ATTACHMENT B

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

Respondent Charles A. Therrien (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated September 6, 2018. For reasons discussed below, staff argues the Board deny the petition and uphold its decision.


Based on the NOAA, Respondent submitted medical notes to Respondent Cal Fire to request days off due to an illness. Respondent, however; was not ill during the requested days. He was performing services for another Fire District. Respondent was served a NOAA as a result of his actions.

On November 9, 2007 Respondent signed an application for Service Retirement and retired effective November 15, 2007, one day prior to the effective date of the NOAA.

Meanwhile, Respondent had also appealed the NOAA before the State Personnel Board (SPB). SPB issued an order dismissing Respondent's appeal on September 3, 2008 on the basis that the employer-employee relationship was permanently severed on the effective date of Respondent's service retirement.


*MacFarland* states that the character of the disciplinary action does not change because a resignation was submitted prior to the effective date of the NOAA. A resignation preceding the effective date of the NOAA bars a member from applying for disability retirement on the basis of *Haywood or Smith*. 
After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ correctly found that this case is akin to MacFarland.

Respondent service retired prior to the effective date of the NOAA, Respondent left under unfavorable circumstances, and "but for the pendency of the disciplinary action, respondent would never have applied for service retirement." The employment relationship between Respondent and his employer had been severed and Respondent has no return rights.

Respondent now petitions the Board for reconsideration of the Proposed Decision. He claims the ALJ failed to consider all the facts. These assertions are incorrect as the ALJ's Proposed Decision incorporated all the facts that were presented before the ALJ. In the Proposed Decision, the ALJ notes that Respondent was served a NOAA but applied for service retirement prior to the effective date of the NOAA. The ALJ also notes that SPB dismissed Respondent's appeal of the NOAA based on his resignation. In the Proposed Decision, the ALJ considers how the approval of the service retirement and the dismissal of Respondent's appeal by the SPB impact his eligibility for industrial disability retirement. The ALJ then applies the MacFarland decision, to the facts, to make a determination. Respondent's assertions, that the ALJ did not consider the relevant facts, are contradicted by the Proposed Decision.

Furthermore, 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 on November 15, 2018, was well reasoned and based on the credible evidence presented at the hearing.

For all of the above reasons, staff argues that the Board deny Respondent's Petition for Reconsideration and uphold its prior decision.

December 19, 2018

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