

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Won B. Baek (Respondent) has petitioned the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision, dated December 16, 2019. For reasons discussed below, staff argues that the Board should deny the Petition and uphold its Decision.

The sole issue for determination by the ALJ was whether Respondent's Application and eligibility for industrial disability retirement was precluded by operation of *Haywood* and related cases.¹ Respondent was dismissed from employment for cause by California Department of Corrections (CDCR) pursuant to a Notice of Adverse Action, effective October 13, 2017. The ALJ properly concluded that the dismissal has not been set aside or otherwise rendered invalid. Respondent appealed his termination to the State Personnel Board (SPB), but did not complete that process.

The ALJ considered Respondent's claim that he was wrongfully terminated and explained that his claim was only relevant to the extent it supported either exception specified in *Haywood* and *Smith*: (1) that the dismissal was the ultimate result of a disabling condition; or (2) that the dismissal preempted the employee's otherwise valid claim for disability retirement. The ALJ concluded that Respondent did not establish that his dismissal was the ultimate result of a disabling condition. The ALJ further concluded that Respondent did not establish that his termination was preemptive of an otherwise valid claim for disability retirement. Accordingly, the ALJ held that, "Respondent's stated claim to any right to disability retirement allowance cannot be deemed to have matured prior to his termination from employment for cause." Therefore, the ALJ concluded that Respondent's application was precluded by operation of *Haywood* and *Smith*.

No new evidence or argument has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at its February 19, 2020 meeting, was well reasoned and based on the credible evidence presented at hearing.

Respondent claims in his Petition for Reconsideration that "the wrong doings alleged in the NOAA were fabricated" and that "Mr. Baek should not have been terminated or dismissed from his employment with CDCR in the first instance." That is an issue that is not part of the appeal and it was not considered by the ALJ. Accordingly, the correctness, or validity, of CDCR's decision to terminate Respondent was not part of the Proposed Decision and the Board should not grant the Petition for Reconsideration on that basis.

¹ *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, and *In the Matter of Robert Vandergroot* (2013) California Public Employees' Retirement System Board of Administration, Precedential Dec. No. 13-01.

Respondent repeats his claim, which was considered by the ALJ, that the withdrawal of his appeal of his termination to the SPB can, and should, somehow be set aside. The Board, if it were to grant Reconsideration, could not change the decision of the SPB. If Respondent thought that the SPB's approval of his withdrawal of his appeal was in error, then Respondent should have addressed his concerns with the SPB.

Respondent also claims that the ALJ used "the wrong legal standard." The ALJ, in the Proposed Decision, made a detailed application of the law, as set forth in the decisions of *Haywood*, *Smith*, and *Vandergoot*, to the facts. There is no error or flaw in the ALJ's analysis. Respondent's reference to "undisputed evidence" versus "unequivocal" evidence is semantics; a distinction without a difference. The Proposed Decision correctly determined the legal issues.

The Board should deny the Petition for Reconsideration.

April 22, 2020

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