

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Ramona Walls (Respondent Walls) worked as a Tax Compliance Representative for Respondent California Department of Health Care Services (DHCS). By virtue of her employment, she was a state miscellaneous member of CalPERS.

Respondent Walls submitted a disability retirement application with CalPERS on October 16, 2012, claiming that on the basis of orthopedic (left and right hand, left and right arm, and carpal tunnel) conditions she was unable to work as a Tax Compliance Representative with DHCS. Respondent Wall's disability retirement application was approved and she was retired for disability effective November 9, 2012.

Pursuant to Government Code section 21192, CalPERS sought to have Respondent Walls examined to determine whether she should be reinstated to her former position with DHCS. To evaluate Respondent Walls's current medical condition, CalPERS referred Respondent Walls for an Independent Medical Examination (IME) with Orthopedic Surgeon Arthur M. Auerbach, M.D. Dr. Auerbach interviewed Respondent Walls, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Auerbach also performed an IME. Dr. Auerbach issued a written report finding Respondent Walls was not, in his opinion, unable to perform her duties as a Tax Compliance Representative with DHCS. On the basis of this IME report and a review of Respondent Walls's medical records, CalPERS determined that Respondent Walls was no longer substantially incapacitated and should be reinstated to her position with DHCS. CalPERS informed Respondent Walls of this determination on August 7, 2014.

Respondent Walls appealed CalPERS' determination that she should be reinstated and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings.

On June 28, 2016, prior to the date set for hearing, CalPERS was informed by representatives from DHCS that Respondent Walls was ineligible for reinstatement. Respondent Walls, in settling a workers' compensation claim, signed a Waiver of Employment agreement whereby she agreed that she would never seek nor accept employment with DHCS.

CalPERS determined that the cases of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*) and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*) preclude Respondent Walls from continuing to receive disability retirement benefits. 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.

Applying *Haywood*, the precedential *Vandergoot* decision (*In the Matter for Application for Disability Retirement of Robert C. Vandergoot, Respondent*, made precedential by the CalPERS Board on October 16, 2013) holds that resignation in the face of threatened dismissal, coupled with a waiver of the right to reinstatement, is tantamount to dismissal for cause and renders the employee ineligible for disability retirement with CalPERS.

Based on these facts, CalPERS amended its Accusation to allege that Respondent Walls was ineligible to receive disability retirement benefits due to precedent set by the *Haywood*, *Smith* and *Vandergoot* cases. Respondent Walls’ employee-employer relationship with DHCS was completely severed pursuant to the Waiver of Employment, and CalPERS determined that the severance was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for IDR.

Respondent Walls appealed CalPERS’ amended determination that she should be reinstated and that she is ineligible to receive disability retirement benefits.

On September 12, 2016, CalPERS informed Respondent Walls that, based on additional information received, it was withdrawing the determination that she should be reinstated to her former position with DHCS. Consequently, the only issue at the hearing was whether Respondent Walls was eligible to receive disability retirement benefits.

An ALJ presided over the hearing in Sacramento, California on October 17, 2016. Respondent Walls represented herself at the hearing. DHCS was represented by attorney Donald R. Aron at the hearing.

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

At the hearing, CalPERS presented evidence supporting a conclusion that Respondent Walls completely severed her employment relationship with DHCS as a result of signing the Waiver of Employment and agreeing to a compromise and release settlement of her workers’ compensation claims. Specifically, Maribeth Ennis-Leu, the workers’ compensation manager for DHCS, testified that DHCS employees can settle their workers’ compensation claim in one of two ways: (1) stipulation, or (2) compromise and release. Ms. Ennis-Leu testified that Respondent Walls chose to settle her workers’ compensation claim by compromise and release, thus receiving a one-time lump sum payment. In addition, Ms. Ennis-Leu testified that DHCS will only settle in this manner if the employee, Respondent Walls in this matter, agrees to waive

all mandatory and permissive rights to reinstate to their former position. Ms. Ennis-Leu testified that Respondent Walls did, in fact, agree to forever waive all mandatory and permissive rights to reinstatement. Furthermore, Ms. Ennis-Leu testified that should CalPERS determine Respondent Walls is no longer substantially incapacitated, the DHCS will not allow Respondent Walls to be reinstated to her former position as a result of the Waiver of Employment entered into by and between DHCS and Respondent Walls. Consequently, Respondent Walls cannot be reinstated to her former position with DHCS.

Respondent Walls testified on her own behalf. Respondent Walls testified that she filed five separate claims for workers' compensation benefits between April 21, 2006 and February 14, 2011. She testified that she settled all of those claims and executed a compromise and release. Respondent Walls testified that she signed the Waiver of Employment on May 13, 2015. The Waiver of Employment provided, in part: "Upon my own initiative and after consultation with my attorney(s), to induce the State of California and its representatives to enter into a compromise and release agreement as a final resolution to the above-reference claim(s), I waive any and all mandatory or permissive rights to reinstatement or rehire by the Department of Health Care Services." The Workers' Compensation Appeals Board approved the Compromise and Release on May 13, 2015.

The Order Approving Compromise and Release contained the following paragraph:

11. WARNING TO EMPLOYEE: SETTLEMENT OF YOUR WORKERS' COMPENSATION CLAIM BY COMPROMISE AND RELEASE MAY AFFECT OTHER BENEFITS YOU ARE RECEIVING TO WHICH YOU BECOME ENTITLED TO RECEIVE IN THE FUTURE FROM SOURCES OTHER THAN THE WORKERS' COMPENSATION, INCLUDING BUT NOT LIMITED TO SOCIAL SECURITY, MEDICARE and LONG-TERM DISABILITY BENEFITS.

Respondent Wall and her attorney both signed the Order Approving Compromise and Release.

The ALJ granted Respondent Walls' appeal. The ALJ found that it was undisputed that Respondent Walls had been receiving CalPERS disability retirement benefits for nearly two years before she settled her workers' compensation claims by compromise and release. The ALJ found that she permanently and irrevocably terminated her employee-employer relationship with DHCS, effective May 13, 2015, the date the Workers' Compensation Appeals Board approved the settlement. However, the ALJ found that Respondent Walls "permanently severed her employee-employer relationship with the Department of Health Care Services solely because of a disability." Consequently, the ALJ concluded the severance of the employee-employer relationship was the ultimate result of a disabling medical condition, and pursuant to Haywood this severance does

not affect Respondent Walls' eligibility to continue receiving disability retirement benefits.

The Proposed Decision is supported by the current law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the member's appeal was granted, it is not likely she will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 21, 2016



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