

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case was completed on April 12, 2016. Following the hearing, a Proposed Decision was issued on May 11, 2016. The Proposed Decision held in favor of CalPERS (denial of Respondent Sebring's application for Industrial Disability Retirement (IDR)). The Board adopted the Proposed Decision on June 15, 2016. Respondent Sebring submitted this Petition for Reconsideration on July 12, 2016.

Respondent Sebring was employed by the Department of Corrections and Rehabilitation (CDCR) at California State Prison, Solano as a correctional officer. On September 19, 2011, he was terminated for smuggling contraband to inmates and failing to make "full, complete, and truthful statements" during an official internal investigation in violation of Government Code section 19572, subdivisions (d) (inexcusable neglect of duty); (e) (insubordination); (o) (willful disobedience); and (t) (other failure of good behavior).

Two hours before his termination became effective, Respondent Sebring resigned for "personal reasons." Almost three years later on May 27, 2014, Respondent Sebring applied for IDR on the basis of "heart, mitral valve release, hypertension, right knee, lower back and psyche." CalPERS rejected Respondent Sebring's IDR application on the grounds that Respondent Sebring had separated permanently from his employment with CDCR, and that his separation was not the result of a disabling condition, nor was his separation preemptive of an otherwise valid disability claim, pursuant to the rule set forth in *Haywood v. American River Fire District*. Respondent Sebring appealed CalPERS' determination, exercising his right to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH).

The *Haywood* case holds that a CalPERS member is ineligible for disability retirement if the member was terminated from employment for reasons that are not related to a disabling condition, and the termination does not preempt an otherwise legitimate claim for disability retirement. To establish preemption, the member must show a vested right to retirement, such that a favorable decision on the application prior to termination would have been a foregone conclusion.

A hearing was held April 12, 2016, in Sacramento, California, to determine whether *Haywood* precluded Respondent Sebring's application. CalPERS and Respondent Sebring were represented by counsel. A representative from CDCR was also present.

Respondent Sebring testified that he was contacted by an unknown individual who showed him a photograph of his mother's house and threatened that if Respondent Sebring did not bring contraband into the prison his mother would be "dead meat." During the ten months Respondent Sebring smuggled the contraband into the prison, he claimed his mental state was a "constant nightmare." In February 2011, CDCR became aware of Respondent Sebring's activities and placed him on administrative leave, barring him from the prison grounds. In March 2011, Respondent Sebring began

seeing a psychologist about his mental stress issues. At hearing, CalPERS argued Respondent Sebring was not eligible for IDR because Respondent Sebring's medical condition had not created a vested right; he continued to perform his duties until he was placed on administrative leave and only sought medical treatment after he was placed on administrative leave.

The ALJ found CalPERS' arguments persuasive. Respondent Sebring did not present undisputed evidence of a disability, such that "a favorable decision on his claim would have been a foregone conclusion," the requisite showing to establish a vested right to disability retirement. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.) Instead, the evidence showed Respondent Sebring was able to perform his usual and customary duties up to the date of his resignation. Because Respondent Sebring's disability pension right had not matured at the time of his resignation, the ALJ found Respondent Sebring ineligible to apply for IDR under the *Haywood* line of cases.

Respondent Sebring was represented by an attorney during the hearing and had full due process. All evidence was presented at the hearing. Respondent Sebring has not presented any new evidence in his Petition for Reconsideration but rather just repeated the evidence presented at the hearing.

For all of the reasons stated above, staff urges the Board to deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the decision of the Board.

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