

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Christopher Guilin (Respondent Guilin) was employed by Respondent Ironwood State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), as a heavy truck driver, beginning December 2005. By virtue of his employment, Respondent Guilin became a state safety member of CalPERS.

On November 11, 2011, Respondent Guilin was arrested for driving under the influence of alcohol and he was disqualified from operating any vehicle from February 20, 2012 through February 19, 2013.

On February 29, 2012, Respondent CDCR served Respondent Guilin with a Notice of Personnel Action – Report of Separation (NOPA). Respondent Guilin was non-punitively separated from employment effective March 2, 2012, pursuant to California Government Code section 19585(d), as he failed to meet the conditions of employment by failing to maintain a California Driver's License allowing Respondent Guilin to drive heavy trucks.

Respondent Guilin appealed Respondent CDCR's determination but later withdrew his appeal. Respondent Guilin has not been reinstated to his employment with CDCR.

On December 2, 2013, Respondent Guilin filed his application for disability retirement on the basis of orthopedic conditions.

Based on the NOPA, CalPERS determined that Respondent Guilin was ineligible to apply for disability retirement due to operation of the *Haywood*, *Smith* and *Vandergoot* cases (cited below), because he had been terminated and his termination was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement. Respondent Guilin appealed and a hearing was held on December 1, 2015 and March 18, 2016.

Respondent Guilin requested at the hearing that he be allowed to file for industrial disability retirement.

The cases of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*), *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*) and *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (dated February 19, 2013 and made precedential by CalPERS Board of Administration on October 16, 2013) (*Vandergoot*), preclude Respondent Guilin from filing an application for disability retirement. The *Haywood* court found that when an employee is fired for cause and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement, termination of the employment relationship renders the employee ineligible for disability retirement. The ineligibility arises from the fact that the discharge is a complete severance of the employer-employee relationship. A disability retirement is only a "temporary separation" from public service, and a complete severance would create a legal anomaly – a "temporary separation" that can never be reversed. Therefore, the courts have found disability retirement and a "discharge for cause" to be legally incompatible.

The *Smith* court explained that to be preemptive of an otherwise valid claim, the right to a disability retirement must have matured before the employee was terminated. To be mature, there must have been an unconditional right to immediate payment at the time of termination unless, under principles of equity, the claim was delayed through no fault of the terminated employee or there was undisputed evidence of qualification for a disability retirement.

In *Vandergoot*, the CalPERS Board concluded that “a necessary requisite for disability retirement is the potential reinstatement of the employment relationship” with the employer if it is ultimately determined by CalPERS that the employee is no longer disabled.

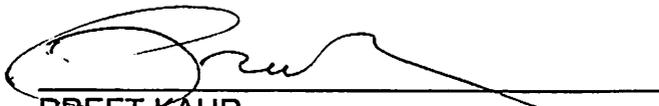
The Administrative Law Judge (ALJ) analyzed the requirements imposed and the principles set by *Haywood*, *Smith* and *Vandergoot*. Applying the principles of relevant case law, the ALJ upheld CalPERS’ determination that Respondent Guilin is not entitled to file an application for disability retirement.

The ALJ noted that Respondent Guilin was not in state service when he filed for Industrial Disability Retirement and was non-punitively separated. The ALJ concluded that the “necessary prerequisites,” the right to reinstatement as required by *Haywood*, *Smith* and *Vandergoot*, were lacking in this case. The ALJ explained that Respondent Guilin’s “... relationship with respondent CDCR had been severed, and he had no right to return to his employment. As such, no employer could require him to undergo a medical examination under Government Code section 21192 to assess his medical condition exists, and it is not possible for him to be reinstated under Government Code section 21193.”

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.

August 17, 2016



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