

ATTACHMENT C

RESPONDENT'S ARGUMENT

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9 **BOARD OF ADMINISTRATION**
10 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**
11

12 *In re the Appeal of:*
13
14 JASON J. BEMOWSKI,
15 Respondent,
16 and
17 CITY OF CHINO,
18 Respondent.
19

AGENCY CASE NO. 2020-0160
OAH NO. 2020070063
**BRIEF IN SUPPORT OF PROPOSED
DECISION**
Date: November 17, 2021

1 I.

2 INTRODUCTION

3 Appellant Sergeant Jason Bemowski (“Respondent”) was a long-term member of the Chino
4 Police Department, having served with distinction for over 18 years. In the course of carrying out
5 his duties as a peace officer, Respondent was injured when he suffered shoulder injuries as well as
6 a back injury. Based on his injuries, Respondent applied for an Industrial Disability Retirement
7 (“IDL”) on April 3, 2019. On May 9 and 12, 2019, Respondent was evaluated by Arrowhead
8 Orthopedics who determined that he had suffered disabling injuries on the job and was no longer
9 able to carry out his duties as a peace officer.

10 On March 7, 2019, the Department placed Respondent on administrative leave. While on
11 administrative leave, Respondent received his full pay and benefits. More importantly, Respondent
12 was also making his contributions to CalPERS for his retirement. On September 19, 2019, the
13 Department served Respondent with A Notice of Intent to Terminate. Appellant appealed that matter
14 and it is still pending. On December 4, 2019, CalPERS notified Respondent that it determined the
15 application for IDR was barred because Respondent’s employment ended for reasons that were not
16 related to a disabling medical condition. Respondent timely appealed that determination and this
17 issue was head before Administrative Law Judge Ji-Lan Zing (“ALJ”). On August 26, 2021, the ALJ
18 issued a decision wherein it was determined that Respondent’s IDR application was not barred
19 because he was still a paid member of the Department when he applied for an IDR.

20 II.

21 DISCUSSION

22 A. The ALJ correctly determined that the *Haywood* and *Smith* cases are not
23 applicable.

24 The basis for CalPERS denial of Respondent’s IDR application was its assertion that the
25 *Haywood* and *Smith* cases were applicable and barred Respondent’s application. However, the
26 distinguishing factor in the present case is that Respondent was a fully paid employee (on
27 administrative leave) when he applied for an IDR. This key fact distinguishes Respondent’s
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1 situation from the facts in *Haywood* and *Smith*. As the ALJ correctly points out, in both *Haywood*
2 and *Smith* the applicants filed for an IDR after the decision to terminate their employment was made.
3 In fact, in *Haywood* the applicant applied for an IDR after he was in fact terminated and in *Smith* the
4 applicant backdated his application on the date of his termination. In the instant case, Respondent
5 applied for an IDR while he was still a fully paid employee of the Department who was entitled to
6 an IDR because he was permanently disabled due to injuries he suffered while carrying out his duties
7 as a peace officer over an 18 year career.

8 **B. The ALJ was correct that the *Willens* case is the controlling precedent.**

9 In *Willens*, the California Supreme Court held that a Judge who had criminal bribery charges
10 pending and was on a paid suspension was entitled to his disability retirement. In so holding, the
11 Supreme Court stated that any other outcome “would ignore the fundamental precept that an accused
12 is presumed innocent until proven guilty.” *Willens v Commission on Judicial Qualifications* (1973)
13 10 Cal. 3d 451, 456. Here, Respondent was on paid leave making his CalPERS contributions when
14 he applied for an IDR. Furthermore, it was determined by an orthopedist that Respondent suffered
15 permanent injuries while on the job and could no longer carry out his duties as a peace officer. To
16 disallow Respondent a disability retirement would completely contradict the opinion of the
17 California Supreme Court in *Willens* and the ALJ correctly analogized the facts of the present case
18 to that of *Willens*.

19 **C. The ALJ’s decision is not precedential.**

20 The ALJ’s decision is not precedential because it follows well established law by following
21 the holding in *Willens*. Further, as the ALJ points out: “As in *Smith*, the facts of this case do not
22 require a determination of whether the event extinguishing a right to a disability retirement is the
23 effective date of the dismissal, the date of the decision to dismiss the employee, or the date of the
24 underlying conduct giving rise to the dismissal.” See footnote 2 at Page 13.

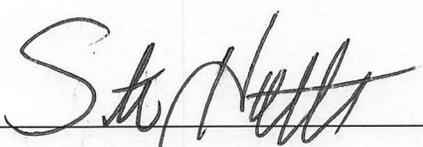
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III.
CONCLUSION

In sum, the Board should adopt the ALJ's decision and allow Respondent to obtain the disability retirement that he duly earned with 18 years of service to the community. Respondent was a fully paid employee when he applied for his IDR and the holding in *Willens* clearly supports this well reasoned decision.

DATED: OCTOBER 28, 2021

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BOARD OF ADMINISTRATION

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CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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11 JASON J. BEMOWSKI,

12 Respondent,

13 v.

14 CITY OF CHINO,

15 Respondent.

AGENCY CASE NO. 2020-0160

OAH No. 2020070063

Date: November 17, 2021

RESPONDENT CITY OF CHINO'S
ARGUMENT RE RESPONDENT JASON
J. BEMOWSKI'S PROPOSED DECISION

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1 The City of Chino submits this argument against the Proposed Decision in the
2 above entitled matter concerning the cancellation of the IDR application of Jason
3 Bemowski, former employee of the City of Chino.

4 The Proposed Decision in this matter is wrought with deeply troubling conclusions
5 and a hyper-technical and flawed interpretation of the law. The result of this tortured
6 analysis is that a convicted felon who preyed upon a minor female victim of human sex
7 trafficking will be permitted to pursue his application for IDR benefits on the merits. The
8 Proposed Decision in this matter is premised on a tortured rationale that basically ignores
9 that the act which gave cause for Bemowski's termination actually occurred on December
10 23, 2018 when Bemowski victimized a 16 year old minor female victim of sex trafficking.
11 The Proposed Decision glosses over this critical fact and date and instead relies on the
12 subsequent dates on which Bemowski was served with a notice of intent to terminate
13 (September 17, 2019) and the final notice of termination (September 30, 2019). The
14 Proposed Decision identifying these as the operative dates determinative of the
15 cancellation of the application for IDR appears to be a basic failure to see the forest
16 through the trees.

17 The truth of this matter is that early on the morning of March 7, 2019, Bemowski
18 became aware that he would be terminated as an employee of the City of Chino when he
19 was placed in handcuffs and arrested for felonious conduct, to wit, unlawful sex with a
20 minor, a violation of Penal Code section 261.5(a). Bemowski was employed as a police
21 sergeant and very clearly understood that his career was over on the morning of March 7,
22 2019. Any consideration to the contrary defies common sense and basic logic.

23 That *after* his arrest Bemowski subsequently made a workers compensation claim
24 for alleged work related injuries speaks to the character of a now convicted felon. The
25 prevailing logic being, if already caught in felonious criminal activity, then why not throw
26 in workers compensation fraud? Bemowski further tripled down on his misdeeds when
27 he submitted his application for an IDR from CalPERS through the City on April 3, 2019.
28 The Proposed Decision overturning CalPERS' correct decision to cancel his IDR

1 application essentially rewards Bemowski for his fraudulent acts occurring well after he
2 got caught in felonious activity and became aware his career in law enforcement was
3 over. There is something fundamentally wrong with this outcome and the Board needs to
4 seriously consider and weigh this before it adopts the incorrect Proposed Decision in this
5 matter.

6 The Proposed Decision also errs in that it seems to attribute the delay from the
7 date of Bemowski's arrest (March 7, 2019) until the service of the notices of termination
8 (September 2019) to the City. This again misses the point because the relevant
9 operative date should be the date that Bemowski committed a felony sex act on a minor
10 female victim (December 23, 2018) or at the latest, the date he became aware his career
11 in law enforcement was over (March 7, 2019). It also misses the point, because it
12 completely ignores the fact that Bemowski knowingly delayed the administrative
13 investigation through a continuous refusal to present for administrative interview and for
14 months hid behind his workers' compensation claim and proceeding to achieve this end.
15 The Proposed Decision appears to impute this delay on the City of Chino, but it occurred
16 through no fault of its own. It appears that at every turn, the Proposed Decision gave the
17 benefit of the doubt to a now-convicted felon, instead of inquiring and making
18 determinations as to the efficacy of the City's administrative investigation and processes.

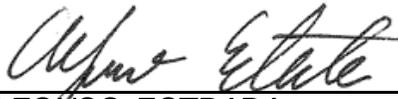
19 It is indisputable that the precedent set by the Proposed Decision in this matter is
20 a dangerous one. It permits individuals like Bemowski, a convicted felon who disgraced
21 the profession of law enforcement to shield themselves through the workers'
22 compensation system to keep their eligibility for public retirement benefits alive. This is
23 deeply concerning in that this Board, if it adopts the Proposed Decision, will be ratifying
24 this conduct and fraud committed upon public employees in good standing who pay into
25 the CalPERS retirement system. The City of Chino submits these points and strenuously
26 urges the Board to revisit common sense and set aside the Proposed Decision.

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1 DATED: October 28, 2021

HANSON BRIDGETT LLP

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