

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Joseph Ramey (Respondent Ramey) was employed by Respondent Sylvan Cemetery District (Cemetery District), as an Assistant Manager effective December 1994. By virtue of his employment, Respondent Ramey became a miscellaneous member of CalPERS.

On April 26, 2014, Respondent Ramey was placed on probation for repeatedly laying out gravesites at the incorrect locations. Respondent Ramey was reprimanded, in writing, on May 2, 2014 and informed he would be immediately terminated if he made another mistake. On December 8, 2014, the General Manager of the Cemetery District, Ronnie Clark, verbally informed Respondent Ramey that he was being terminated because Respondent Ramey prepared the wrong gravesite again. A written notice of termination was not provided to Respondent Ramey. On December 9, 2014, Mr. Clark informed the Sylvan Cemetery District that Respondent Ramey was terminated. After he was notified of his termination, Respondent Ramey submitted a letter of resignation, dated December 8, 2014 to the Cemetery District.

On January 28, 2015, Respondent Ramey filed his application for disability retirement claiming he is unable to perform his job due to an orthopedic (back) condition.

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

Prior to the hearing, CalPERS explained the hearing process to Respondent Ramey and the need to support his case with witnesses and documents. CalPERS provided Respondent Ramey with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent'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 Ramey 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.

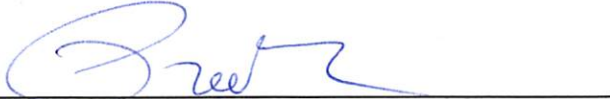
In *MacFarland*, Mr. MacFarland was served a Notice of Adverse Action, which stated his effective termination date. Mr. MacFarland resigned and filed his industrial disability retirement application prior to the effective date of termination. The employer accepted Mr. MacFarland's resignation and considered 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 Ramey testified at the hearing that Mr. Clark did not inform him regarding his termination. Rather, he testified, that he resigned because he was unable to perform his job duties.

The Administrative Law Judge concluded that the facts in this case are distinguishable from *Haywood* and *Vandergoot* because Respondent Ramey resigned after being verbally informed he was terminated, but before any official termination paperwork was served on him. For the same reason, the ALJ held *MacFarland* does not apply. The ALJ held that CalPERS failed to establish Respondent Ramey's resignation from his employment "was tantamount to a dismissal for cause under the criteria set forth in *Haywood* and its progeny. . ."

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Having won his appeal, the member is not likely to file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 15, 2017



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