

ATTACHMENT C

RESPONDENT'S ARGUMENT

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9 BOARD OF ADMINISTRATION
10 CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

11 In the Matter of the Application for Industrial)
12 Disability Allowance of:)
13 LANIECE P. CLAUSELL,)
14 Respondent,)
15 v.)
16 CALIFORNIA STATE PRISON,)
17 CORCORAN, CALIFORNIA DEPARTMENT)
18 OF CORRECTIONS AND)
19 REHABILITATION,)
20 Respondent.)

OAH Case No. 2020-120640
Agency Case No. 2020-0962
RESPONDENT LANIECE
CLAUSELL'S OBJECTION TO THE
PROPOSED DECISION
Hearing Date: March 2, 2021
CalPERS Board Meeting: June 16, 2021

21 INTRODUCTION

22 CalPERS member, Laniece Clausell objects to the Proposed Decision in the above
23 referenced hearing on her application for an industrial disability retirement. Objections are for
24 misapplying applicable law, *Haywood v. American River Fire Protection District* (1998) 67
25 Cal.App.4th 1292 (*Haywood*,) and its progeny because Ms. Clausell was never in danger of
26 being terminated for cause when she resigned.

27 Ms. Clausell respectfully requests this board to review the Closing Briefs, the evidence
28 referred to in those briefs and to exercise its authority under the California Government Code to
process her application for industrial disability retirement. *California Government Code § 11517*

1 The *Haywood* court said, "*that where an employee is terminated for cause* and the
2 discharge is neither the ultimate result of the disabling medical condition nor preemptive of an
3 otherwise valid claim for disability retirement, the termination of the employment relationship
4 renders the employee ineligible for disability retirement."

5 The Proposed Decision misapplies the intent behind the *Haywood case*, and its related
6 subsequent cases. The facts in every of these cases cited by CalPERS in support of their
7 cancellation have a member who was terminated for cause or in an attempt to circumvent
8 termination for cause, resigned. This is not the case here. There was no discipline pending or a
9 risk of being terminated for cause.

10 SUMMARY OF ARGUMENT

11 Ms. Clausell's application for an industrial disability retirement should not have been
12 cancelled because the *Haywood case*, Smith case nor the Vandergoot decision support the
13 cancellation under the facts here.

14 The Proposed Decision States:

15 14. As explained in detail in the Legal Conclusions below, the holdings in *Haywood* and
16 its progeny are that the permanent termination of the employer- employee relationship
17 renders the former employee ineligible for disability retirement, so long as termination is
18 neither the ultimate result of a disability nor preemptive of a valid claim for disability
19 retirement. It does not matter whether termination of the relationship was caused by the
former employee's dismissal from employment for cause (*Haywood*, her voluntary
resignation and permanent waiver of any right to reinstate to her former position
(*Vandergoot*), or that there was an impending ruling on a claim for disability pension that
was delayed (*Smith*)³. (*Proposed Decision, Page 8*)

20 As discussed below, the proposed decision misses that being ineligible for a disability
21 retirement applies "*When public employee is fired for cause*" or in circumstances when
22 termination for cause is imminent. In each of the cases cited, the applicant was facing
23 termination. Ms. Clausell was never in danger of being terminated.

24 Since, Ms. Clausell was not facing discipline or in danger of termination for cause, the
25 argument that she is not eligible for a disability retirement because she signed the settlement
26 agreement that states she is ineligible for re-hiring does not apply here.

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1 ARGUMENT

2 I

3 CALPERS' NOTIFICATION OF CANCELLATION OF MS. CLAUSELL'S
4 APPLICATION FOR AN INDUSTRIAL DISABILITY RETIREMENT PROVIDE
5 REASONS FOR THE CANCELLATION NOT SUPPORTED BY THE RECORD

6 CalPERS notified Ms. Clausell that her application for an industrial disability retirement
7 was cancelled for the following reasons:

8 "We have determined that your employment ended for reasons which were not related to
9 a disabling medical condition. *When an employee is separated from employment as a*
10 *result of disciplinary action or the employee enters into a settlement agreement where the*
11 *employee chooses to voluntarily resign in lieu of termination, and the discharge is neither*
12 *the ultimate result of a disabling medical condition nor preemptive of an otherwise valid*
13 *claim for a disability retirement, termination and/or mutual understanding of separation*
14 *from employment due to a pending adverse action renders the employee ineligible to*
15 *apply for a disability retirement."* (Exhibit 5, Page 1, PERS044)

16 The parties can agree that none of the above listed reasons by CalPERS apply here. Ms.
17 Clausell did not:

18 1) separate from employment as a result of disciplinary action; 2) voluntarily enter into a
19 settlement agreement where she chose to voluntarily resign in lieu of termination; 3) face
20 discharge that is neither the ultimate result of a disabling condition nor preemptive of an
21 otherwise valid claim for disability retirement; 4) terminate and/or was there a mutual
22 understanding of separation from employment due to a pending adverse action renders the
23 employee ineligible to apply for disability retirement.

24 1) Ms. Clausell was not separated from employment as a result of disciplinary action, she
25 resigned. 2) She did not voluntarily resign in lieu of termination because not in danger of being
26 terminated. 3) She was not discharged, and 4) there was no pending adverse action.

27 CalPERS' letter continues:

28 Our decision is based on *Haywood v. American River Protection District* (1998) 67
Cal.App.4th 1292, *Smith v. City of Napa* (2204) 120 Cal.App.4th 194, *Martinez v. Public*
Employees Retirement System (2019) 33 Cal.App.5th 1156, as well as the CalPERS
Precedential Decisions *in the Matter of the Application for Industrial Disability*
Retirement of Robert Vandergoot (2013) CalPERS Presidential Decision No. 13-01 and
In the matter of accepting the application for industrial disability retirement of Philip
MacFarland (2016) CalPERS Precedential Decision Number 16-01.(Exhibit 5, Page 1,
PERS044)

Ms. Clausell was not terminated for cause, not in danger of being terminated for cause
and did not resign in lieu of termination. What is happening here was not the intent of the
Haywood Court and it said so in its subsequent decision in *Smith*.

1 IV
2 THE HAYWOOD v. AMERICAN RIVER FIRE PROTECTION DISTRICT AND
3 RELATED CASES

4 A. The Haywood Case

5 CalPERS cancelled Ms. Clausell's application for an IDR based on the *Haywood* and
6 related cases.

7 The *Haywood* Court concluded: *When public employee is fired for cause*, and when
8 discharge is neither the ultimate result of disabling medical condition nor preemptive of
9 an otherwise valid claim for disability retirement, *termination of employment
relationship renders employee ineligible for disability retirement*, regardless of whether
10 timely application for such benefits has been filed. West's Ann.Cal.Gov.Code § 21156.
11 *Haywood v. American River Fire Protection Dist.* (1998) 67 Cal.App.4th 1292 [79
12 Cal.Rptr.2d 749]

13 As noted just below in the *Smith* case, this Court clarified that in reaching its conclusion
14 in *Haywood*, "*dismissal for good cause... was essential to... our analysis.*" The court frames
15 when its conclusion applies. It concludes that, "Termination of employment relationship renders
16 employee ineligible for disability retirement." It also tells us when it applies.... "When a public
17 employee is fired for cause." That is, termination of the employment relationship renders
18 employee ineligible for disability retirement...when a public employee is terminated for cause.
19 CalPERS has ignored this limitation placed by the *Haywood* court in this application and
20 probably others.

21 The *Smith* court, the same court that decided *Haywood* further expands on these
22 limitations.

23 B. The Smith Case

24 The *Smith* case touches more on the exceptions of *Haywood* cancellations, however, there
25 is a statement by the Court that is fundamental in reaching their conclusions in both the *Haywood*
26 and *Smith* Cases

27 In discussing *Haywood*, the *Smith* Court states:

28 "In the first place, *our conclusion that a dismissal for good cause* unrelated to a medical
disability *disqualifies an employee for a disability retirement was essential to the
dispute before us and our analysis.* Nothing about it exceeds the necessary *ratio
decidendi* of the case. We therefore reject the plaintiff's characterization of the principle
as mere unpersuasive dicta." *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 204 [14
Cal.Rptr.3d 908, 914]

The *Smith* Court discusses their previous decision in *Haywood* and explains that in

1 reaching their conclusion “dismissal for good cause” was essential to their rationale and analysis.
2 Since, Ms. Clausell was not dismissed for cause, none of these cases apply. Ms. Clausell
3 strongly believes that under the facts of her situation, the *Haywood* Court will reach a different
4 conclusion allowing her to be eligible to apply for an industrial disability retirement.

5 **C. The Martinez Case**

6 In the Martinez Case, The Court of Appeal held that:

7 “1 amendment to disability retirement statute did not supersede *Haywood v.*
8 *American River Protection Dist.*, 79 Cal.Rptr.2d 749, or *Smith v. City of Napa*, 14
9 Cal.Rptr.3d 908, under which public employees ordinarily lost claim for disability
retirement *when terminated for cause*, except under certain circumstances, and

10 2 Board's interpretation of disability retirement law was not clearly erroneous, and
thus would be given great weight.

11 *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156
12 [245 Cal.Rptr.3d 693, 33 Cal.App.5th 1156], review denied (June 26, 2019)

13 Holding “2,” the Court concluded that CalPERS’s interpretation in the *Vandergoot*
14 decision was not clearly erroneous in finding that when an employee *settled pending termination*
15 *for cause and* agreed not to seek re-employment, that was tantamount to dismissal, thus
16 precluding disability retirement, “and thus would be given great weight in action by former
17 public employee and labor union challenging Board's cancellation of her disability retirement
18 application based on settlement of pending termination for cause; Legislature and Board had
19 decided that resignation effected “permanent separation” from state service, and *resignation*
20 *under those circumstances appeared to be tantamount to dismissal for purposes of determining*
21 *whether retirement disability was precluded.* Cal. Gov't Code §§ 11425.60(b), 19996, 21156;
22 Cal. Code Regs. tit. 2, § 446.” *Martinez v. Public Employees' Retirement System* (2019) 33
23 Cal.App.5th 1156 [245 Cal.Rptr.3d 693, 33 Cal.App.5th 1156], review denied (June 26, 2019)”

24 Again, the Court finds its conclusion on a termination for cause.

25 **D. The Vandergoot Decision**

26 As with the cases above, the *Vandergoot* decision does not apply here for the same
27 reason, Ms. Clausell was not terminated for cause or in danger of being terminated for cause.

28 The *Vandergoot* Decision in its Legal Conclusions 3-5 states:

1 3. *Where an employee is fired for cause* and the discharge is neither the ultimate result of
2 a disabling medical condition nor preemptive of an otherwise valid claim for disability
3 retirement, termination of the employment relationship renders the employee ineligible
4 for disability retirement. (*Haywood v. American River Fire Protection District* (1998)
5 67 Cal. App.4th 1292, 1297.) The Third District Court of Appeal **explained that the
6 dismissal** "constituted a complete severance of the employer/employee relationship, thus
7 eliminating a necessary requisite for disability retirement the potential reinstatement of
8 his employment relationship with the District if it ultimately is determined that he is no
9 longer disabled." (Ibid.)

6 4. CalPERS demonstrated that respondent's separation from employment was *tantamount*
7 *to a dismissal* for purposes of applying the Haywood criteria. (See Findings 16 through
8 19.) It was also established that respondent's separation from employment was not the
9 ultimate result of a disabling medical condition.

9 The *Vandergoot* decision states that under the circumstances where an employee is facing
10 termination for cause and avoids termination by resigning, the resignation is the same as a
11 dismissal for purposes of applying *Haywood*. The *Vandergoot* decision, along with the other
12 cases do not apply because Ms. Clausell was not terminated for cause or facing termination.


13 All these cases that stem from the *Haywood* decision have one thing in common, the
14 member was terminated for cause or was in danger of being terminated for cause. We must not
15 ignore that the Court states that "termination for good cause" is essential in the analysis and
16 conclusions it reached.

17 The facts of Ms. Clausell's case do not support the fundamental requirement of
18 "termination for good cause" for cancelling applications under *Haywood*.

19 CONCLUSION

20 Laniece Clausell respectfully submits that cases relied upon by CalPERS to cancel her
21 application do not apply to her. She respectfully requests CalPERS to process her application
22 without further delay.

23 Dated: May 11, 2021

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26 Attorney for Respondent
27 Laniece Clausell
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