

ATTACHMENT C

RESPONDENT'S ARGUMENT

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To BOARD SERVICES UNIT COORDINATOR From MATTHEW ALVENDORPA

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Date 10/27/22 Total pages 5

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AGENCY CASE # 2021-0883
 OAH No. 2022030225

Respondent's Argument

To The Board Services Unit Coordinator:

Respondent is writing this in response to Judge Holly M. Baldwin's proposed decision.

I want to start by noting that I am obviously not an Attorney. My reason for representing myself in this case was due to not having the funds to afford legal assistance.

I was hired by Martinez Police Department and started with CalPERS in May 2012. Prior to my service as a Police Officer, I enlisted and served in the United States Army for 5 years from 2004-2009. During my time in the Army, I spent approximately 27 months in Iraq on Combat Deployments. Upon completion of my Army Service, I was given an Honorable Discharge, and had many combat and garrison related awards and commendations. I received no disciplinary actions during my time in the Army outside of verbal counseling at times and remedial training. I was promoted to the rank of Sergeant and supervised up to 12 Soldiers at a time.

I was hired by Martinez Police Department and started with CalPERS in May 2012 (3% @50). I had excellent evaluations during my time in Martinez, and no citizen complaints. I made the lateral transfer to Antioch PD in February 2014. The facts contained in the proposed decision are generally accurate. I understand that I was terminated for cause in February 2021. I am not here to dispute the termination as that is a separate issue.

Judge Baldwin stated in the proposed decision that respondent did not meet the requirements for any exceptions to the Haywood Rule. The following facts are reasons the exception should apply to this case.

1. This should be considered a mature claim, prior to not only termination, but even mature prior to the incident that led to termination (10/20/20). While working modified duty full time, I was ordered by Captain Schnitzius to go home and begin my disability (4850) time. This happened on August 13th, 2020. Again, I was on full duty status at that time, but was working modified duty so I was not on patrol. I was not given a choice in this matter, and Captain Schnitzius told me at that time, Antioch PD could help me "expedite" my industrial retirement. I had been told by Dr. Brose (Work Comp Qualified Medical Evaluation on June 30th, 2020, that I would unfortunately have to take a disability retirement because I had reached the point of maximum medical intervention. Then, on August 18th just five days later, I was ordered to meet with the Director of Human Resources for the City Of Antioch. This meeting was specifically to see if the city could find me another job with the same pay and benefits that would allow me to work with my "permanent" restrictions. There was no such job located.

These above stated facts would lead any reasonable person to believe that the industrial retirement was already in process by the city. I was under the impression at that time that I was waiting on the city to process my retirement. I mean this to say, I believe my industrial disability retirement claim was mature at that time. The long part of this process was the five years of continued pain and attempted medical intervention. Then being told, even after approximately 9 years of good service to the citizens of both Antioch and Martinez, that I would have no choice but to give up the career I love and retire. I believe it was obvious at that time, the "maturity" of the IDR was at a point of application to PERS. Since early 2019 I was going through a very contentious divorce and ongoing custody battle of two young children. This along with the Veteran's Affairs Hospital advising that I was 100% disabled due to ongoing PTSD, was a huge amount of stress and pressure. My ex wife was making several accusations against me in an attempt to gain full custody. In a decision written by Judge Benjamin Reyes (Contra Costa County), Judge Reyes stated that my ex wife had run a "campaign" to keep our two children away from me. This decision was not until December 2021, showing how long this issue has been going on.

This to say, I simply did not know what to do at that point. To think about all the personal and family court issues I had going on, the VA rating me at 100% disability, major financial issues, missing out on important dates with my children, and Antioch PD telling me the can "expedite" my retirement, I was overwhelmed, extremely stressed out and emotional. I believe it is obvious that Antioch PD administration knew they were better off by hurrying my retirement they could fill the position with a new, healthy Officer. This was during massive hiring procedures by Chief Brooks.

It also should be noted, I have been diagnosed with "Alcohol Use Disorder" by my Psychologist Dr Clair Howard in Antioch. Alcoholism is recognized as a disability.

I was on 4850 leave for over 2 months from August to October. During that time, I was trying to figure out exactly what I needed to do to figure out this huge change to my life, career, finances, retirement etc. I wanted to make it to 50 years old for my full retirement, as my Father before me retired from Walnut Creek PD after 24 years and is actively receiving his pension from PERS. On October 20th, 2020, I had the last day of my court trial against my ex wife where she was trying to obtain a restraining order for her and our kids keeping me completely from them so she could move to Idaho away from me. I was drinking heavily and arguing with my family and I had a mental and emotional melt down. Oakley PD was contacted by an estranged family member and I was detained for a 72 hour hold per Welfare and Institution 5150. This was not a criminal act. Again I understand this is not a matter as to whether my termination was justified, but I think it is important for this board to know some of the "human" factors that were happening all at the same time.

2. Judge Baldwin states in the last paragraph on page 9 of her proposed decision, that I had received "work restrictions, but no decision was made by the City or CalPERS as to whether respondent met the standard for industrial disability retirement."

This is simply not the case. I do not contend that CalPERS had not made a decision at that time, but clearly the facts and timeline show that Antioch PD had made their decision. Again, no light duty assignment or any other job within the city was offered at anytime. I was already on 4850 for over two months when October 20th happened, which led to termination. The only step in the process that had not been completed was my IDR application to CalPERS.

Almost immediately after October 20th, I applied for IDR. It was suggested to me by my soon to be Attorney Harry Stern. He advised that the IDR was separate from my incident and the possible discipline that would follow.

To my understanding, CalPERS has to approve an application to be considered "mature" for the exception? While I understand this is a way to prevent employees that very obviously raise their hand for an injury after getting in some sort of trouble, because they know the level of discipline will be steep and are hoping to avoid this.

Although I had not applied, this was not in my thinking when I completed my application. My career up to the point of my divorce and issues with my ex wife was flooded with commendations from the public, my co workers and supervisors. I had my issues, but did my job well and for the most part excelled above my peers in many aspects of the job. The determination that I would have to apply for an IDR was already a certainty for myself and the City of Antioch. If Antioch was not pushing my IDR, I would not have been placed off duty for disability (4850) and I do not believe I would of had to meet with Human Resources to check for other positions. Again, this made it obvious along with Dr Brose, that my IDR was a certainty.

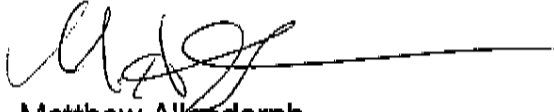
3. Although it is not obvious this was delayed to ensure my termination happened first, therefore to negate the other exception, I believe Antioch PD purposely did not respond to CalPERS initial request for a determination on my application. Then the termination was completed and the Skelly portion where the City Manager upheld the termination. This was completed prior to Antioch PD responding to CalPERS. Then CalPERS sent another notice to Antioch PD and they finally responded with the termination information. I believe Antioch PD did not want to answer prior to the termination, because of my good service and their uncertainty in my situation due to it being a mental health issue related to ongoing and documented disabilities.

I realize again I have no lawyer experience and am grossly under qualified to be representing myself. I believe that the right and legal decision for the board to make is to accept my application for IDR. Since 2020, my physical medical issues related to my on duty injuries have become dramatically worse, making it difficult for me to work in a job where any continued use of my hands is necessary. I have numbness in my hands and fingers, along with cramping. This is all related to the shoulder and neck injuries documented in Dr. Brose QME report.

I believe the exception should be considered for my case specifically as it was obvious I was going to be medically retired all prior to not only my termination but the incident

leading to that termination. I am sorry for any grammatical errors located in this, or if it should have been written in a different format.

Please accept this letter, and thank you for your time.

A handwritten signature in black ink, appearing to read 'Matthew Allendorph', followed by a long horizontal line extending to the right.

Matthew Allendorph

10/27/2022