

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Respondent Cynthia Jamison (Respondent Jamison) petitions the Board to reconsider the cancellation of her application for disability retirement. For reasons discussed below, Staff argues that Respondent Jamison's petition be denied.

Respondent Jamison worked as an Associate Governmental Program Analyst (AGPA) for the Department of Alcohol and Drug Programs (Respondent ADP). Respondent ADP served Respondent Jamison with a Notice of Adverse Action (NOAA) stating that she would be terminated for driving under the influence of alcohol while on State business, and using State time and resources to cover-up the DUI and appear at DUI-related hearings.

Thereafter, Respondents Jamison and ADP entered into a settlement agreement approved by the State Personnel Board (SPB). Respondent ADP agreed to withdraw the NOAA and Respondent Jamison agreed to resign for personal reasons. Respondent Jamison further agreed to never seek employment with Respondent ADP at any time, and waived all reinstatement rights.

Later, Respondent Jamison applied for disability retirement with CalPERS. CalPERS cancelled the application on grounds that Respondent Jamison 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. (*Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292.) 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.

Respondent Jamison appealed CalPERS' determination. At hearing, the Administrative Law Judge (ALJ) considered all the evidence and issued a Proposed Decision (PD) denying Respondent Jamison's appeal. The ALJ ruled the settlement agreement was tantamount to dismissal pursuant to *Vandergoot*, and that Respondent Jamison did not meet her burden to prove either *Haywood* exception, discussed *supra*, applied.

At hearing, Respondent Jamison argued she suffers from Post-Traumatic Stress Disorder (PTSD) and raised it as the cause of her actions on the night she was arrested. 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."

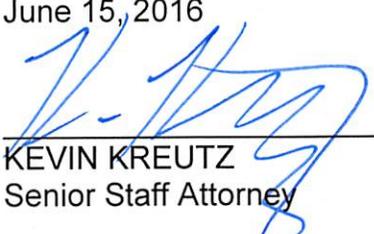
Respondent Jamison petitions for reconsideration on several grounds. First, Respondent Jamison argues the PD is erroneous because it says she was arrested for DUI at 4:33 a.m., when in fact she was arrested at 11:45 p.m. the evening prior and booked into jail at 4:33 a.m. This is not a material fact. The ALJ was asked to determine whether Respondent Jamison was eligible to apply for disability retirement, not to recount the minute details of her arrest. Second, Respondent Jamison argues that Respondent ADP failed to perform its obligations under the settlement agreement. This is also immaterial to Respondent Jamison's eligibility to apply for disability retirement with CalPERS. She argues ADP's non-performance voids the agreement; if true, then Respondent Jamison was actually terminated for cause instead of resigning in the face of a NOAA, and *Haywood* still applies. Third, Respondent argues the medical evidence shows she is substantially incapacitated pursuant to Government Code 21154. The question of substantial incapacity was not before the ALJ.

Finally, Respondent Jamison argues that the medical records clearly show that she was terminated because of her disability and that the NOAA preempted an otherwise valid claim for disability retirement. The ALJ considered both of these issues and found that Respondent Jamison did not meet her burden of proof. The ALJ ruled Respondent Jamison did not meet the first exception because there was no credible connection between Respondent Jamison's PTSD and the dishonesty for which she was terminated. The ALJ also held there was no evidence that Respondent ADP knew of Respondent Jamison's condition. There was also no evidence Respondent ADP initiated termination proceedings to cut off Respondent Jamison's right to apply for disability retirement. The ALJ further ruled that Respondent Jamison's condition was not so obviously incapacitating, as in the loss of a limb, that equitable principles required granting Respondent Jamison's appeal.

In her Petition for Reconsideration, Respondent Jamison claims there is one final issue (not identified) she wishes to raise, and makes a Public Records Act Request for the total number of disability retirement applications filed with CalPERS and the number of applications approved for the period January 1, 2009 through December 31, 2011. Assuming such information exists, it has no bearing on whether Respondent Jamison should be granted the right to apply for disability retirement.

Staff argues the Petition for Reconsideration be denied. Because the Board's Decision applies the law to the salient facts of the case, the risks of denying Respondent Jamison's Petition for Reconsideration 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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