

ATTACHMENT B

**AUGUST 26, 2013 REQUEST FOR PUBLIC COMMENTS RE: DESIGNATION OF
BOARD DECISION IN ROBERT VANDERGoot MATTER AS PRECEDENTIAL**



California Public Employees' Retirement System
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Memorandum

August 26, 2013
 Ref. No. 2012-0287

To: All CalPERS Contracting Agencies

From: ELIZABETH YELLAND
 Senior Staff Attorney

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CalPERS Legal Office
 400 Q Street, Lincoln Plaza North Room 3340
 P.O. Box 942707
 Sacramento, CA 94229-2707

Subject: Request for Public Comments re: Designation of Board Decision in the ROBERT VANDERGOOT Matter as Precedential

On February 19, 2013, an Administrative Law Judge (ALJ) issued a proposed decision after a public hearing in an administrative appeal before the CalPERS Board of Administration (Board) entitled "In the Matter of the Application for Industrial Disability Retirement of ROBERT VANDERGOOT, Respondent, and CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, Respondent." A copy of the proposed decision is attached.

The proposed decision determined that Respondent was not entitled to file an application for industrial disability retirement. Respondent's termination permanently severed his employment relationship with his employer. The character of the disciplinary action does not change because Respondent elected to settle his case prior to exhausting his appeal rights. CalPERS correctly determined that *Haywood* and *Smith* bar Respondent's eligibility to apply for industrial disability retirement.

On April 17, 2013 the Board adopted the proposed decision of the ALJ as its final decision. On August 21, 2013 the Board voted to take public comments about whether the decision should be made precedential.

This Request for Public Comments has been issued to solicit your written comments on the question of whether the Board's final decision in this matter should be made precedential. *(Please note: the Board is not requesting comments or arguments on the merits or correctness of its final decision, which is not up for reconsideration; any such comments or arguments will not be considered.)*

In deciding whether to designate a decision as precedential, the Board's policy is to consider the following questions:

- Does the decision contain a significant legal or policy determination of general application that is likely to recur?
- Does it include a clear and complete analysis of the issues in sufficient detail so that interested parties can understand why the findings of fact were made and how the law was applied?

If you are interested in commenting on whether the Board's decision should be precedential, please address the questions above, along with any other questions or considerations, and mail, fax or deliver your written comments to:

CalPERS Legal Office
Attn: Elizabeth Yelland, Senior Staff Attorney
400 Q Street, Lincoln Plaza North, Room 3340
Sacramento, CA 95811
Fax No. (916) 795-3659

Comments must be received in the CalPERS Legal Office no later than 5:00 p.m. PDT September 26, 2013. Comments should not exceed six pages in length (single spaced). Late comments will not be considered.

The Board will consider all comments received at a future Board public meeting, on a date to be announced, and determine whether to make its final decision in the Robert Vandergoot matter precedential.

CalPERS staff will provide copies and a summary of the comments received to Board members. CalPERS staff will also provide its written recommendations to the Board. Oral comment or argument will not be received at the Board meeting.

Questions concerning this notice may be directed to Ms. Yelland in the CalPERS Legal Office at (916) 795-1101.

Attachment