

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Thomas H. Walters (Respondent Walters) worked as a Correctional Officer for California Department of Corrections and Rehabilitation (CDCR) at California Men's Colony (CMC) in San Luis Obispo. He began working for CDCR in August 1989. By virtue of his employment, Respondent Walters was a state safety member of CalPERS subject to Government Code section 21154.

On March 21, 2014, CMC served Respondent Walters with a Notice of Adverse Action (NOAA) notifying him that he would be terminated effective March 31, 2014. CMC charged Respondent Walters with stealing a cellphone from one inmate to give to another inmate who was acting as a confidential informant, then lying about the incident to internal affairs. The NOAA stated this alleged conduct violated Government Code section 19572, subdivisions (d) (inexcusable neglect of duty); (f) (dishonesty); (o) (willful disobedience); (p) (misuse of state property); (r) (violations of the prohibitions set forth in accordance with section 19990); and (t) (other failure of good behavior).

Three days before his effective termination date, Respondent Walters resigned for "personal reasons." Approximately four months later on July 22, 2014, Respondent Walters applied for Industrial Disability Retirement (IDR). He claimed "chronic residuals, lumber radiculopathy with atrophy of the left calf" arising from a slip and fall on concrete while responding to an alarm at Pelican Bay State Prison, about December 29, 2006, where he previously worked for CDCR. CalPERS rejected Respondent Walters' IDR application on grounds that Respondent Walters had separated from his employment with the State, and that his separation was not the result of a disabling condition, nor was his separation preemptive of an otherwise valid disability claim pursuant to the rule set forth in *Haywood v. American River Fire District*. Respondent Walters appealed CalPERS' determination, exercising his right to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH).

The *Haywood* case holds that a CalPERS member is ineligible for disability retirement if the member was terminated from employment for reasons that are not related to a disabling condition, and the termination does not preempt an otherwise legitimate claim for disability retirement. To establish preemption, the member must show a vested right to retirement, such that a favorable decision on the application prior to termination would have been a foregone conclusion.

Prior to the hearing, the parties stipulated and agreed that Respondent Walters' termination was not the result of a disabling condition. On the issue of preemption, the parties stipulated and agreed that the only disputed issue before OAH was whether Respondent Walters' claimed disability had vested and matured as of the date of the severance of the employment relationship.

A hearing was held November 4, 2015 in Sacramento, California, to determine whether *Haywood* precluded Respondent Walters' application. CalPERS and Respondent Walters were represented by counsel. CDCR/CMC did not appear.

Respondent Walters testified but did not call any other witnesses. He claimed to have injured his back when responding to an urgent situation at Pelican Bay State Prison in 2006; and testified that the injury prevented him from stooping, bending, lifting over 50 pounds, or running. He further testified that symptoms included lower back pain, leg tingling, calf atrophy, and sciatica. However, he continued to work as a Correctional Officer after the incident and until separation. Respondent Walters also submitted two medical reports pertaining to his workers' compensation claim. Doctor Alan Sanders prepared an examination report of Respondent Walters for State Compensation Insurance Fund, finding Respondent Walters physically impaired but noting he continued to perform the usual and customary duties of a Correctional Officer after the 2006 accident at Pelican Bay and until Respondent Walters' resignation in 2014. At hearing, CalPERS argued Respondent Walters was not eligible for Industrial Disability Retirement because Respondent Walters' medical condition had not created a vested right; he continued to perform his duties after the accident and until resignation.

The ALJ found CalPERS' arguments persuasive. Neither CalPERS nor CDCR had found Respondent Walters incapable of performing his duties. Respondent Walters did not present undisputed evidence of a disability, such that "a favorable decision on his claim would have been a foregone conclusion," the requisite showing to establish a vested right to disability retirement. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.) Instead, the evidence showed Respondent Walters was able to perform his usual and customary duties up to the date of his resignation. Because Respondent Walters' disability pension right had not matured, the ALJ found Respondent Walters ineligible for IDR under the *Haywood* line of cases, and issued a Proposed Decision on November 12, 2015, denying Respondent Walters' appeal.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be inserted before the words "disability retirement" on pages one, two, three, four, five and six of the Proposed Decision. The Proposed Decision is supported by the law and that facts. Staff argues that the Board adopt the Proposed Decision, as modified.

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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 18, 2016



KEVIN M. KREUTZ
Senior Staff Attorney