

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Mark R. Kranhold (Respondent) was employed by Respondent City of Sacramento (City) as an Utilities Operations and Maintenance Serviceworker¹. By virtue of his employment, Respondent was a local miscellaneous member of CalPERS.

On January 12, 2018, City issued Respondent a letter informing him it intended to terminate Respondent's employment following an investigation revealing that he had been dishonest in his submission of reimbursement requests for safety boots to City. A *Skelly* hearing was held on January 23, 2018. On January 26, 2018, Respondent and City entered into a Settlement and Release (settlement agreement) which provides in relevant part, as follows:

1. In lieu of termination, Mr. Kranhold has resigned from his position ... effective at the close of business on February 2, 2018. Mr. Kranhold's resignation is irrevocable...
3. Mr. Kranhold understands that the City shall not consider him for reemployment or as a volunteer for any position within the City...
5. Mr. Kranhold and Local 447, waive the right to appeal, challenge, grieve, litigate, or otherwise file any claim regarding any matter concerning his employment with the City...

On August 23, 2018, Respondent signed an application for industrial disability retirement which was received by CalPERS on August 23, 2018. Respondent claimed disability on the basis of an orthopedic (right shoulder) condition.

Based on the termination documents and the settlement agreement, CalPERS determined that Respondent was ineligible for industrial disability retirement pursuant to *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 *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (*Vandergoot*) dated February 19, 2013, and made precedential by the CalPERS Board of Administration on October 16, 2013.

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

¹ Utilities Operations and Maintenance Serviceworker, Utilities Operations and Maintenance Service Worker, and Utilities Operations and Maintenance Lead Worker are used interchangeably in reference to Respondent's position title with the City. The title given to Respondent's position with the City does not materially impact the outcome of his appeal or the Proposed Decision

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.

In *Vandergoot*, the Board agreed that “a necessary requisite for disability retirement is the potential reinstatement of the employment relationship” with the employer if it is ultimately determined by CalPERS that the employee is no longer disabled. The Board held that an employee’s resignation was tantamount to a dismissal when the employee resigned pursuant to a settlement agreement entered into to resolve a dismissal action and agreed to waive all rights to return to his former employer.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on July 15, 2019. Respondent represented himself at the hearing. City did not appear at the hearing.

At the hearing, the ALJ received documentary evidence demonstrating that CalPERS had provided both Respondent and City with proper notice of the date, time and place of the hearing. The ALJ found that the matter could proceed as a default against City, pursuant to Government Code section 11520.

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

Respondent testified on his own behalf. He admitted that he provided fictitious receipts to City for reimbursement of safety boots. Respondent testified that he resigned from his employment upon advice of a union labor relations officer and that he was not aware of the consequences of his resignation. He further testified that at the time he received City’s notice of intent to terminate employment, he was awaiting the results of a Qualified Medical Evaluation (QME) report relating to a workers’ compensation matter and that the QME report indicated that he could not work.

Evidence including City's letter to Respondent of its intent to terminate Respondent's employment, the settlement agreement, and the testimony of Respondent were admitted into evidence.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found as follows:

Respondent Kranhold permanently terminated his employer-employee relationship with the City when he entered into the January 26, 2018 settlement agreement. Termination of the employer-employee relationship was based upon his voluntary resignation and waiver of any right to reinstate to his former position. There was no evidence that his voluntary resignation and waiver of right to reinstate his former position was related to any disability from which he may have been suffering at the time or was preemptive of a valid claim for disability retirement. Although respondent represented that a QME report following his resignation, relating to a workers' compensation claim, stated the he "could not work," evidence did not show that he would have had a valid claim for disability retirement at the time he chose to resign from his position ... Accordingly, respondent is not eligible for disability retirement benefits.

In the Proposed Decision, the ALJ concludes:

Respondent Kranhold permanently terminated his employer-employee relationship with the City with no right of reemployment for reasons unrelated to any disability he may have been suffering at the time. No evidence was submitted to show that he was suffering from a disabling medical condition at the time he resigned from his position or that the termination of the employment relationship was the ultimate result of a disabling medical condition. The evidence did not establish that termination of that relationship preempted an otherwise valid claim for an industrial disability pension. Therefore, respondent Kranhold's appeal of CalPERS's decision finding him that he is not eligible for disability retirement is denied.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

September 18, 2019

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