

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Glen Sebring (Respondent Sebring) worked as a Correctional Officer for California Department of Corrections and Rehabilitation (CDCR) at California State Prison, Solano. He began working for CDCR in October 2006. By virtue of his employment, Respondent Sebring was a state safety member of CalPERS subject to Government Code section 21154.

On July 28, 2011, CDCR served Respondent Sebring with a Notice of Adverse Action (NOAA) notifying him that he would be terminated effective September 19, 2011. CDCR charged Respondent Sebring with smuggling contraband to inmates and failing to make "full, complete, and truthful statements" during an official internal investigation. The NOAA stated this alleged conduct violated Government Code section 19572, subdivisions (d) (inexcusable neglect of duty); (e) (insubordination); (o) (willful disobedience); and (t) (other failure of good behavior).

Two hours before his effective termination, Respondent Sebring resigned for "personal reasons." Almost three years later on May 27, 2014, Respondent Sebring applied for Industrial Disability Retirement (IDR) on the basis of "heart, mitral valve release, hypertension, right knee, lower back and psyche." CalPERS rejected Respondent Sebring's IDR application on grounds that Respondent Sebring had separated from his employment with CDCR, and that his separation was not the result of a disabling condition, nor was his separation preemptive of an otherwise valid disability claim pursuant to the rule set forth in *Haywood v. American River Fire District*. Respondent Sebring appealed CalPERS' determination, exercising his right to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH).

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 legitimate claim for disability retirement. To establish preemption, the member must show a vested right to retirement, such that a favorable decision on the application prior to termination would have been a foregone conclusion.

A hearing was held April 12, 2016 in Sacramento, California, to determine whether *Haywood* precluded Respondent Sebring's application. CalPERS and Respondent Sebring were represented by counsel. A representative from CDCR was also present.

Respondent Sebring testified that he was contacted by an unknown individual who showed him a photograph of his mother's house and threatened that if Respondent Sebring did not bring contraband into the prison his mother would be "dead meat." During the ten months Respondent Sebring smuggled the contraband into the prison he claimed his mental state was a "constant nightmare." In February 2011 CDCR became aware of Respondent Sebring's activities and placed him on administrative leave, barring him from the prison grounds. In March 2011 Respondent Sebring began seeing

a psychologist about his mental stress issues. At hearing, CalPERS argued Respondent Sebring was not eligible for Industrial Disability Retirement because Respondent Sebring's medical condition had not created a vested right; he continued to perform his duties until he was placed on administrative leave and only sought medical treatment after he was placed on administrative leave.

The ALJ found CalPERS' arguments persuasive. Neither CalPERS nor CDCR had found Respondent Sebring incapable of performing his duties. Respondent Sebring did not present undisputed evidence of a disability, such that "a favorable decision on his claim would have been a foregone conclusion," the requisite showing to establish a vested right to disability retirement. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.) Instead, the evidence showed Respondent Sebring was able to perform his usual and customary duties up to the date of his resignation. Because Respondent Sebring's disability pension right had not matured, the ALJ found Respondent Sebring ineligible for IDR under the *Haywood* line of cases, and issued a Proposed Decision on May 11, 2016, denying Respondent Sebring's appeal.

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.

June 15, 2016



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