ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Sheila Crawford (Respondent) was employed by Respondent City of Inglewood (Respondent City) as a Special Enforcement Officer (parking and traffic enforcement). By virtue of her employment, Respondent became a local miscellaneous member of CalPERS.

In July 2010, Respondent was placed on administrative leave by Respondent City because she was accused of being under the influence of alcohol while on the job. In February 2011, Respondent had a stroke. On June 14, 2011, Respondent was served with a Notice of Intent to Terminate. On July 20, 2011, a Skelly hearing was completed. On August 11, 2011, Respondent was issued written Notice of Termination based on Respondent's alleged intoxication while on duty, and she was terminated on August 17, 2011.

Sometime in 2011, Respondent filed a grievance regarding her termination. She was represented by an SEIU representative during the grievance process. An agreement was reached where Respondent was allowed to file for a medical retirement in lieu of being terminated. The SEIU representative wrote a letter to Respondent outlining the agreement:

> After your recent detailed medical evaluation, your physician came to the conclusion that it would not be in your interest to subject yourself to the anticipated rigors of an appeal in front of the Civil Service Commission further concluding that even if the hearing itself had no negative impact on you, you would not be able to return to the City service in any capacity including your former position. I concur with that assessment.
>
> We therefore have two very limited options in front of us: first is to simply do nothing and let the discharge stand for the reasons stated; second is to accept the offer of the City, and resign. Leaving through resignation would be a voluntary action and therefore preserve your record from the stain of discharge. Should you recover sufficiently at a later date and wish to seek employment in another venue, you would not have to inform your new employer of a discharge, but only that you chose to leave Inglewood for personal reasons. Your subsequent history would surely explain any time after that. This latter option would be the best.
>
> I have therefore, crafted a brief Resignation for you to sign and it is included. You need to sign it and send it to Jack Hoffman, Human Resources Director. . . This should be done immediately. You should send me a copy. Once I receive it, I will withdraw your appeal and you can get on with your life.

> You may have existing retirement options that would still be available to you even if you resign, and you can explore them by contacting the same address.

On July 23, 2012, Respondent sent a resignation letter to the City stating: "Accept my resignation effective August 17, 2011."

The hearing in this case was completed on March 17, 2016, but the record was re-opened for Respondent to submit further documents. On March 31, 2016 and April 1, 2016, Respondent submitted additional documents including the letter quoted above. CalPERS submitted additional briefing on the late documents.

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

CalPERS argued that Respondent's termination was for cause, and that she therefore cannot receive disability benefits under existing case law, regardless of whether she is otherwise disabled from performing her usual and customary duties. Respondent argued that she was not terminated because of the agreement her SEIU representative reached with the City. CalPERS argued that even under the voluntary resignation, Respondent could not return to work for the City, and therefore is barred from obtaining disability retirement under applicable case law.

The Administrative Law Judge (ALJ) concluded that if a member is terminated for cause, the member is barred from obtaining disability retirement under *Haywood v. American River Fire Protection District* (1998) 6f7 Cal.App.4th 1292 (*Haywood*); *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*); and the Precedential Decision *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot (Vandergoot)*. In *Haywood*, the Court of Appeal held that if an employee has been terminated for cause, then there has been a complete severance of the employer-employee relationship, which eliminates a required condition for disability retirement – the potential reinstatement of the employee if there is physical recovery to the point that the employee is no longer disabled (*Haywood, supra* at p. 1297). *Smith* and *Vandergoot* follow the *Haywood* reasoning, and make clear that if Respondent was terminated for cause, then the member may not apply for disability retirement.

The ALJ found that *Vandergoot* was similar to the facts of this case. In *Vandergoot* the Court found that if a member facing termination for cause resigns from service as part of a resolution of the termination case, they are barred from disability retirement. In *Vandergoot*, the ALJ concluded that the employment relationship had been severed by a settlement, and the employee could not be required to submit a medical exam pursuant to Government Code §21192, and could not be reinstated under Government Code §21193, two statutes relied upon by the *Haywood* court.

The ALJ reviewed the letter quoted above, which states that if Respondent sufficiently recovered physically, and she sought employment "in another venue, you would not have to inform your new employer of a discharge." The ALJ concluded the letter alluded to the fact that Respondent would not reapply to Respondent City for employment.

The ALJ found that Respondent has the burden of proof, and she did not meet her burden. The ALJ held that under case law, and the facts and circumstances of this case, CalPERS correctly determined it was barred from considering Respondent's disability retirement application, because there was insufficient evidence that she could be reinstated.

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

Elizabeth Yelland

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