

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Mark Anthony Rodriguez-Faz (Respondent) was employed as a Peace Officer II, Sergeant, by the Department of Developmental Services. By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for industrial disability retirement on April 20, 2009. CalPERS was informed by the Department of Developmental Services that Respondent had been terminated for cause (inappropriate, unprofessional and dishonest conduct) on April 16, 2008. CalPERS determined that, because he had been terminated for cause, Respondent was not eligible to apply for industrial disability retirement. Respondent and the Department of Developmental Services were advised of CalPERS determination. Respondent appealed CalPERS' determination and a hearing was held on August 15, 2012.

Pursuant to the decision in *Haywood v. American River Fire Protection District* (1998) 67 Cal. App. 4<sup>th</sup> 1292, a CalPERS member who has been terminated for cause is not eligible to apply for disability retirement. The court in *Haywood* stated that there are two circumstances (exceptions) in which an employee terminated for cause can still seek a disability retirement. A CalPERS member, terminated for cause, can still apply for disability retirement if the termination was either (1) the ultimate result of a disabling condition, or (2) preemptive of an otherwise valid claim for disability retirement.

Respondent did not appear at the hearing. The Administrative Law Judge (ALJ) received documentary evidence showing that Respondent received a Notice of Hearing on June 6, 2012. The ALJ found that the Notice of Hearing stated the correct date, time and location for the hearing (the office of the Department of Alcohol and Beverage Control on Stockdale Highway in Bakersfield). The ALJ found that an Amended Notice of Hearing was mailed to Respondent, using the same address of Record, and that the Amended Notice of Hearing simply clarified that the address for the Department of Alcohol and Beverage Control office was 4800 Stockdale Highway, instead of 1800 Stockdale Highway. The ALJ found:

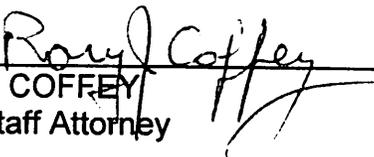
"Respondent was deemed to be in default by his failure to appear at the hearing. [Respondent] timely received the Notice which correctly stated the time, date and place of the hearing, except for the street number of the ABC office where the hearing would be held. That error was remedied by the Amended Notice, which Respondent had received no later than the day before the hearing. Respondent, who lives in Bakersfield, could have easily noted the correct address provided in the Amended Notice. Respondent provided no reasonable excuse for not attending the hearing."

After considering all of the evidence, the ALJ found that Respondent had been terminated for cause. The ALJ found that Respondent's termination was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement. Accordingly, pursuant to the *Haywood* decision, the ALJ concluded that Respondent's termination for cause precludes him from applying for disability retirement and that his appeal is denied.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

November 15, 2012

  
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RORY J. COFFEY  
Senior Staff Attorney