

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION WITH MODIFICATION

Anthony Navarro (Decedent) was employed by the California Department of Corrections and Rehabilitation (CDCR) from 1996 to 2012. His last position was as a Correctional Sergeant (CS). Decedent last worked on February 29, 2012.

In 2011 and 2012, CDCR conducted an investigation into Decedent's workplace conduct. A Notice of Adverse Action (NOAA) terminating Decedent was filed on March 21, 2012. His effective date of termination was April 25, 2012. Decedent appealed his termination, and during pendency of the appeal, CDCR and Decedent reached a Stipulated Settlement.

The Stipulated Settlement provided that Decedent was to file for "medical retirement" no later than March 28, 2012, and that CDCR would not oppose his application. If the application was denied by CalPERS, then Decedent would be deemed to have resigned for personal reasons from his position as of March 28, 2012. His resignation was irrevocable. Decedent agreed:

[N]ever to apply for or accept employment, reemployment, reinstatement or placement with the CDCR or any entity providing services to inmates or wards with the CDCR. If the CDCR inadvertently offers [Decedent] a position, the [Decedent] breaches this Stipulation and Release by accepting employment with the CDCR.

On November 13, 2013, Decedent applied for Industrial Disability Retirement (IDR), claiming orthopedic injuries to his back and neck, and severe workplace anxiety.

Decedent died on February 18, 2014, but CalPERS was not timely informed.

On June 21, 2014, CalPERS denied Decedent's IDR application and notified him that he was ineligible to apply for IDR due to operation of *Haywood v. American River Fire Protection District*.

Respondent Jennifer Navarro (Respondent) is Decedent's widow. Her appeal contends that *Haywood*, *Smith* and *Vandergoot* do not apply because Decedent's resignation from CDCR was contingent upon CalPERS denying his application for IDR "on its medical merits." Respondent argued that since CalPERS never denied Decedent's IDR application, the terms of the Stipulated Settlement render his resignation ineffective. Due to terms of the Stipulated Settlement, CDCR withdrew its NOAA and Decedent was reinstated to CDCR employment. Respondent concluded that Decedent's employment status was reinstated, and as such, he was eligible to file the IDR application.

A hearing on the appeal was completed on November 10, 2015. Respondent was represented by counsel at hearing.

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 pursuing Decedent's IDR 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) found that while Decedent was initially terminated, the settlement converted the termination for cause into a resignation and waiver of any return rights to CDCR. Thus, the question presented is whether this separation is tantamount to termination such that the bar to the application for IDR applies.

The ALJ found this very question addressed by the CalPERS Board of Administration in a Precedential Decision entitled *In the Matter of the Application for Disability Retirement of Robert C. Vandergoot, Respondent*, made Precedential by the CalPERS Board on October 16, 2013. The Precedential Decision in *Vandergoot* included the determination that the resignation constituted a complete severance of the employment relationship and that it was not possible to reinstate Respondent if he was no longer disabled. Therefore, the necessary prerequisite for receiving disability benefits was not satisfied

The ALJ found that Respondent's appeal fails because Decedent was ineligible to file his IDR application as a result of the legal bar created in *Haywood*, and elaborated and extended in *Smith* and *Vandergoot*. Respondent's appeal was defeated by the Decedent's execution of the Stipulated Settlement, which had the effect of permanently severing the Decedent's employment relationship with CDCR, causing him to fall squarely within the prohibition to file for IDR enumerated in *Haywood*, *Smith* and *Vandergoot*. Respondent's contention that the Decedent was reinstated to CDCR employment due to the failure of CalPERS to consider his application for IDR "on its medical merits" is circular and lacks factual and legal merit.

The ALJ concluded that Respondent's appeal should be denied. 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 page one; and that the abbreviation "IDL" be replaced with the abbreviation "IDR" on page two, three, eleven and fifteen. The Proposed Decision is supported by the law and the 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.

March 16, 2016.

  
ELIZABETH YELLAND  
Senior Staff Attorney