

ATTACHMENT C

RESPONDENT'S ARGUMENT

FAX COVER SHEET

TO	BOARD SERVICE UNIT COORDINATOR
COMPANY	CALPERS
FAX NUMBER	19167953972
FROM	Larry Watkins
DATE	2023-10-19 18:32:14 GMT
RE	MONROE, RANDY oah 2023030282 CALPERS NO. 2022-0654

COVER MESSAGE

OPPOSITION TO DECISION OF ALJ FOR SUBMISSION TO THE BOARD AT
REGULAR MEETING 11-15-2023

1 LARRY WATKINS 188725
 2 4788 Rawhide Street
 3 Montclair, California 91763
 4 Office: 310 603-0300
 5 Cell 310 925-1600
 6 FAX: 310 603-0400

7 Attorney for Randy Monroe

8 STATE OF CALIFORNIA
 9 CAL PERS BOARD STATE OF CALIFORNIA

10	RANDY MONROE) Case No. OAH 2023030282
11) CALPERS REF NO. 2022-0654
12	APPELLANT)
13	V) APPELLANTS RANDY MONROE
14) WRITTEN ARGUMENT IN
15) OPPOSITION TO PROPOSED
16	CALIFORNIA DEPARTMENT OF) DECISION OF ALJ
17	CORRECTIONS AND	
18	REHABILITATION	
19	(CDCR) RESPONDANT	

20 The ALJ's Proposed Decision is completely out of line with Haywood and
 21 its progeny.

22 The ALJ in this case attempts to litigate a dismissed case. There is no
 23 case upon which a decision can be made. There was no agreement between
 24 CDCR and Monroe to forgo an appeal of disciplinary action. There was no
 25 agreement to swap disciplinary action for retirement. There was no act of
 retirement intended to contravene disciplinary action.

The application for disability retirement is an "Application" "Only" and
 not a decision as to whether Monroe is entitled to disability retirement.
 Therefore, the decision as to whether to accept the "Application" is one based
 only on Monroe's conduct with his initial employer. In this case, if the
 employer withdrew all charges without any condition's precedent, there is no

RANDY MONROE – Opposition to Proposed Decision by ALJ

1 employer/employee action upon which to base denial of the application itself
2 for disability retirement.

3 The ALJ misreads and misinterprets the circumstances of the charges
4 before CDCR dismissed and fails to give Monroe equal representation.

5 Under no circumstances can the ALJ resurrect charges that have been
6 dismissed and withdrawn. They are what they are and that is **DISMISSED and**
7 **WITHDRAWN.**

8 **Dictionary**

9 Data from Oxford Languages

10 Look It up

11 **dis·miss**

12 [dəˈsmɪs]

13 **VERB**

14 **dismissed** (past tense) · **dismissed** (past participle)

- 1. order or allow to leave; send away:
"she dismissed the taxi at the corner of the road"

15 SIMILAR:

16 release free disband disperse dissolve discharge

17 discharge from employment or office:

"CBS Records dismissed another 120 people"

18 SIMILAR: throw out get rid of discharge lay off oust expel

- treat as unworthy of serious consideration:

"it would be easy to dismiss him as all brawn and no brain"

19 SIMILAR: banish put away set aside lay aside abandon drop

- deliberately cease to think about:

"he suspected a double meaning in her words, but dismissed the thought"

20 SIMILAR: banish put away set aside lay aside abandon drop

- (of a group assembled under someone's authority) disperse:

"he told his company to dismiss"

- LAW

22 refuse further hearing to (a case):

23 "the judge dismissed the case for lack of evidence"

24 **A Judge's Decision**

1 The other case when something is withdrawn in court is when a decision is made to
2 remove the charges entirely for someone that is accused of committing a crime. In other
3 words, this isn't simply removing an objectionable line of questioning, this is erasing the
4 crime itself. There are two ways that this can work, with charges being withdrawn, or
5 stayed.

6 In the case of charges being stayed, this means that the court is no longer actively
7 pursuing a conviction in a case and will stop prosecuting *for the time being*. It is, in one
8 sense, considered a "dormant" case, but it is not outright canceled. When a court case
9 has been stayed, this simply means that the court and the resolution of a verdict, are
10 being put aside for now, but it is legally possible to revive the case and continue it at a
11 later date.

12 Under normal circumstances, stayed charges may be "revived" within one year of the
13 court decision, especially if another crime occurs by the defendant during that year.
14 When a charge is withdrawn, however, this means that the court has made the decision
15 to drop the charges permanently, and no longer seek prosecution.

16 The ALJ cannot refer to the charges because once withdrawn, they are
17 gone. They cannot be revived. CDCR's Employee Relations Officer believed
18 and testified that if Monroe returned to work, CDCR could revive the charges.
19 This is also patently wrong. If CDCR as a condition of withdrawal, indicated or
20 noticed that if Monroe returned to work, and in consideration of withdrawing
21 the charges, they could be reinstated, this possibly would be a viable
22 argument. The problem is that the Withdrawal and Dismissal of charges
23 carried no conditions and No Agreements (See Withdrawal Exhibit).

24 CDCR and likely the ALJ seem to believe that since CDCR served Monroe
25 with the **NOAA** (Notice of Adverse Action) after he retired, somehow, this
error can be remedied but it cannot. Haywood and its progeny based their
cases on the **NOAA** and the appellants knowledge of having **TIMELY** received
the **NOAA**. All of the cases then rely on what the Appellant did after he
received the **NOAA**. In essence, the Board said "No Cheating". There was none
here.

1 CDCR and this ALJ seem to want the Board to make new law
2 eviscerating the **NOAA** as a condition of disciplinary action and allow the
3 employing department to make up its own reasons for disciplinary action at
4 any time it chooses.

5 If this was to be the case, every retired person retiring or having retired
6 from State Service could be served a **NOAA** at any time after their retirement
7 and be forced to defend charges that may have been brought up years after
8 they retired, thereupon dissolving them of any retirement they receive, had
9 received, or will receive.

10 A **NOAA** (Notice of Adverse Action) says you did something while
11 working in State Service and we intend to discipline you for it and this is the
12 discipline we are imposing. (For Monroe) removal from State Service.
13 Here, they could not do it because Monroe has already retired and applied for
14 his disability. PERS did their due diligence and sent CDCR a request to give
15 notice of any pending disciplinary action. The Back to Work Officer checked
16 the box stating that Monroe is retiring and applying for disability in "GOOD
17 STANDING".

18 The ALJ says Monroe was sent a letter after he had retired telling him
19 his retirement was "Under Unfavorable Circumstances". This also cannot
20 legally be done after Monroe retired. If the letter was created before and sent
21 before Monroe retired, CDCR might have had an argument, although a losing
22 one but the letter was sent clearly after his retirement and before any **NOAA**
23 was delivered.

24 At ALJ paragraph 17, the ALJ writes that on April 12, 2022, after Monroe
25 had retired, the Return-to-Work Coordinator marked on the Cal Pers

1 Certification form "The member resigned in lieu of termination". Even
2 though this was a paper outright lie, the form clearly contravenes what she
3 wrote on the Cal Pers Certification form in March of 2022 that Monroe was in
4 good standing.

5 ALJ's paragraph 18, should never have been included in the report
6 because it contained clearly false information to Pers by the Assistant
7 Employee Relations Officer who was only an assistant as no true Employee
8 Relations Officer had been hired. This person "Lopez" admitted in the hearing
9 that she was only a Parole Agent II Assistant Supervisor and had no
10 management authority to speak for CDCR or espouse CDCR policy. ALJ's
11 paragraph was proved untrue by the Attorney who represented and signed
12 the Dismissal and Withdrawal of charges.

13 The ALJ reciting of the alleged circumstances of the incident resulting in the
14 charges that were withdrawn and dismissed is little more than an attempt to
15 inflame the reader because the charges were withdrawn and dismissed. The

16 ALJ did not even exclude those charges that were not filed against
17 Monroe. The ALJ was given the response by Monroe to those charges but
18 conveniently missed and omitted them. The ALJ failed to list that Monroe was
19 at the Settlement Conference to set a date for his formal appeal hearing when
20 his attorney heard language of retirement prior to the NOAA and brought that
21 issue to the floor.

22 These charges were not dismissed by the State Personnel Board but
23 dismissed and withdrawn by CDCR and signed by the Attorney representing
24 CDCR.

1 CDCR withdrew their charges and dismissed the case against Monroe at
2 the "Settlement Conference". The ALJ mentions that a Skelly hearing was held.
3 At Skelly, the employee has an opportunity to tell his side but may not call
4 witnesses to prove his case. Skelly provides for a hearing but leaves the
5 decision to the Employing Head who simply happens to be the person who
6 charged the employee in the first instance. Likely, Ms Lopez. The minimum
7 constitutional standard is "Notice and Opportunity to be heard and
8 Opportunity to be heard includes ability to call witness in one's defense.

9 For CDCR to say that Monroe retired in lieu of termination requires that
10 Monroe have had some say in denying or some conduct which shows he has
11 abandoned his right to be heard and call witnesses.

12 APPLICABLE CASE LAW

13 Haywood was terminated for cause **after** receiving his NOAA

14 Vandergoot was terminated for cause **after** receiving his NOAA

15 Smith was terminated for cause **after** receiving his NOAA.

16 Martinez received a NOAA but settled termination for cause and agreed never
17 to return to that employment.

18 MacFarland was served with his NOAA while still employed and dismissed for
19 reasons not involving disability and found not eligible because he was
20 scheduled to be fired the next day.

21 Our employee Monroe **was not** served with a NOAA until 10 days **after** he
22 retired. Monroe's injury was service related.

23 None of these cases step one iota into our circumstances or case and they
24 definitely do not mimic Haywood or its progeny.

25 Larry Watkins -
Attorney on behalf of RANDY MONROE

RANDY MONROE - Opposition to Proposed Decision by ALJ

-6-