “November 20, 2013” to “November 20, 2014.” The committee confirmed that the second recommended change identified in the committee materials was non-substantive and a typographical error.

IV. REVIEW OF COMMITTEE CHARTER (Item 4)

The committee received a presentation from Ms. Minoya recommending minor changes to the Appeals Committee charter, which included changing “Benefits & Services Executive Officer” to “Chief Benefits Officer” to reflect the change in position title and to delete references to the specific section number of the Board Policy Manual in which the Policy on Designating Precedential Decisions is located. The committee discussed the technical changes recommended by staff, including confirming that the section number of the Board Policy Manual was being deleted in order to prevent the need for future changes to the charter solely to reflect updates to the pagination and section numbers of the Board Policy Manual, and did not reflect any substantive changes.

MOTION duly made by Ms. Hendricks, seconded by Ms. Yamamoto, and carried to approve the recommended changes to the Appeals Committee charter.

Members Voting	Aye	Nay	Abstain
Ms. Hendricks	X		
Ms. Yamamoto	X		
Chairperson Bradford	X		

V. EDUCATION: APPEAL ISSUE SERIES – EMPLOYER SERVICES (Item 5)

The committee received a presentation from the Employer Services Division (formally Member Account Services) regarding an overview of the appeal issues it has administered in the last five calendar years, as well as its statistical data on Decision letters, Determination letters, and requests for administrative hearings.

The committee received a presentation from Mr. Cozad regarding the Compensation Review Unit’s role in the administrative appeal process. The committee learned about the focus of the unit and its sources of information. The committee learned that 62 Decision letters were issued during the relevant timeframe, in which approximately half went through the Executive Review process, and 12 administrative hearings were ultimately requested. The committee discussed the unit’s role in determining non-creditable compensation and learned that hundreds of cases were reviewed through this process.

The committee received a presentation from Ms. Snyder regarding the Communications and Analytics Team’s administrative appeal process. The committee received general information on how the team receives appeal cases. The committee learned that 12 Decision letters were issued during the relevant timeframe, 11 Determination letters were issued, and seven administrative hearings were requested. The committee asked about the

implication of the number of requests decreasing at each level of review and learned about the communications staff provide to members and employers to help them understand the various issues. The committee commended the team's low number of appeals especially in light of the number of members and staff's proactive approach with members and employers. The committee discussed the critical need for communication and feedback to members and employers.

VI. COMMITTEE WORK PLAN INPUT FOR FISCAL YEAR 2021-22 (Item 6)

The committee received a presentation from Ms. Minoya regarding the proposed work plan and identifying educational topics for the committee. The committee discussed topics such as the patterns or challenges that may lead to appeals relating to the service retirement process, including benefit planning sessions, and whether BenefitConnect will help any such challenges. The committee also inquired about learning more about the audit resolution and appeal process in BenefitConnect. Additionally, the committee requested a refresher training on the precedential decision designation process and a review of the precedential decisions it has designated.

VII. ANNUAL SUMMARY OF APPEAL ACTIVITY FOR FISCAL YEAR 2020-21 (ITEM 7)

The committee received a presentation regarding the appeal activity for fiscal year 2020-21 from Mr. Lindsay. The committee learned that it had considered three proposed decisions in the past fiscal year, and the main reason for this low volume was because of COVID-19 and various phases of resulting delay. Initially when the pandemic hit in March 2020, the Office of Administrative Hearings closed and since it could not hold in-person hearings, it took time for OAH to navigate how to hold hearings virtually. Starting in about summer of 2020, litigants did not want to undertake virtual hearings so there were many continuance requests as they hoped COVID would resolve and in-person hearings could be conducted. Once many litigants realized the situation was not changing, hearings began to be conducted virtually in late fall of 2020, and the committee began considering those proposed decisions through the end of the fiscal year.

The committee learned that the lowered level of OAH activity in fiscal year 2020-21 also related to CalSTRS having a productive prior year of hearings with seventeen proposed decisions being considered by the committee. The committee received information that because there was a high volume of proposed decisions considered the prior fiscal year, that increased the number of writ of mandate actions this past fiscal year, with six petitions for writ of mandate filed following committee decisions. In addition, the committee learned that of the six direct actions that were filed in superior court, four were filed by systemic members impacted by prior employer audits, which is reflective of the increased systemic member litigation.

VIII. ANNUAL SUMMARY OF DESIGNATION OF PRECEDENTIAL DECISIONS FOR FISCAL YEAR 2020-21 (ITEM 8)

The committee received information from Mr. Lindsay that during the 2020-21 fiscal year, the committee did not designate any precedential decisions.

IX. STAFF REPORT (ITEM 9)

The committee received the staff report from Ms. Minoya concerning the need to schedule a meeting prior to mid-September 2021 to consider a proposed decision. The committee discussed the continued utilization of technology and other remote opportunities to meet, as well as considering returning to hold committee meetings along with the regular board meetings.

X. REVIEW OF INFORMATION REQUESTS (Item 10)

There were no requests for information.

XI. OPPORTUNITY FOR STATEMENTS FROM THE PUBLIC (Item 11)

The committee received Mr. Isenhardt's public comment regarding utilizing medical professionals to evaluate disability applications.

RECESS

The Open Session of the committee meeting recessed at 11:22 a.m. and the committee went into Closed Session. The committee reconvened in Open Session at 12:06 p.m.

XII. ANNOUNCEMENT OF ACTIONS TAKEN ON PROPOSED ADMINISTRATIVE DECISION (Item 15)

a. In the Matter of the Retirement Benefits of: Kenneth Isenhardt

The committee adopted the proposed decision *In the Matter of the Retirement Benefits of: Kenneth Isenhardt*, with the additional changes discussed during Item 3, as reflected below:

1. On page 3, line 3, change "CalSTRS" to "CalSTRS'."
2. On page 8, paragraph 9C, line 4, change "participate" to "had not participated."
3. On page 8, paragraph 10, line 1, change "decision" to "Determination."
4. On page 9, paragraph 13, line 2, change "2004/2005" to "2004-2005."
5. On page 13, paragraph 28, line 2, change "from 2014 until 2015" to "the 2013-2014 school year."
6. On page 11, paragraph 20, line 1 from "stopping" to "stooping."

7. On page 17, paragraph 44, line 2 from “November 20, 2013” to “November 20, 2014.”

XIII. ADJOURNMENT

There being no further business to conduct, Chairperson Bradford adjourned the Appeals Committee meeting at 12:09 p.m.

Jack Ehnes, Chief Executive Officer
And Secretary to the Teachers’ Retirement Board

Denise Bradford, Chairperson

Prepared by: Summer L. Harrison, Senior Counsel