ATTACHMENT B

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

Respondent Reymund L. Dheming (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated September 5, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Respondent was employed by Respondent California Institution for Men, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS.


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 ALJ found that Respondent’s dismissal for cause on December 9, 2016, was the direct result of his actions on June 12, 2015, resulting in his criminal conviction. The ALJ also found that as a result of his criminal conviction, Respondent was not lawfully able to possess a firearm. As a result, the ALJ found Respondent did not have reinstatement rights and was ineligible for an industrial disability retirement. The ALJ also found that under Haywood and Smith, Respondent must establish he had a mature claim for disability on the date of the event giving rise to his termination for his application to survive the termination of his employment. Respondent did not apply for disability retirement until 11 months after June 12, 2015, the date of the incident that gave rise to his termination. The ALJ concluded that Respondent’s termination did not preempt an otherwise valid claim for disability retirement.

The Petition is based on the fact Respondent is “receiving payments from State Compensation Insurance Fund because they have deemed me permanent and
stationary resulting in permanent disability of 21%.” Respondent introduced similar evidence at the hearing. However, as the Court in Smith notes, “a workers’ compensation ruling is not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties is different.”

Respondent has not introduced any new evidence that establishes he had a mature claim for disability on the date of the event giving rise to his termination. Simply put, 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]

JOHN SHIPLEY
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