

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Aaron M. Perez (Respondent) was employed by Respondent Department of State Hospitals Atascadero (Respondent DSH-A) as a Unit Supervisor. By virtue of his employment, Respondent was a state safety member of CalPERS.

On October 19, 2020, Respondent DSH-A served Respondent with a Notice of Adverse Action (NOAA) terminating him for cause effective November 6, 2020. Respondent Perez appealed his termination to the State Personnel Board (SPB). At a January 25, 2021 settlement conference, in front of the SPB, Respondent Perez entered into a Stipulation for Settlement (Settlement) with Respondent DSH-A.

Through the Settlement, Respondent agreed to voluntarily resign from Respondent DSH-A effective November 6, 2020, and Respondent DSH-A agreed to accept the resignation. In the event that Respondent were to seek employment from Respondent DSH-A at a future date, Respondent agreed to attach a copy of the Settlement to his application. Respondent also agreed to withdraw his appeal of the NOAA, and Respondent DSH-A agreed to remove the NOAA from Respondent's official personnel file. The Settlement was incorporated into a Proposed Decision that was ultimately adopted by the SPB.

On June 30, 2020, Respondent signed an application for industrial disability retirement which was received by CalPERS on June 30, 2020. Respondent claimed disability on the basis of psychological conditions.

Based on the Notice of Adverse Action, Notice of Intent to Discipline, and the Notice of Discipline, Termination, Resignation Pursuant to a Settlement Agreement, CalPERS determined that Respondent was ineligible for industrial disability retirement pursuant to *Haywood v. American River Fire Protection District (Haywood)* (1998) 67 Cal.App.4th 1292; *Smith v. City of Napa (Smith)* (2004) 120 Cal.App.4th 194; and *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot (Vandergoot)* dated February 19, 2013, 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 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 which resolved the pending dismissal action, and agreed to waive all rights to return to his former employer.”

The Court of Appeal upheld the principles from *Vandergoot* in *Martinez v. Public Employees’ Retirement System (Martinez)* (2019) 33 Cal.App.5th 1156, in which a state employee settled a termination for cause by entering into a settlement agreement through which she resigned from state service. In the settlement agreement, the employee agreed that she would neither apply for employment, nor accept employment, with the agency from which she was resigning. Following her resignation through the settlement agreement, the employee applied for a disability retirement with CalPERS. CalPERS rejected the application, citing to *Haywood*, *Smith* and *Vandergoot*. The Court of Appeal ruled that the settlement agreement was “tantamount to a dismissal” for the purposes of the disability retirement application, completely severing the employment relationship and precluding the employee’s possible reinstatement to her 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 (OAH). A hearing was held on January 27, 2022. Respondent was represented by counsel at the hearing. Respondent DSH-A did not appear.

CalPERS introduced evidence including the NOAA, Settlement Agreement and the SPB Decision approving settlement.

Respondent testified on his own behalf. Respondent maintained that his resignation did not preclude his application for industrial disability retirement. Respondent explained that he was a target of violent acts while working for Respondent DSH-A, such as attempted assaults and having bodily fluids thrown at him on several occasions.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent completely severed his employment relationship with Respondent DSH-A when he voluntarily resigned on November 6, 2020, pursuant to the terms of the Settlement Agreement. Respondent’s

voluntary resignation was neither the ultimate result of a disabling medical condition, nor preemptive of an otherwise mature or valid right to a disability retirement antedating the resignation. Accordingly, the ALJ upheld CalPERS' determination and denied the appeal.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." In order to avoid ambiguity, staff recommends that the case name "Martin" be changed to "Martinez" in the heading right before paragraph 13 on page 12, in the text of paragraph 13 on pages 12 and 13, and in the first line of paragraph 14 on page 13; staff also recommends the reference to "Employers" be changed to "Employees" in paragraph 13 on page 12.

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

April 19, 2022

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