

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Frederick Johnson (Respondent Johnson) worked as a Supervising Correctional Cook for California Department of Corrections and Rehabilitation, Valley State Prison (Respondent CDCR). By virtue of his employment, Respondent Johnson was a state safety member of CalPERS, subject to Government Code section 21154.

Respondent Johnson began working for Respondent CDCR in 1993 as a Correctional Supervising Cook. He promoted to Supervising Correctional Cook in 2000. On August 14, 2011, Respondent CDCR served Respondent Johnson with a Notice of Adverse Action (NOAA) advising him that he would be terminated for overfamiliarity with female inmates and dishonesty during the underlying investigation. Respondent Johnson appealed his termination to State Personnel Board (SPB). SPB upheld Respondent CDCR's decision to sever the employment relationship. On June 18, 2013, one year after the SPB proceedings, Respondent Johnson applied for Industrial Disability Retirement (IDR) with CalPERS. He claimed disability on the basis of mental stress and low back pain.

CalPERS cancelled Respondent Johnson's IDR application pursuant to *Haywood v. American River Fire District* (Haywood) on grounds that he was terminated for cause, and that Respondent Johnson's separation from employment with the State was not the result of a disabling condition or preemptive of an otherwise valid disability claim. Respondent Johnson appealed, exercising his right to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH). A hearing was held

March 3, 2016 in Fresno, California. A custodian of records witness appeared on behalf of Respondent CDCR to authenticate Respondent Johnson's personnel file. Respondent Johnson represented himself.

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

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. At hearing, the custodian of records witness from Respondent CDCR authenticated the contents of Respondent Johnson's personnel file, including the Adverse Action, written resignation, rejection from probation and Respondent CDCR's response to Respondent Johnson's resignation. The records showed Respondent Johnson had been terminated for cause, invoking the *Haywood* rule.

Regarding the exceptions to the *Haywood* rule, Respondent Johnson testified at hearing that both exceptions applied. He claimed that the "allegations prior to the investigation stressed [him] out." However, *Haywood* expressly rejected the argument that stress arising from the disciplinary investigation is evidence that termination resulted from a medical condition. Respondent Johnson also testified to having a back injury resulting from prolonged sitting that was vested before he was fired. However, Respondent Johnson did not make a claim for low back pain until long after the disciplinary proceedings commenced.

After considering all the evidence, the ALJ ruled "[t]here was no indication in any of the evidence that Respondent VSP terminated respondent's employment in order to preempt him from filing a disability retirement application. Instead, as set forth in the notice of adverse action served on him and the decision of the SPB, respondent's termination was based on factual and legal causes unrelated to respondent's current claim for disability retirement."

The ALJ concluded Respondent Johnson'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 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.

May 18, 2016



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