

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Patricia Alamilla (Respondent Alamilla) was employed by Respondent Department of Corrections and Rehabilitation, Corcoran (CDCR), as a Correctional Officer effective February 13, 1999. By virtue of her employment, Respondent Alamilla became a state safety member of CalPERS.

On April 11, 2014, CDCR served Respondent Alamilla with a Proposed Notice of Adverse Action (NOAA). The NOAA stated that Respondent Alamilla was terminated for inexcusable neglect of duty, dishonesty, willful disobedience and other violations. The NOAA stated that Respondent forged the physician's signature on a Family Medical Leave Act form she submitted to CDCR.

The NOAA stated that Respondent Alamilla's effective date of dismissal is April 25, 2014. Respondent Alamilla submitted a letter of resignation on or before April 25, 2014. CDCR accepted the resignation effective April 25, 2014.

On April 22, 2015, Respondent Alamilla filed her application for Industrial Disability Retirement claiming she is unable to perform her job due to various medical conditions.

Based on the NOAA, CalPERS determined that Respondent Alamilla was ineligible to apply for disability retirement due to operation of the *Haywood*, *Smith* and *Vandergoot* cases (cited below), because she had been terminated for cause and her termination was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement. Respondent Alamilla appealed and a hearing was completed on November 22, 2016.

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

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 Alamilla 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 Board held that an employee’s resignation was tantamount to a dismissal when the employee resigned pursuant to a settlement agreement entered into to resolve a dismissal action and agreed to waive all right to return to his former employer.

In *MacFarland*, Mr. MacFarland was served a NOAA, which stated his effective termination date. Mr. MacFarland resigned and filed his Industrial Disability Retirement application prior to the effective date of termination. The employer accepted Mr. MacFarland’s resignation and considered him terminated “under unfavorable circumstances.” The Board held that the employment relationship was severed when the NOAA was served on Mr. MacFarland, which occurred prior to his resignation. Due to his termination, Mr. MacFarland had no employer to return to, thus he is ineligible to apply for disability retirement under *Haywood*, *Smith* and *Vandergoot*.

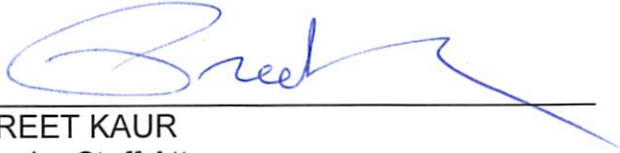
Respondent Alamilla admitted that she had forged a physician’s signature. The Administrative Law Judge concluded that the facts are not in dispute, and upheld CalPERS’ cancelation of Respondent Alamilla’s application for Industrial Disability Retirement.

Respondent Alamilla’s termination permanently severed her employment relationship with CDCR. The ALJ held that CalPERS correctly determined that *Haywood*, *Smith*, *Vandergoot* and *MacFarland* bar Respondent Alamilla’s eligibility to apply for industrial disability retirement. The ALJ held that the facts in *MacFarland* are applicable to Respondent Alamilla’s case because Respondent Alamilla “resigned on the effective date of the NOAA for the purpose of avoiding dismissal.”

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

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.

February 15, 2017



PREET KAUR
Senior Staff Attorney