

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Tracy Craig (Respondent Craig) worked as a Tax Program Technician I for the California Franchise Tax Board (Respondent FTB). By virtue of her employment, Respondent Craig was a state miscellaneous member of CalPERS.

Starting on July 10, 2009, Respondent Craig was absent without leave (AWOL) for five consecutive working days. Respondent FTB sent Respondent Craig a Notice of AWOL Separation on July 24, 2009, intending to invoke the AWOL statute found in Government Code section 19996.2. Respondent Craig did not request a hearing under *Coleman v. Department of Personnel Administration (Coleman)*. So, effective August 6, 2009, Respondent Craig was automatically resigned from employment at FTB pursuant to the AWOL statute. Respondent Craig then appealed her automatic resignation to the Department of Personnel Administration (DPA). Respondent Craig failed to appear at her appeal hearing before DPA. Thus, DPA considered Respondent Craig's appeal withdrawn, and dismissed her appeal with prejudice.

On March 23, 2015, Respondent Craig applied for Disability Retirement (DR) with CalPERS. She claimed disability on the basis of orthopedic (back, tendonitis, carpal tunnel) and psychological conditions.

CalPERS cancelled Respondent Craig's DR application pursuant to *Haywood v. American River Fire District (Haywood)* on grounds that her automatic AWOL resignation was a separation from which Respondent Craig had no reinstatement rights. Also, Respondent Craig's separation from employment with Respondent FTB was not the result of a disabling condition or preemptive of an otherwise valid disability claim.

Respondent Craig appealed, exercising her right to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH). A hearing was held November 15, 2016 in Sacramento, California. Respondent Craig appeared on her own behalf. Respondent FTB did not appear.

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

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. Analyzing *Haywood*, *Smith v. City of Napa (Smith)* held that a termination for cause extinguishes the right to a disability retirement unless the employee can show her right to a disability retirement matured prior to severance of the employment relationship. Applying the *Haywood* rule, the *Vandergoot* precedential

decision holds that resignation by a member in the face of a Notice of Adverse Action, 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, Respondent Craig testified that her mental health issues began in 2003. Thus, Respondent Craig alleged at the hearing that her alleged disability ultimately caused her automatic resignation. Respondent Craig also testified to certain medical conditions at the time of her resignation.

However, the ALJ concluded that there was no evidence showing Respondent Craig's permanent severance from FTB resulted from a disabling medical condition. Nor was the severance preemptive of an otherwise valid claim for disability retirement pursuant to *Haywood*. In addition, applying the principles of *Smith*, the ALJ found that Respondent Craig did not have a matured right to a disability retirement before her AWOL resignation.

The ALJ concluded Respondent Craig'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.

February 15, 2017



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Senior Staff Attorney