

**ATTACHMENT A**

**RESPONDENT'S PETITION FOR RECONSIDERATION**

1 STEVEN R. ROSALES, ESQ. SBN: 324565  
LAW OFFICE OF STEVEN R. ROSALES  
2 7056 Archibald Avenue, Suite 102-172  
Corona, CA 92880  
3 Phone: (866) 777-2193  
Fax: (866) 777-2193  
4



5 Attorney for Laniece P. Clausell

6  
7  
8 BOARD OF ADMINISTRATION  
9 CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM  
10

11	In the Matter of the Application for Industrial Disability Allowance of:	)	OAH Case No. 2020-120640
12	LANIECE P. CLAUSELL,	)	Agency Case No. 2020-0962
13	Respondent,	)	PETITION FOR RECONSIDERATION
14	v.	)	Hearing Date: March 2, 2021
15	CALIFORNIA STATE PRISON,	)	CalPERS Board Meeting: June 16, 2021
16	CORCORAN, CALIFORNIA DEPARTMENT	)	
17	OF CORRECTIONS AND REHABILITATION,	)	
18	Respondent.	)	

19  
20 Pursuant to Government Code Section 11521, CalPERS Member Laniece Clausell hereby  
21 files a Petition for Reconsideration of the CalPERS notice, dated June 17, 2021, notifying  
22 Member Laniece Clausell that CalPERS adopted the Administrative Judge's Proposed Decision  
23 to deny Laniece Clausell's application for an industrial disability retirement.

24 This Petition for Reconsideration is based on the premise that the evidence does not  
25 support the actions of the Retirement Board and that it acted in excess of their powers.

26 By adopting the administrative Proposed Decision, CalPERS exceeded their powers by  
27 not following the law outlined in the Government Code or the related case law.

28 The evidence does not justify the Proposed Decision. This Petition for Reconsideration is

1 based on primarily because the Court of Appeal stated that their decision in Haywood is to be  
2 viewed through the prism of a member being terminated for cause. Here, Ms. Clausell was not  
3 terminated for cause or in danger of being terminated for cause and her employer took advantage  
4 of her decision to resign by asking her to sign a settlement agreement, which was an illusory  
5 contract, where terms exist that she would not seek re-employment. At no time, was Ms.  
6 Clausell in danger of being terminated or have any pending discipline.

7 Member Laniece Clausell respectfully requests the Board to reconsider its decision to  
8 deny her eligibility to apply for disability retirement and to review the written briefs by all  
9 parties, the evidence referred to in those briefs and to exercise its authority under the California  
10 Government Code and grant her eligibility to apply/process her industrial disability retirement.

11 Ms. Clausell was denied the processing of her application under the “Haywood” case.

12 The *Haywood* Court concluded:

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

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

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

27 The *Smith* case touches more on the exceptions of *Haywood* cancellations, however, there  
28 is a statement by the Court that is fundamental in reaching their conclusions in both the *Haywood*

1 and *Smith* Cases

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

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

9 The *Smith* Court discusses their previous decision in *Haywood* and explains that in  
10 reaching their conclusion “dismissal for good cause” was essential to their rationale and analysis.  
11 Since, Ms. Clausell was not dismissed for cause, none of these cases apply. Ms. Clausell  
12 strongly believes that under the facts of her situation, the *Haywood* Court will reach a different  
13 conclusion allowing her to be eligible to apply for an industrial disability retirement.

14 Also, the *Smith* court opened the door to applying principles of equity in these cases:  
15 “Conceivably, there may be facts under which a court, applying principles of equity, will deem  
16 an employee’s right to a disability retirement \*207 to be matured and thus survive a dismissal for  
17 cause. This case does not present facts on which to explore the outer limits of maturity,  
18 however.” *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 206–207 [14 Cal.Rptr.3d 908,  
19 916]

20 The *Haywood* court concluded, “*that where an employee is terminated for cause* and the  
21 discharge is neither the ultimate result of the disabling medical condition nor preemptive of an  
22 otherwise valid claim for disability retirement, the termination of the employment relationship  
23 renders the employee ineligible for disability retirement.”

24 The CalPERS Board of Retirement may be tempted to continue to deny eligibility to  
25 members who sign an illusory agreement, and who have not been terminated for cause or in  
26 danger of being terminated for cause, but this would be a breach of its fiduciary duty and not  
27 what the Court of Appeal intended.

28 ///

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

Laniece Clausell requests the CalPERS Board of Retirement to Reconsider its decision to deny his application for an industrial disability retirement, review the written arguments/record and find that she is eligible to apply for an Industrial Disability Retirement.

Dated: June 22, 2021



Steven R. Rosales, Esq.  
Attorney for Respondent  
Laniece Clausell