ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Joseph Buchanan (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated October 2, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

At its November 15, 2017 meeting, the CalPERS Board of Administration adopted the Proposed Decision of the Administrative Law Judge (“ALJ”). The Decision denied Respondent’s appeal and found that Respondent was ineligible to apply for disability retirement due to operation of the Haywood and Smith cases because Respondent 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 filed a timely Petition for Reconsideration.

If a member is terminated for cause, the member is barred from obtaining disability retirement under 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 the Precedential Decision In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot (Vandergoot). In Haywood, the Court of Appeal held that if an employee has been terminated for cause, then there has been a complete severance of the employer-employee relationship, which eliminates a required condition for disability retirement – the potential reinstatement of the employee if there is physical recovery to the point that the employee is no longer disabled (Haywood, supra at p. 1297). Smith and Vandergoot follow the Haywood reasoning, and make it clear that if Respondent was terminated for cause, then the member may not apply for disability retirement.

The ALJ correctly found that “pursuant to the holding in Vandergoot, respondent’s resignation did not preempt his dismissal for the purposes of applying the Haywood and Smith criteria.” In Vandergoot the ALJ found that if a member facing termination for cause resigns from service as part of a resolution of the termination case, he or she is barred from disability retirement. In Vandergoot, the ALJ concluded that the employment relationship had been severed by a settlement, and therefore Mr. Vandergoot was not eligible for disability retirement.

After considering the facts of the case and the decisions of Haywood, Smith and Vandergoot, the ALJ denied Respondent’s appeal. The ALJ found that Respondent was terminated effective April 23, 2009, and did not file his application for disability retirement until seven years later. The ALJ held that CalPERS “demonstrated that respondent’s separation from employment was a dismissal for cause for the purposes of applying the Haywood criteria.”

Respondent now requests reconsideration, stating he was unable to represent himself due to lack of communication of the hearing date. Respondent lacks a valid basis for his request, as Respondent was notified of the hearing date and location.
On April 28, 2017, CalPERS mailed Respondent a copy of the Notice of Hearing, informing him that the hearing would be held at the Office of Administrative Hearings, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833, on September 20, 2017. The Notice of Hearing stated that Respondent's failure to appear at the hearing would result in a default. On May 2, 2017, Respondent signed a certification card, acknowledging delivery of the Notice of Hearing. CalPERS received a copy of the certification card on May 5, 2017. The hearing was held on September 20, 2017, as scheduled, and Respondent failed to appear at the hearing. The ALJ reviewed CalPERS' documentation of notice to the Respondent and found that he had been "duly served" with a Notice of Hearing.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the November 15, 2017, meeting was well reasoned and based on the credible evidence presented at hearing.

December 20, 2017

[Signature]

Senior Attorney