

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Stacey A. Woienski (Respondent) was employed by Respondent California Department of Corrections and Rehabilitation, Deuel Vocational Institution (Respondent CDCR) as a Correctional Officer. By virtue of her employment, Respondent was a state safety member of CalPERS.

On October 5, 2018, Respondent CDCR served Respondent with a Notice of Adverse Action of Dismissal (NOAA) with an effective termination date of November 5, 2018. The NOAA was based on inexcusable neglect of duty, intemperance, discourteous treatment of the public or other employees, willful disobedience and other failure of good behavior.

Respondent appealed the NOAA and the matter was heard by an Administrative Law Judge (ALJ) of the State Personnel Board (SPB) on March 11, 2019. On April 2, 2019, the SPB ALJ issued a Proposed Decision upholding respondent's dismissal. On May 10, 2019, the SPB adopted the decision.

Respondent filed an application for industrial disability retirement on August 16, 2018. Respondent also requested CalPERS to change her address from a physical location to a P.O. Box. On October 8, 2018, CalPERS informed Respondent that her application was canceled because the required information was not received. The letter was sent to Respondent's old physical address, not her new P.O. Box, because there was a computer problem that blocked the update.

On October 24, 2018, Respondent called CalPERS and learned that her application had been canceled and her address had not been updated due to a computer problem. Respondent was informed that she must resubmit her application.

On November 2, 2018, Respondent resubmitted her application.

Based on the Notice of Adverse Action, Notice of Intent to Discipline, Notice of Discipline, Termination, and Resignation Pursuant to a Settlement Agreement, CalPERS determined that Respondent was ineligible for 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*).

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 *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.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 2, 2019. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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 her own behalf. She did not call any witnesses to testify on her behalf. Respondent testified that she never received CalPERS’ cancellation letter. She was unaware of the cancellation until she called CalPERS.

Evidence including the final decision of SPB Board and the testimony of Respondent were admitted into evidence. Testimony was submitted by a representative of Respondent CDCR. CalPERS also presented the testimony of CalPERS’ staff from the Benefits Services Division. CalPERS’ witness testified that in 2018, it took CalPERS an average of four months to process industrial/disability retirement applications. Here, Respondent filed her initial IDR application on August 16, 2018. Respondent was served a NOAA on October 5, 2018 with November 5, 2018 as the effective date of termination. Therefore, even if CalPERS continued to process Respondent’s August 16, 2018 IDR application, the application would have been canceled due to the NOAA because the NOAA was served within the four months of the average processing timeframe. Essentially, CalPERS’ witness testified that CalPERS would have stopped processing the August 16, 2018 IDR application and applied *Haywood*, upon the discovery of the NOAA, and canceled the August 16, 2018 IDR application.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent’s appeal. The ALJ held that while there is “insufficient evidence to support a finding that respondent's dismissal was the ultimate result of a disabling condition, the second exception to *Haywood* and the equitable principals in *Smith* are applicable, i.e., respondent established that her dismissal preempted her otherwise valid claim for disability retirement.”

The ALJ found that Respondent “took all of the required steps to file for disability retirement prior to the termination of her employment” and CalPERS canceled Respondent’s initial application for industrial disability retirement prior to her termination with Respondent CDCR. Furthermore, the cancelation was due to Respondent CDCR’s failure to provide necessary documentation without proper notice to Respondent. Thus, “respondent was denied the opportunity to have her application decided prior to her termination, through no fault of her own.”

CalPERS disagrees with the ALJ’s findings in the first full paragraph of page 16, that Respondent was denied the opportunity to have her second application for industrial disability decided when CalPERS canceled the second application. CalPERS disagrees because Respondent was terminated effective November 5, 2018, pursuant to the NOAA, which was served on October 5, 2018, not when the SPB issued a Decision upholding the NOAA on May 10, 2019.

Nonetheless, CalPERS agrees with the ALJ that Respondent was denied the opportunity to have her initial application for industrial disability retirement decided due to no fault of her own because her employer failed to submit the required documents and the cancelation notice was mailed to the incorrect address.

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

December 18, 2019

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