

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Ruben G. Robles (Respondent) was employed by the California Highway Patrol (CHP) as a Highway Patrol Officer from March 24, 2003 to May 24, 2019. By virtue of his employment, Respondent was a state safety member of CalPERS.

On November 2, 2021, Respondent completed an application for industrial disability retirement (IDR), claiming disability on the basis of orthopedic (right hand and wrist) conditions. CalPERS approved Respondent's IDR application on March 24, 2022, finding him to be substantially incapacitated from the performance of his usual duties as a Highway Patrol Officer with CHP.

However, on May 3, 2022, CalPERS reversed its decision and cancelled Respondent's IDR application because CHP notified CalPERS that Respondent's employment "ended for reasons which were not related to a disabling medical condition." CalPERS reviewed Respondent's IDR application and requested further information from CHP related to his dismissal. However, CHP refused to provide CalPERS with the requested information. CalPERS eventually obtained a copy of the Notice of Adverse Action (NOAA) from Respondent, indicating he was served on May 3, 2019.

The NOAA sought to discipline Respondent based on allegations that between July 25, 2017, and April 20, 2018, Respondent: (1) submitted falsified documents that resulted in compensation for overtime he had not worked; and (2) failed to perform his assigned duties as the Area Court Liaison Officer, resulting in dismissal of numerous misdemeanor court cases. The proposed discipline was dismissal from CHP, effective May 24, 2019.

Respondent appealed the NOAA to the State Personnel Board (SPB). On February 24, 2020, Respondent and CHP entered into a Settlement and Release of All Claims (Settlement). Under the Settlement, CHP agreed to withdraw the NOAA and remove it (and all supporting documents) from Respondent's personnel file. In exchange, Respondent agreed to withdraw his SPB appeal and "resign voluntarily for personal medical reasons" effective May 24, 2019. CHP agreed to accept that resignation. The Settlement did not contain any provision prohibiting Respondent from seeking or accepting future employment with CHP. On February 25, 2020, the SPB adopted the Settlement as its own decision in the case.

Based on the NOAA terminating Respondent, and Respondent's resignation pursuant to a settlement agreement, CalPERS determined that he was ineligible for IDR pursuant to *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*); *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*); *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156 (*Martinez*); CalPERS Precedential Decision 13-01 *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot (Vandergoot)*; and CalPERS Precedential Decision 16-01 *In the Matter of Accepting the Application for Industrial Disability Retirement of Phillip*

MacFarland (MacFarland). The ALJ focused on the holdings in *Martinez* and *Vandergoot* when writing the Proposed Decision.

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.

In *Vandergoot*, the Board held that “a necessary requisite for disability retirement is the potential reinstatement of the employment relationship” with the employer if it is ultimately determined by CalPERS that the employee is no longer disabled. The Board concluded that an employee’s resignation was tantamount to a dismissal when the employee resigned pursuant to a settlement agreement to resolve a dismissal action and agreed to waive all rights to return to his former employer.

The *Martinez* court affirmed the holding in *Haywood* and refused to overturn more than twenty years of legal precedent. The *Martinez* court also affirmed *Vandergoot* as a logical extension of *Haywood*. Both *Martinez* and *Vandergoot* involved employees who agreed to resign following a settlement of NOAA terminating their employment, and who waived any right to reinstatement as part of a settlement agreement.

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 November 16, 2023. Respondent was represented by counsel at the hearing. A default was taken against CHP, which did not appear at the hearing.

After considering all the evidence introduced, as well as arguments made by the parties, the ALJ granted Respondent’s appeal. The ALJ found the facts in Respondent’s case to be distinguishable from *Martinez* and *Vandergoot* for two reasons. First, Respondent’s settlement with CHP did not contain any provision prohibiting him from seeking or accepting future employment with CHP. Thus, the possibility of his future reinstatement is not precluded as it was in *Martinez* and *Vandergoot*. Second, Respondent’s accepted resignation was expressly for “personal medical reasons.” The ALJ found that such a resignation is wholly consistent with the pursuit of IDR, that Respondent is eligible to apply for IDR, and that CalPERS must consider Respondent’s application on its merits.

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For all the above reasons, staff does not oppose the Board's adoption of the Proposed Decision.

February 21, 2024

Nhung Dao
Attorney