

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)



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8 IN THE APPEAL HEARING BEFORE
9 THE STATE OF CALIFORNIA, OFFICE OF ADMINISTRATIVE HEARINGS
10

11 JENNIFER NAVARRO,
12 Respondent,
13
14 and
15 CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,
16 Respondent.

OAH Case No. 2015050796
Agency Case No.: 2014-1031
RESPONDENT'S ARGUMENT

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1 I.

2 INTRODUCTION

3 Due to Correctional Sergeant Anthony Navarro's tragic and untimely death on February
4 17, 2014, he is not able to personally seek to vindicate his right to a disability pension in this
5 matter. However, his widow Jennifer seeks to vindicate her rights as his beneficiary on behalf of
6 herself and their two young children.

7 Correctional Sergeant Anthony Navarro's application for disability retirement was
8 purportedly denied under the rule established in *Haywood v. American River Fire Protection*
9 *District* (1998) 67 Cal.App.4th 1292. Specifically, it was denied on the stated basis that, prior to
10 applying for disability retirement, "[h]e was dismissed [for cause] from employment for reasons
11 which were not the result of a disabling medical condition." (Exh. 4, CalPERS Denial Letter, p.1.)
12 However, that claim is demonstrably false.

13 Anthony Navarro's termination was rescinded, he remained on Workers' Compensation
14 leave, and he never subsequently separated from State service. These facts distinguish this case
15 from *Haywood*, as well as *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 and *In the matter of*
16 *the Application for Industrial Disability of Robert Vandergoot and Department of Forestry and*
17 *Fire Protection*, Precedential Decision No. 13-01. Therefore, the appeal should be granted.

18 II.

19 ISSUE ON APPEAL

20 According to the Statement of Issue, there is a single issue on appeal:

21 This appeal is limited to the issue of whether Anthony Navarro met
22 the requirements to file an application for industrial disability
23 retirement based on orthopedic (back and neck) and psychological
24 (anxiety) condition or is he precluded by operation of *Haywood v.*
25 *American River Fire Protection District* (1998) 67 Cal.App.4th
1292, *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, and *In the*
matter of the Application for Industrial Disability of Robert
Vandergoot and Department of Forestry and Fire Protection,
Precedential Decision No. 13-01.

26 (Exh. 1, Statement of Issues, 5:5-11.) At the hearing in this matter on November 10, 2015, the
27 parties agreed that Anthony Navarro's medical and psychological qualifications are not yet at
28

1 issue because his application was rejected solely based on the perceived presence of a “*Haywood*”
2 issue.

3 **III.**

4 **FACTUAL BACKGROUND**

5 Anthony Navarro was hired by the California Department of Corrections and
6 Rehabilitation (“CDCR”) in 1997 and attained the rank of Correctional Sergeant prior to his
7 untimely death. (Exh. 1, Statement of Issues, 1:23-2:1.)¹ His place of work was Pelican Bay State
8 Prison (“PBSP”), the “supermax” correctional facility outside Crescent City, California.

9 On July 21, 2011, Sergeant Navarro suffered a serious knee injury when he slipped on ice
10 while performing a maximum security inmate escort within PBSP. (Exh. 3, Disability Retirement
11 Election Application, p.2.) And on February 7, 2012, he severely injured his neck and back when
12 he slipped on a loose electrical floor plate while on duty at PBSP. (*Id.* at Attachment 2a.) Around
13 that time, he also began developing and suffering from symptoms of severe workplace anxiety.
14 (*Id.* at Attachment 2a.) Sergeant Navarro filed Workers Compensation claims based on the
15 foregoing injuries and went out on industrial disability leave beginning on or before February 29,
16 2012. (Exh. 3, Disability Retirement Election Application, p. 8 and Attachment 8a; Exh. 15,
17 CalPERS Database Printout, p.1.)²

18 On approximately March 28, 2012, Anthony Navarro received a Notice of Adverse Action
19 (“NoAA”) dismissing him from his job as a Correctional Sergeant at PBSP. (Exh. 1, Statement of
20 Issues, 3:6-7.)³ The termination was then appealed to the State Personnel Board (“SPB”).
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23 ¹ The Statement of Issues incorrectly states that Anthony Navarro was hired as a Correctional
24 Sergeant. In reality, he was hired as a Correctional Officer on March 1, 1997 and later promoted
to the rank of Sergeant on November 27, 2000.

25 ² Exhibit 15 suggests that the Workers’ Compensation leave ended on March 29, 2012.
26 Presumably this is because March 29, 2012 was the first date following the effective date of
Sergeant Navarro’s later-reversed termination. However those Workers’ Compensation claims
27 were never withdrawn.

28 ³ A First Amended Notice of Adverse Action dated April 12, 2012, which is among the documents
contained in Exhibit 11 (Personnel Documents), also had an effective date of March 28, 2012.

1 On November 12, 2012, prior to the SPB hearing, the case was settled with a Stipulation
2 and Release containing an agreement that, among other things, Sergeant Navarro's termination
3 and NoAA were withdrawn, that he would apply for industrial disability retirement, and that
4 CDCR would not oppose his application. (Exh. 11, Personnel Documents, Stipulation and
5 Release, 2:13-20.)

6 The settlement also provided that, in the event his disability retirement was denied, he
7 would resign retroactive to March 28, 2012 and would not seek or accept reemployment with
8 CDCR:

9 Appellant agrees that if he is denied a medical retirement by PERS,
10 he will be deemed to have resigned for personal reasons from his
11 position as a Correctional Sergeant effective at the close of business
12 March 28, 2012 Appellant further agrees ... never to apply for
or accept employment, reemployment, reinstatement or placement
with the CDCR or any entity providing service to inmates or wards
within CDCR.

13 (Exh. 11, Personnel Documents, Stipulation and Release, 2:20-28 [emphasis added].) It is of
14 critical importance to this matter that the denial of Sergeant Navarro's disability retirement
15 application was a condition precedent to his resignation and agreement not to seek or accept
16 reemployment with CDCR. In other words, unless and until his claim was denied on its medical
17 merits, he would not resign and be prevented from being reemployed.

18 The settlement was adopted as a decision of the SPB on November 14, 2012 and, as a
19 result, the NoAA that led to Sergeant Navarro's termination was withdrawn. (Exh. 11, Personnel
20 Documents, Decision Approving Stipulation for Settlement.) This had the obvious practical and
21 legal effect of reinstating his employment with CDCR. (*Lucas v. State of California* (1997) 58
22 Cal.App.4th 744, 750 ["Upon the State's withdrawal of the adverse action, [he] was no longer
23 separated from service by involuntary termination."]) However, Sergeant Navarro remained out
24 on Workers' Compensation leave. At no point did he resign or otherwise separate from service.⁴

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27 ⁴ Exhibit 15 falsely states that Sergeant Navarro "Resigned" on April 26, 2012. It is undisputed
28 that Sergeant Navarro had been terminated and was in the process of challenging his termination
at that time.

1 On April 4, 2013, in accordance with the settlement that reinstated his employment,
2 Anthony Navarro filed a Disability Retirement Election Application (Exh. 12), which was
3 subsequently cancelled due to being incomplete (Exh. 14). Subsequently, on November 13, 2013,
4 Sergeant Navarro filed the Disability Retirement Election Application that is the subject of the
5 current dispute. (Exh. 3.) He passed away just three months later on February 17, 2014.

6 On June 21, 2014, the CalPERS Benefit Services Division sent Mrs. Navarro a letter by
7 certified mail denying the disability retirement application. In relevant part, the letter stated:

8 We have received Anthony Navarro's application for industrial
9 disability retirement; however, we are unable to accept it. The
10 case of *Haywood v. American River Fire Protection District*
11 (1998) 67 Cal.App.4th 1292, 79 Cal. Rptr.2d 749 holds that
12 where "an employee is terminated for cause and the discharge is
neither the ultimate result of the disabling medical condition nor
preemptive of an otherwise valid claim for disability retirement,
the termination of the employment relationship renders the
employee ineligible for disability retirement."

13 Following a review of Mr. Navarro's application and file, it has
14 been determined that the facts of his case fit within the Haywood
case. He was dismissed from employment for reasons which
15 were not the result of a disabling medical condition.
16 Additionally, the dismissal does not appear to be for the purpose
of preventing a claim for disability retirement. Therefore, under
17 the Haywood case, he is not eligible for disability retirement.
For that reason, CalPERS cannot accept this application for
disability retirement.

18 (Exh. 4, CalPERS Denial Letter, p.1.)

19 The stated basis for denying the application is demonstrably false. As detailed above,
20 Sergeant Navarro's termination was rescinded and he never separated from CDCR prior to his
21 death. No other basis was stated for denying the application and no other issue is on appeal.

22 **IV.**

23 **ARGUMENT**

24 "Under a well-established rule, pension legislation should be liberally construed, resolving
25 all ambiguities in favor of the applicant." (*Barrett v. Stanislaus County Employees Retirement*
26 *Assn.* (1987) 189 Cal.App.3d 1593, 1603.) Relevant here, Government Code section 21151(a)
27 provides that "[a]ny patrol, state safety, state industrial, state peace officer/firefighter, or local
28 safety member incapacitated for the performance of duty as the result of an industrial disability

1 shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.”
2 Because Mr. Navarro was incapacitated for the performance of his duties as a Correctional
3 Sergeant with CDCR as a result of on-the-job injuries, his application for disability retirement
4 should have been approved, unless some exception applies.

5 The exception relied on in the denial letter is the assertion that Anthony Navarro was
6 terminated from his employment with CDCR for cause. However, that claim is false. As detailed
7 above, Sergeant Navarro’s termination was rescinded, he remained on Workers’ Compensation
8 leave, and he never separated from state service prior to his untimely death. These facts
9 distinguish this case from *Haywood v. American River Fire Protection District* (1998) 67
10 Cal.App.4th 1292, *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, and *In the matter of the*
11 *Application for Industrial Disability of Robert Vandergoot and Department of Forestry and Fire*
12 *Protection*, Precedential Decision No. 13-01.

13 In *Haywood*, the plaintiff “was terminated for cause following a series of increasingly
14 serious disciplinary actions against him. After his discharge, he applied for disability retirement,
15 claiming that stress from the disciplinary actions caused him to suffer a major depression, which
16 rendered him incapable of performing his usual duties with the District.” (67 Cal.App.4th at 1295
17 [emphasis added].) The *Haywood* plaintiff’s disability retirement application was properly
18 rejected because he had been terminated for cause and his claimed disability did not arise before
19 the disciplinary action was taken—rather, it allegedly arose as a result of his termination. (*Id.* at
20 1305-1306.) By comparison, Sergeant Navarro was not terminated, and his disabling injuries
21 occurred in the workplace during his employment. (Exh. 3, Disability Retirement Election
22 Application, p.2 and Attachment 2a.)

23 *Smith v. City of Napa* is also distinguishable. Although the *Smith* plaintiff’s disabling
24 injuries occurred prior to his termination, the Court found “[h]is right to a disability retirement
25 was ... immature, and his dismissal for cause defeated it.” (120 Cal.App.4th at 206.) Because
26 Sergeant Navarro’s termination was rescinded, *Smith* has no application here.

27 The CalPERS Board of Administration’s (“the Board”) precedential decision in
28 *Vandergoot* is likewise distinguishable, though the distinction is more nuanced. There the Board

1 adopted a proposed decision rejecting an application for disability retirement based on the fact that
2 it found the former employee's resignation resulting from settlement of an adverse action was
3 "tantamount to a dismissal." (*Vandergoot*, Proposed Decision at p.10, ¶ 4.) The Board's finding
4 was based on the facts that he had already resigned and had agreed not to seek or accept
5 reemployment with the State agency.

6 In the present case, by contrast, Sergeant Navarro did not resign as a result of the
7 Stipulation and Release that reversed his termination. Sergeant Navarro's disability retirement
8 application was not considered and rejected on its medical merits, so the condition precedent to his
9 resignation and agreement not to seek reemployment never occurred. (Exh. 11, Personnel
10 Documents, Stipulation and Release, 2:21 ["if he is denied a medical retirement by PERS"].)
11 Because Anthony Navarro remained an employee of CDCR (albeit on Workers' Compensation
12 leave), there was no resignation "tantamount to dismissal," so his application was valid and
13 timely.

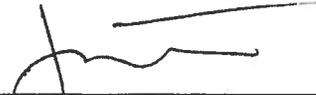
14 V.

15 CONCLUSION

16 In conclusion, the stated basis for denying Anthony Navarro's disability retirement
17 application is inapplicable, and CalPERS has identified no deficiencies that would require its
18 rejection on the merits. Under these circumstances, the injustice of denying his wife Jennifer and
19 their two small children the disability pension that was promised to Sergeant Navarro must end.

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21 Dated: March 4, 2016

MESSING ADAM & JASMINE LLP

22
23 By 

24 Jonathan Yank
25 Attorney for Respondent JENNIFER NAVARRO
26
27
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1 State of California, Office of Administrative Hearings
Case No.: 2015050796

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3 **PROOF OF SERVICE**

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of San Francisco, State of California. My business address is 580
California Street, Suite 1600, San Francisco, CA 94104.

6 On March 4, 2016, I served true copies of the following document(s) described as:

7 **RESPONDENT'S ARGUMENT**

8 on the interested parties in this action as follows:

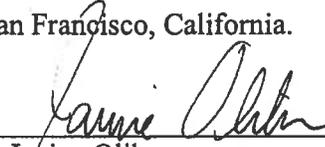
9 Cheree Swedensky, Assistant to the Board 10 CalPERS Executive Office P.O. Box 942701 11 Sacramento, CA 94229-2701 Email: cheree.swedensky@calpers.ca.gov	
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12 **[X] BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
13 persons at the addresses listed in the Service List and placed the envelope for collection and
14 mailing, following our ordinary business practices. I am readily familiar with the practice of
15 Messing Adam & Jasmine LLP for collecting and processing correspondence for mailing. On the
16 same day that correspondence is placed for collection and mailing, it is deposited in the ordinary
17 course of business with the United States Postal Service, in a sealed envelope with postage fully
prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was
placed in the mail at San Francisco, California.

18 **[X] BY ELECTRONIC DELIVERY:** By causing an electronic (PDF) version of the
19 document(s) to be sent to the person(s) at the electronic notification address(es) listed above. I did
not receive, within a reasonable time after the transmission, any electronic message or other
indication that the transmission was unsuccessful.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed on March 4, 2016, at San Francisco, California.

23
24 

Janine Olikier