

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Timothy J. Beck (Respondent Beck) was employed by Respondent Lake Arrowhead Community Services District (LACSD) as a maintenance worker. By virtue of his employment, Respondent Beck became a local miscellaneous member of CalPERS.

On April 30, 2015, LACSD served Respondent Beck with a Notice of Intent to Terminate, seeking to dismiss Respondent Beck for cause. On May 6, 2015, Respondent Beck's union filed a formal grievance on his behalf seeking to have the decision to terminate reversed. On May 18, 2015, LACSD responded to the formal grievance and denied Respondent Beck's request to reverse the decision to terminate his employment. On June 11, 2015, Respondent Beck was informed that LACSD was terminating his employment with an effective date of June 11, 2015. Respondent Beck did not appeal this decision, either through the administrative process or by filing a lawsuit.

On January 19, 2016, Respondent Beck signed a disability retirement application. He claimed disability on the basis of an orthopedic (lower back) condition.

CalPERS reviewed the facts and learned that Respondent Beck had been terminated, and that the termination was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement.

Based on these facts, CalPERS determined that Respondent Beck was ineligible to apply for disability retirement due to operation of the *Haywood*, and *Smith* cases. Because Respondent Beck 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, CalPERS cancelled Respondent Beck's disability retirement application.

Respondent Beck appealed CalPERS' determination, exercising his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. The ALJ presided over a one-day hearing in San Bernardino, California on December 15, 2016. Respondent Beck represented himself at the hearing. Respondent LACSD did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent Beck and the need to support his case with witnesses and documents. CalPERS provided Respondent Beck with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Beck'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*) and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*)

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.

At the hearing, CalPERS presented evidence that Respondent Beck was terminated, and that his termination was unrelated to any medical condition and/or claim of disability. CalPERS also presented evidence that LACSD's decision to terminate Respondent Beck's employment was not an attempt to prevent him from filing an otherwise valid claim for disability retirement.

Respondent Beck testified on his own behalf. Respondent Beck testified that he was injured on the job, and that his injury prevented him from adequately performing his job. Respondent Beck testified that he was placed on light duty because of his injury; however, despite being on light duty his supervisor continued to assign him tasks that were impossible for him to physically achieve given his medical condition. Respondent Beck submitted as evidence medical records to support his claims.

The ALJ rejected Respondent Beck's arguments and upheld CalPERS' determination. The ALJ found that Respondent Beck's termination for cause was not the result of his alleged disability and did not preempt an otherwise valid claim for disability retirement. For these reasons, the ALJ found that *Haywood*, *Smith* and *Vandergoot* preclude the acceptance of Respondent Beck's application for disability retirement.

The ALJ concluded that Respondent Beck'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.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be deleted before the words "disability retirement" on pages three and six of 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.

March 15, 2017



JOHN SHIPLEY
Senior Staff Attorney