

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Cynthia Jamison (Respondent Jamison) worked as an Associate Governmental Program Analyst (AGPA) for the Department of Alcohol and Drug Programs (Respondent ADP). By virtue of her employment, Respondent Jamison was a state miscellaneous member of CalPERS, subject to Government Code section 21154.

On February 10, 2010, ADP served Respondent Jamison with a Notice of Adverse Action (NOAA) advising her that she would be terminated for being arrested for driving under the influence of alcohol while in Los Angeles on State business on June 9, 2009. The NOAA further stated that termination was also based on Respondent Jamison improperly using State time and resources to cover-up the DUI and appear at DUI-related hearings.

On May 5, 2014, Respondent Jamison applied for disability retirement with CalPERS. Respondent Jamison claimed disability on the basis of Post-Traumatic Stress Disorder, arising from an attack on her and her daughter in a restaurant parking lot in December 2008.

CalPERS cancelled Respondent Jamison's application for disability retirement pursuant to *Haywood v. American River Fire District (Haywood)* on grounds that she was terminated for cause, and that Respondent Jamison's separation from employment with the State was not the result of a disabling condition or preemptive of an otherwise valid disability claim. Respondent Jamison appealed, exercising her right to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH). A hearing was held March 14, 2016 in Sacramento, California. CalPERS was represented by counsel. A custodian of records witness appeared on behalf Department of Health Care Services¹ (DHCS) to authenticate Respondent Jamison's personnel file. Respondent Jamison represented herself.

Prior to the hearing, CalPERS explained the hearing process to Respondent Jamison and the need to support her case with witnesses and documents. CalPERS provided Respondent Jamison with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Jamison's questions and clarified how to obtain further information on the process.

Prior to hearing, CalPERS obtained additional records from Respondent Jamison. The records showed Respondent Jamison appealed her termination to the State Personnel Board (SPB). At the August 10, 2010 hearing before the SPB, the parties entered into a settlement agreement, reduced to writing and approved by SPB. Pursuant to the agreement, Respondent Jamison withdrew her appeal, ADP agreed to withdraw the NOAA and Respondent Jamison agreed to resign for personal reasons. Respondent

¹ After Respondent Jamison applied for disability retirement, ADP was merged into Department of Healthcare Services, or DHCS.

Jamison further agreed to never seek employment with ADP at any time, and waived all reinstatement rights.

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 valid claim for disability retirement. Applying *Haywood*, the precedential decision of the CalPERS Board in *In the Matter of Robert Vandergoot* (2013) Cal. Public Employees' Retirement System Bd. of Administration, Precedential Dec. No. 13-01 (*Vandergoot*) holds that resignation in the face of threatened dismissal, coupled with a waiver of the right to reinstatement, is tantamount to dismissal for cause and renders the employee ineligible for disability retirement with CalPERS.

At hearing, CalPERS presented records from Respondent Jamison's personnel file, and offered the testimony of a DHCS human resources officer to confirm that Respondent Jamison had waived her right to reinstatement. Respondent Jamison testified at hearing that she suffered a PTSD-related panic attack on June 9, 2009, causing her to drink and leading to the DUI arrest.

After considering all the evidence, the ALJ ruled that Respondent's settlement with ADP forfeited her reinstatement rights, and pursuant to *Haywood* and *Vandergoot*, was tantamount to dismissal. The ALJ ruled "the primary reason for respondent's dismissal was that she was dishonest when she charged ADP for her time and expense while she was in jail as a result of her DUI, and when she returned to Los Angeles for reasons related to her DUI." No competent medical evidence showed that "[Respondent's] dishonesty can be attributed to her PTSD or other mental health conditions. None of the medical or psychiatric reports she submitted found or opined that respondent's PTSD or other mental health conditions caused her to engage in dishonest conduct."

The ALJ concluded Respondent Jamison's appeal should be denied. 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 her 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.

May 18, 2016



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