

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Jose Huerta, Jr. (Respondent Huerta) worked as a Correctional Officer for California Department of Corrections and Rehabilitation, California Substance Abuse Treatment Facility and State Prison, Corcoran (Respondent CDCR). By virtue of his employment, Respondent Huerta is a state safety member of CalPERS.

Respondent Huerta worked as a Correctional Officer for Respondent CDCR for approximately 6 years. On December 28, 2012, Respondent CDCR served Respondent Huerta with a Notice of Adverse Action (NOAA) advising him that he would be terminated for inexcusable neglect of duty, dishonesty, discourteous treatment of the public or other employees, willful disobedience and other failure of good behavior. Respondent Huerta appealed his termination to the California State Personnel Board (SPB). While his appeal was pending, Respondent Huerta settled with Respondent CDCR, agreeing to resign in exchange for withdrawal of the NOAA. Respondent Huerta also agreed to waive any right to future employment or reinstatement to employment with Respondent CDCR. SPB approved the settlement. On January 23, 2014, Respondent Huerta applied for Industrial Disability Retirement (IDR) with CalPERS. He claimed disability on the basis of orthopedic (left shoulder, neck and right hip) conditions.

CalPERS cancelled Respondent Huerta's IDR application pursuant to *Haywood v. American River Fire District* (Haywood) on grounds that his resignation in the face of the NOAA was tantamount to dismissal for cause, and that Respondent Huerta's separation from employment with Respondent CDCR was not the result of a disabling condition or preemptive of an otherwise valid disability claim.

Respondent Huerta appealed, exercising his right to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH). A hearing was held September 22, 2016 in Bakersfield, California. Counsel appeared on behalf of Respondent Huerta. Respondent CDCR did not appear.

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 valid claim for disability retirement. Applying the *Haywood* rule, the *Vandergoot* precedential decision holds that resignation by a member in the face of a NOAA, accompanied by a waiver of all reinstatement rights, is tantamount to dismissal for purposes of determining a member's eligibility to apply for disability retirement benefits. Such facts trigger the *Haywood* rule, requiring a member to demonstrate that one of the two *Haywood* exceptions, *supra*, applies, in order for the member to be eligible to apply for disability retirement.

Regarding the *Haywood* exceptions, counsel for Respondent Huerta argued at hearing and in his closing briefing that both applied. Counsel presented evidence that prior to the NOAA being issued, Respondent Huerta fell through a control booth gunport window at the prison, sustaining various orthopedic injuries and receiving approximately \$50,000 in benefits as the result of a permanent partial disability rating from the California Workers' Compensation Appeals Board (WCAB). Counsel also presented several hearsay medical reports from physicians retained to evaluate Respondent Huerta for receipt of workers' compensation benefits.

After considering all the evidence, the ALJ ruled that the settlement between Respondent Huerta and Respondent CDCR, in the face of the NOAA, was tantamount to dismissal, and that the *Haywood* rule applied. With respect to the *Haywood* exceptions, the ALJ found that the SPB-approved settlement between the parties was based on facts unrelated to any disabling medical condition, or Respondent Huerta's alleged physical incapacity to perform his job. Additionally, although Respondent Huerta did sustain work-related injuries prior to disciplinary action being taken against him, Respondent Huerta did not have a vested right to disability retirement prior to being disciplined. He did not apply for disability retirement until after receiving the NOAA, and CalPERS had not made a determination regarding Respondent Huerta's medical condition prior to the date the NOAA was served. Though Respondent Huerta did present evidence of a workers' compensation claim and a work-related injury, such evidence was not proof that his approval for disability retirement with CalPERS would have been a foregone conclusion, as required by *Haywood* and its progeny. For these reasons, the ALJ held that the NOAA did not preempt an otherwise valid claim for disability retirement, and the second *Haywood* exception also did not apply.

The ALJ concluded Respondent Huerta's appeal should be denied. 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.

December 21, 2016



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