

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Matthew Jeffery Allendorph (Respondent) was employed by the City of Antioch (Respondent City) as a Police Officer. By virtue of his employment, Respondent was a local safety member of CalPERS.

Respondent signed a "last chance agreement" (Agreement) with Respondent City on September 4, 2019, following an internal affairs investigation and a fitness-for-duty evaluation, triggered by issues related to Respondent's use of alcohol and a domestic disturbance. Under the Agreement, Respondent agreed that consuming or being under the influence of alcohol, either on-duty or off-duty, would be cause for termination. The Agreement also provided that Respondent's refusal to take an alcohol or drug test when ordered to do so would be a breach and would result in a termination.

On October 20, 2020, Respondent was involved in an incident that led to an internal affairs investigation and his ultimate termination. Officers from the Oakley Police Department (OPD) were dispatched to Respondent's residence to perform a welfare check. Respondent was intoxicated at the time of the incident and was hostile towards the responding officers. OPD contacted Respondent City's police department, and the OPD then asked Respondent to take an alcohol screening test at the direction of Respondent City, which Respondent refused.

On October 30, 2020, the Superior Court issued a three-year domestic violence restraining order against Respondent, which prohibits him from possessing a firearm. Respondent City did not learn of the restraining order from Respondent, but found out about it due to the internal affairs investigation.

On December 8, 2020, Respondent City issued Respondent a Notice of Intent to terminate his employment due to policy violations and violation of the Agreement. The stated reasons for Respondent's termination were: (1) his job as a police officer required him to carry a firearm, but he was prohibited from doing so by the restraining order, and he failed to notify Respondent City of the restraining order as required by policy; (2) he was hostile and disrespectful to Oakley police officers, which was conduct unbecoming and a violation of policy; and (3) he was intoxicated and refused to take an alcohol screening test, both in violation of the last chance agreement.

Through his legal counsel, Respondent submitted a written *Skelly*¹ response to his proposed termination on February 2, 2021. Respondent City upheld the termination in its February 16, 2021 Notice of Termination, which was effective that same day.

Respondent then appealed his termination to arbitration. Following a hearing on the appeal, the arbitrator upheld the termination in a decision dated July 15, 2022.

¹ Prior to the imposition of discipline, due process requires that public employees be allowed to respond to the alleged policy violations. The employee's response is commonly referred to as the *Skelly* hearing. (See *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.)

On October 22, 2020, Respondent signed an application for industrial disability retirement on the basis of an orthopedic (right shoulder) condition. After receiving the application, CalPERS requested that Respondent City provide employment records relating to Respondent.

Based on the February 16, 2021 Notice of Termination, CalPERS determined that Respondent was ineligible for industrial disability retirement pursuant to *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*) and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*).

The *Haywood* court found that when an employee is fired for cause and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement, termination of the employment relationship renders the employee ineligible for disability retirement. The ineligibility arises from the fact that the discharge is a complete severance of the employer-employee relationship. A disability retirement is only a “temporary separation” from public service, and a complete severance would create a legal anomaly – a “temporary separation” that can never be reversed. Therefore, the courts have found disability retirement and a “discharge for cause” to be legally incompatible.

The *Smith* court explained that to be preemptive of an otherwise valid claim, the right to a disability retirement must have matured before the employee was terminated. To be mature, there must have been an unconditional right to immediate payment at the time of termination unless, under principles of equity, the claim was delayed through no fault of the terminated employee or there was undisputed evidence of qualification for a disability retirement.

Respondent appealed this 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 September 6, 2022. Respondent represented himself at the hearing. Respondent City did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent’s questions and clarified how to obtain further information on the process.

A Respondent City Police Captain testified at the hearing. The Captain explained that Respondent was terminated from Respondent City, and his termination was final. The Captain also testified that the termination was not the ultimate result of a disabling medical condition, and that Respondent City did not terminate Respondent to preempt an application for disability retirement. The Notice of Intent to Terminate, the Notice of Termination, and the decision after arbitration were admitted into evidence through the Captain’s testimony.

Respondent testified on his own behalf. Respondent explained that he first injured his shoulder in February 2015, and underwent surgery shortly thereafter. Respondent

testified that he suffered additional shoulder trauma following the surgery, and submitted a workers' compensation claim in 2019. Because of his shoulder injury, Respondent City placed Respondent on workers' compensation leave in August 2020.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent's termination was not the ultimate result of a disabling medical condition, and it did not preempt an otherwise valid application for industrial disability retirement. Respondent may have been on approved leave for his injury at the time of the incident leading to his termination, but his disability was not mature because CalPERS had not yet ruled on the disability retirement claim.

Accordingly, the ALJ concluded CalPERS correctly cancelled Respondent's application for industrial disability retirement based on the operation of *Haywood* and *Smith*. Respondent's termination severed his employment relationship with Respondent City and precluded his application for industrial disability retirement.

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

November 16, 2022

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