

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Scott Casadona (Respondent Casadona) was employed by Respondent California State University, San Marcos (Respondent CSUSM), as a police officer, beginning November 19, 2007. By virtue of his employment, Respondent Casadona became a state safety member of CalPERS.

On March 19, 2012, Respondent CSUSM served Respondent Casadona with a Notice of Adverse Action (NOAA) terminating his employment effective March 31, 2012.

The NOAA states that Respondent Casadona filed an industrial injury report claiming he suffered severe and debilitating back pain and as a result was placed on temporary modified work duty. Despite the medical limitations and Respondent Casadona's repeated complaints of pain, he was observed outside of work performing activities beyond his proscribed limitations.

The NOAA further states Respondent Casadona made false material statements and representations to Respondent CSUSM, treating doctors, supervisors, and Sedgwick representatives for purpose of receiving monies and extending his workers' compensation benefits. The NOAA detailed the coaching sessions, Respondent Casadona's statements to doctors and Sedgwick representatives, Respondent Casadona's medical treatments, and other relevant information.

On February 1, 2012, Respondent Casadona appealed CSUSM's Final Decision Regarding Disciplinary Action and the matter was heard before an Administrative Law Judge of the State Personnel Board (SPB) on April 18, 2013. SPB upheld the termination. Respondent Casadona appealed the SPB determination; however, the termination was once again upheld by the Superior Court of California, County of San Diego.

On July 11, 2012, Respondent Casadona filed his application for Industrial Disability Retirement on the basis of cumulative trauma to low back pain occurring between March 9, 2010 and March 1, 2011.

Based on the NOAA, CalPERS determined that Respondent Casadona was ineligible to apply for Industrial Disability Retirement due to operation of the *Haywood*, *Smith* and *Vandergoot* cases (cited below), 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 Industrial Disability Retirement. Respondent Casadona appealed and a hearing was completed on November 10, 2015.

The cases of *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*) and *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (dated February 19, 2013 and made precedential by CalPERS Board of Administration on

October 16, 2013) (*Vandergoot*), preclude Respondent Casadona from filing an application for Industrial Disability Retirement. 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.

In *Vandergoot*, the CalPERS Board concluded 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 held that an employee's resignation was tantamount to a dismissal when the employee resigned pursuant to a settlement agreement entered into to resolve a dismissal action and agreed to waive all right to return to his former employer.

Respondent Casadona argued that the discharge was a result of a disabling condition. The Administrative Law Judge of the Office of Administrative Hearings (ALJ) however, disagreed because Respondent Casadona offered no proof to establish his discharge was the ultimate result of a disabling condition. Instead, evidence demonstrated that Respondent Casadona was terminated due to his misrepresentations regarding his medical condition to obtain workers' compensation benefits.

The ALJ concluded that the facts are not in dispute, and upheld CalPERS' determination that Respondent Casadona is not entitled to file an application for Industrial Disability Retirement. Respondent Casadona's termination permanently severed his employment relationship with Respondent CSUSM. CalPERS correctly determined that *Haywood*, *Smith*, and *Vandergoot* bar Respondent Casadona's eligibility to apply for Industrial 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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 18, 2016



PREET KAUR
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