

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Trever R. Dalton (Respondent) was employed by Respondent California Highway Patrol (CHP) as a CHP Officer beginning December 11, 2006. By virtue of his employment, Respondent is a state safety member of CalPERS.

On December 5, 2017, Respondent was off duty. He became inebriated and got into an altercation with a neighbor in the neighbor's driveway. Respondent went home but returned to the neighbor's driveway, drew his firearm, and shot at his neighbor twice. One bullet struck the neighbor in the back. The Ventura County Police Department officers arrested Respondent and charged him with violating Penal Code section 245, subdivision (a)(2) (assault with a firearm), a felony.

On December 7, 2017, CHP placed Respondent on leave of absence with pay, pending its investigation of the shooting incident. In the notice, CHP relieved Respondent of all his duties as a CHP Officer.

On April 7, 2018, Respondent applied for Industrial Disability Retirement (IDR) based on Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder caused by "cumulative trauma" he experienced during his employment with CHP. As part of its review of Respondent's IDR application, CalPERS scheduled Respondent for an Independent Medical Examination (IME) on August 8, 2018, with Lawrence Warick, M.D., Ph.D., a board-certified Psychiatrist.

On July 18, 2018, CHP served Respondent with a Notice of Adverse Action (NOAA) terminating his employment effective August 8, 2018. The NOAA was based primarily on the shooting incident that occurred in his neighbor's driveway.

On August 7, 2018, one day before the effective date of his termination, Respondent resigned from his position as a CHP Officer. Respondent's letter of resignation stated that during his years as a CHP Officer, he "developed physical, emotional and cognitive symptoms that are a result of stress." He further stated that he was recently diagnosed with PTSD and Major Depression and that his symptoms made it impossible for him to perform his work duties.

By letter dated August 8, 2018, CHP wrote to Respondent:

On August 7, 2018, at 1700 hours, I received your written resignation from your position of *Officer* with the California Highway Patrol, in lieu of *Adverse Action* being taken against you.

As such, your employment with the Department has officially terminated, effective August 7, 2018, at 1700 hours. You may only reinstate with the Department at the discretion of the Commissioner.

On August 8, 2018, one day after Respondent resigned from the CHP, Dr. Warick conducted his examination of Respondent and prepared a summary of his findings upon examination. Respondent told Dr. Warick that he stopped drinking alcohol since the shooting incident in December 2017. He also told Dr. Warick that, in connection with a workers' compensation claim he filed in January 2018, he was seen a few times by a psychiatrist, Mark Nehoraya, M.D., and by a psychotherapist, Inés Monguió, Ph.D., whom he continued to see weekly. Dr. Warick reviewed documents, clinically interviewed Respondent, and applied the Millon Clinical Multiaxial Inventory IV.

Dr. Warick diagnosed Respondent with PTSD; Major Depressive Disorder; and Alcohol Abuse, currently in remission. Dr. Warick opined that Respondent was substantially incapacitated from performing his job as a CHP Officer. Dr. Warick suggested a re-evaluation in 12 months. On September 18, 2018, CalPERS approved Respondent for IDR. CalPERS placed Respondent on disability retirement effective August 8, 2018.

By letter dated October 2, 2019, CalPERS notified Respondent that his IDR was under review to determine whether he continued to remain substantially incapacitated from performing his job duties. CalPERS did not re-evaluate Respondent for continued eligibility and instead determined that Respondent was not eligible for IDR benefits.

By letter dated February 4, 2020, CalPERS informed Respondent:

We have determined that your employment ended for reasons which were not related to a disabling medical condition. When an employee is separated from employment as a result of disciplinary action or the employee enters into a settlement agreement *where the employee chooses to voluntarily resign in lieu of termination, and the discharge is neither the ultimate result of medical condition nor preemptive of an otherwise valid claim for disability retirement*, termination and/or a mutual understanding of separation from employment due to a pending adverse [action] renders the employee ineligible to apply for disability retirement.

CalPERS also notified Respondent that it was revoking his IDR benefit. CalPERS' determination letter cited the *Haywood (Haywood v. American River Fire Protection District)* (1998) 67 Cal.App.4th 1292, line of cases as well as the CalPERS Precedential Decisions in *In The Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (2013) CalPERS Precedential Dec. No. 13-01 (*Vandergoot*), and *In the Matter of Accepting the Application for Industrial Disability Retirement of Phillip MacFarland* (2016) CalPERS Precedential Dec. No. 16-01 (*MacFarland*).

Respondent appealed CalPERS' determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 7, 2022. Respondent was represented by counsel. CHP did not appear at the hearing.

At the hearing, Respondent testified that his position as a CHP Officer involved "working the road," responding to calls about traffic collisions, conducting investigations, and making traffic enforcement stops, among other duties. Respondent testified that he witnessed numerous vehicle accidents or their aftermath during his career with CHP, including fatal incidents. Respondent found many to be disturbing and traumatic. They gave him nightmares, flashbacks, anxiety attacks, and feelings of guilt about people he was powerless to help or save. He drank to self-medicate, which caused additional health complications.

Respondent presented documentary evidence of his various performance appraisals and memoranda as a CHP Officer. In a memorandum dated September 12, 2016, CHP referred Respondent to the Managed Healthcare, State of California, Employee Assistance Program (EAP), for assistance in resolving concerns about his self-reported drinking problem and its effects. The memorandum referred to a pattern of sick leave use, reports of his off-duty behavior, including walking in his neighborhood in an apparently inebriated state, and reports of his having "drunk dialed" CHP employees to have inappropriate and unprofessional conversations. The memorandum stated that Respondent's participation in the EAP would be voluntary, but that CHP would monitor Respondent's job performance and "may need to proceed with disciplinary action."

Respondent also presented medical records from Dr. Nehoraya, Dr. Monguió, and Dr. Warick relating to his psychological condition. Those medical records opined that Respondent suffered from PTSD and Major Depression because of cumulative trauma during his work as a CHP Officer.

Respondent also presented the testimony of Dr. Monguió. At the hearing Dr. Monguió testified that in March 2018, when she started treating Respondent, he was "a mess." He had a dismal attention span, was extremely anxious, and would startle at any sound from outside the room due to his PTSD. She testified that he has made progress in the past four years and continues to improve. She testified that Respondent decided to resign before he was fired because being fired would be too demeaning.

CalPERS staff testified that CalPERS was not aware that CHP served a NOAA terminating Respondent's employment or of Respondent's resignation effective August 7, 2018, when it approved his application for IDR on September 18, 2020. Staff testified that a termination due to a medical condition would be an exception to the application of *Haywood*, however, in this case, CalPERS did not consider Respondent's intoxication a medical condition. Further, CalPERS rejected the possibility that Respondent's PTSD was a disabling condition at the time of the shooting incident because there was no indication Respondent was receiving any psychological treatment for PTSD until after CHP started its investigation.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found that the legal precedent set forth in *Haywood* and its progeny did not apply in this case, because Respondent applied for IDR in April 2018, which was four months before his effective date of termination. The ALJ also found that the evidence established that Respondent was suffering from PTSD and depression before the December 2017 shooting and well before CHP terminated his employment. Further, the CalPERS' appointed IME psychiatrist diagnosed Respondent with PTSD and major depression at the time of his application for IDR. The ALJ held that the evidence in this case supported the conclusion that Respondent's discharge was the ultimate result of a medical condition or preemptive of an otherwise valid claim for disability retirement.

Government Code section 11517 (c)(2)(C) which authorizes the Board to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends changing the hearing date on page 1 of the Proposed Decision from March 15, 2021, to July 7, 2022, and changing the date in paragraph 4 on page 4 from December 4, 2017, to December 5, 2017.

For all the above reasons, staff recommends that the Proposed Decision should be adopted by the Board, as modified.

Austa Wakily
Senior Attorney