

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Thomas Stawicki (Respondent) was employed by Respondent San Diego Unified School District as a Custodian. By virtue of his employment, Respondent was a local agency member of CalPERS.

On April 17, 2012, Respondent San Diego Unified School District served Respondent with a Notice of Adverse Action (NOAA) terminating his employment based on Respondent's misconduct, including absenteeism, refusal to clean assigned areas, discourteous treatment of employees and supervisors, and falsifying time records. Respondent did not appeal the decision terminating his employment; the decision is now final.

On July 3, 2012, Respondent signed a Disability Retirement application. He claimed disability based on an orthopedic condition (lumbar spine).

CalPERS reviewed the facts and learned that Respondent had been terminated and the termination was final. CalPERS determined that Respondent was ineligible to apply for Disability Retirement due to operation of the *Haywood* and *Smith* cases, because he had been terminated for cause and his termination was neither the ultimate result of a disabling medical condition, nor preemptive of an otherwise valid claim for Disability Retirement. Respondent appealed and a hearing was completed on June 3, 2013.

Prior to 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 handbook. Neither Mr. Stawicki nor the School District appeared at the hearing.

The sole issue for hearing is a question of law: May Respondent Stawicki file an application for disability retirement based on alleged injury to his lumbar spine, or is his application precluded by operation of *Haywood*?

The cases of *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*) preclude Respondent from filing a disability retirement application. 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.

The Administrative Law Judge (ALJ) concluded the facts were not in dispute. The ALJ found that Respondent was terminated for cause due to performance issues, and his termination from employment was not the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement. His termination completely severed his employment relationship with his employer Respondent San Diego Unified School District.

The ALJ upheld CalPERS' determination that Respondent is not entitled to file an application for Disability Retirement.

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.

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