

ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE PETITION
FOR RECONSIDERATION**

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BEFORE THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

In the Matter of the Appeal of Accepting the
Application for Industrial Disability
Retirement of
TIFFANY M. WAGNER,

Respondent,

and
COUNTY OF PLUMAS;

Respondent,

Respondent.

OAH No. 2021010772

CalPERS Ref No. 2020-1100

**ATTACHMENT OF RESPONDENT’S
ARGUMENT IN SUPPORT OF
PETITION FOR RECONSIDERATION
OF THE BOARD OF
ADMINISTRATION**

Board Services Unit Coordinator
California Public Employees’ Retirement
System
Post Office Box 942701
Sacramento, CA 94229-2701

Board@CalPERS.ca.gov

TO CALPERS BOARD AND ALL PARTIES OF RECORD:

Respondent Tiffany M. Goodson (Tiffany M. Wagner), hereby submits as an attachment,
Respondents Argument submitted previously for the Board Meeting of July 17, 2024. See
Exhibit A.

**ATTACHMENT OF RESPONDENT’S ARGUMENT IN SUPPORT OF PETITION FOR
RECONSIDERATION OF THE BOARD OF ADMINISTRATION**

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Dated: August 16, 2024

CAL LAW APC



By: _____,

Calvin Chang, Esq.
Attorneys for Tiffany Goodson

EXHIBIT A

1 **CAL LAW APC**
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8 **BEFORE THE BOARD OF ADMINISTRATION**
9 **CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM**

10
11 In the Matter of the Appeal of Accepting the
12 Application for Industrial Disability
13 Retirement of
14 TIFFANY M. WAGNER,
15 Respondent,
16 and
17 COUNTY OF PLUMAS;
18 Respondent.

OAH No. 2021010772

CalPERS Ref No. 2020-1100

RESPONDENT’S ARGUMENT

Board Meeting Date: July 17, 2024

Board Services Unit Coordinator
California Public Employees’ Retirement
System
Post Office Box 942701
Sacramento, CA 94229-2701

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20
21 The Proposed Decision is incompatible with the Public Employees Retirement Law
22 “PERL,” because it does not distinguish the *Haywood* line of cases that apply to disciplinary
23 terminations - from unlawful terminations.

24 Government Code section 21154, subd. (c), provides that: “The application shall be made
25 only (a) while the member is in state service, or (b) while the member for whom contributions
26 will be made under Section 20997, is absent on military service, or (c) within four months after
27 the discontinuance of the state service of the member, or while on an approved leave of absence,
28

1 or (d) while the member is physically or mentally incapacitated to perform duties from the date
2 of discontinuance of state service to the time of application or motion. ([Cal Gov Code § 21154](#),
3 emphasis added).”¹

4 Goodson² was a victim of sexual assault and harassment by her sergeant, and the
5 County terminated her in retaliation for reporting it. (*see* Proposed Decision generally). The
6 Court determined so. The County’s HR Director testified Goodson’s employment status was not
7 ordered to be reversed, only that the word “terminated” be removed from her record. This
8 testimony and the Proposed Decision interpretation of it – is contrary to the Court’s order that the
9 County: “must remove the record of [Ms. Goodson’s] termination from her personnel record “
10 (Proposed Decision “PD”, ¶16). The Court also ordered backpay - the employment should have
11 continued beyond the separation date – and front pay to continue for years. (See Proposed
12 Decision, ¶15). Goodson timely filed her first application for IDR three months before she was
13 terminated from the County. (*see* PD ¶2). CalPERS cancelled the application because of
14 documentation, not because of ineligibility. Goodson filed her second application two months
15 after her termination. CalPERS denied her application citing the *Haywood* line of termination
16 cases. (PD, ¶3).

17 The Proposed Decision relies on *Haywood*, “[...] an employee is fired for cause and the
18 discharge is neither the ultimate result of a disabling medical condition nor preemptive of an
19 otherwise valid claim for disability retirement, termination of the employment relationship
20 renders the employee ineligible for disability retirement.” (*Haywood v. American River Fire*
21 *Protection District* (1998) 67 Cal.App. 4th 1292, 1307.) *Haywood* must be distinguished from
22 this case because Goodson’s termination was found to be unlawful retaliation.

23 More specifically, the Proposed Decision would effectuate an end-run around the Court’s
24 order, subscribing its reasoning from *Haywood*, that termination severs the employment
25 relationship and that is why it precludes right of “reinstatement.” The Proposed Decision does
26 not recognize the gravamen of Goodson’s appeal. The Court ordered the County to remove the

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28 ¹ The statute further makes clear it applies to local safety members.

² Respondent’s last name has changed from Wagner to Goodson.

1 unlawful termination from Goodson’s personnel record. (PD, ¶16). The Proposed Decision
2 concludes Goodson’s relationship with her employer remains severed, regardless of if she is no
3 longer considered terminated. (*see* PD, ¶15). Yet so is the relationship with disability retirees
4 who resigned and later applied. Goodson should be eligible to apply in the same manner as a
5 member who resigns, because the latter would also have no “right to reinstatement” within the
6 meaning ascribed in the Proposed Decision. Like Goodson, the disabled member who resigns is
7 also severed from employment, but can reinstate by reapplying, or petitioning. Section 21154
8 enables a member to first resign, then apply within four months. This is the status quo
9 application of the PERL with currently disability retired members in this state. The Proposed
10 Decision is incompatible with it.

11 When, as here, a court has determined a member’s termination was unlawful - the
12 member must be eligible to apply in the same manner as a member who resigned. In both
13 situations – the Proposed Decision would deem the former employee to have no right of
14 “reinstatement.” Both would be precluded from eligibility to apply. That cannot be - and it is not
15 the case for current CalPERS disability retirees who resigned and then applied.

16 Former employees, like Goodson, do not have an automatic right to reinstatement. An
17 employee who resigns cannot demand reinstatement. They must apply for re-employment or
18 seek other administrative or judicial action - just like Goodson would need to if she were no
19 longer disabled. To hold otherwise, would be to invalidate the disability retirements of numerous
20 CalPERS disability retirees who first resigned, then later applied for disability retirement. The
21 Proposed Decision is not consistent with the PERL and purpose of disability retirement.

22 Put another way: why is a member who resigns still eligible to apply – while Goodson,
23 who was wrongfully separated, prohibited from applying? Neither would have a right to
24 “reinstatement” within the meaning ascribed in the Proposed Decision. Both would have to apply
25 for reemployment to be reinstated. One was involuntarily separated. The other voluntarily
26 resigned. Indeed, Section 21154 contemplates that both may apply by one of two ways: either
27 within four months of separation, or at any time in the future – so long as the member remains
28 continuously disabled. Goodson complied with both methods. In this case, to prevent a victim of

1 sexual harassment from the right to disability retirement if she is unlawfully terminated - is
2 untenable.

3 **The Proposed Decision Ascribes Reinstatement Too Broadly And Misapplies it To A**
4 **Case That It Cannot Be Applied To**

5 The PERL does not define the right of “reinstatement.” The construct of reinstatement
6 itself derives from the *Haywood* line of termination cases. “Reinstatement” was never consistent
7 with Section 21154; but it was constructed as a public policy to turn back disability retirements
8 for employees who had been terminated for misconduct. This construct should not be applied to
9 cases of unlawful terminations that have been ordered removed from the personnel record. As
10 argued with emphasis, a member who resigns for reasons other than misconduct, can later apply
11 for disability retirement. It is patently true, under Section 21154, like Goodson, those former
12 employees also have no right to be reinstated. To reinstate, those members would need to apply
13 for reemployment, or other procedure. Just like Goodson could if she were not disabled. A
14 contrary ruling – that an employee is not eligible if they must reapply for employment – is also
15 untenable because there are numerous members who resigned for reasons unrelated to discipline,
16 remained disabled, and applied after separation.

17 **Public Policy Favors Application of Equitable Grounds Where There is Ambiguity**
18 **And Where An Important Public Policy Against Sexual Harassment and Retaliation In A**
19 **Law Enforcement Agency Exists.**

20 The Court ruled Goodson was terminated in retaliation for reporting sexual harassment.
21 As part of the #MeToo, a social movement and awareness campaign against sexual abuse, sexual
22 harassment, and rape culture, legislation was enacted that prohibits employers from
23 implementing “no-rehire” clauses in settlements for sexual-harassment victims. “An agreement
24 to settle an employment dispute shall not contain a provision prohibiting, preventing, or
25 otherwise restricting a settling party that is an aggrieved person from obtaining future
26 employment with the employer...” (AB 749, Cal. Assemb., 2019, *see also* C.C.P. §1002.5).
27 Employers have previously been able to prohibit victims of sexual harassment from working for
28 them again. It is of importance, had Goodson’s Federal complaint against the County been

1 resolved by settlement, that this public policy would prevent Goodson from being barred or
2 prohibited from being reinstated by the County. Having prevailed at trial, Goodson is not
3 prohibited from reinstating – if she were not disabled. Indeed, at hearing, under cross-
4 examination on this precise issue, the HR Director, presented no testimony that Goodson is
5 barred from future employment (Proposed Decision, ¶18). And such a prohibition would be
6 inconsistent with the Court’s order. Goodson remains unable to be reinstate because of her
7 disability that resulted from the sexual harassment and retaliation prevents her from doing so.

8 When a termination is determined by a Court - to have been unlawful because of
9 retaliation against an employee who was sexually assaulted and harassed – it is inequitable to
10 preclude the member from applying for disability retirement merely because she has not
11 reinstated – when she cannot reinstate because of her disability. Such a separation must not be
12 allowed to preclude disability retirement benefits if the employee was disabled and cannot
13 reinstate to employment. The Court order that Goodson’s termination be removed from her
14 record – should be given the same consideration as our state’s public policy. Here, the Chief U.S.
15 District Judge ordered Goodson’s termination removed from her “personnel record.” This means
16 what it says. No record of termination. Consequently, equity must deem Goodson’s separation at
17 least akin to a resignation.³ And her application must be accepted under Section 21154, and not
18 precluded by *Haywood*.

19 **The Hearing Did Not Determine Whether Goodson’s Disability Arose During Her**
20 **Employment Because Goodson’s Disability Was Not An Issue In This Appeal.**

21 Even in a case, the Board directs CalPERS to disregard the Federal Court’s order that
22 Goodson’s termination was unlawful and to remove the termination from her personnel record –
23 the second exception set forth in *Haywood* case, whether Goodson’s disability arose during her
24 employment cannot be determined. CalPERS determined it its SOI⁴, that Goodson’s disability

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26 ³ Public employee pension legislation must be liberally construed, resolving all ambiguities in favor of the
applicant. (*Irvin v. Contra Costa County Employees’ Retirement Assn.* (2017) 13 Cal. App. 5th 162, 171).

27 ⁴ CalPERS’ Statement of Issues, “Should Wagner be found eligible to submit an application for industrial
28 disability retirement, CalPERS will separately make a determination regarding whether her medical condition
renders her substantially incapacitated.” (SOI, Part XIV),

1 would be “separately” determined. (See SOI, Part XIV)

2 It would be unfair to create a circular impossibility – requiring Goodson to prove her
3 disability arose during her employment – when CalPERS had the sole authority to determine in
4 the SOI for Goodson’s Appeal as one in which the members disability would be determined
5 “separately” from this Appeal. Consequently, it is inequitable and a denial of due process for the
6 Proposed Decision to rely on lack of evidence that Goodson’s disability arose during her
7 employment - as an alternate basis for precluding her right to apply. To be sure, there is ample
8 evidence in the Court’s decision admitted in this Appeal to support such a finding. (see,
9 Proposed Decision generally). It simply was not part of the Appeal because CalPERS determined
10 in its SOI, it would not be.

11 Consequently, Goodson must be eligible to apply for disability retirement under
12 Government Code section 21154. She cannot be precluded by operation of the *Haywood* line of
13 termination cases. The Court ruled her termination was unlawful and ordered her termination
14 removed from her personnel record. Goodson is eligible to apply in the same way a member who
15 severs their employment by resignation is eligible. To hold otherwise, would create a new rule,
16 which contradicts the PERL, and would effectively invalidate an innumerable number of current
17 disability retirees who had applied for disability retirement after they resigned their employment.
18 Respondent respectfully requests the Board reject the Proposed Decision and grant Respondents
19 appeal.⁵

20 Dated: June 27, 2024

CAL LAW APC

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22
23 By: _____,

24 Calvin Chang, Esq.
25 Attorneys for Tiffany Goodson

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28 ⁵ Should the Appeal be granted, Respondent requests the Board adopt its Decision as a Precedential Decision to prevent misapplication of *Haywood* to cases in which a member’s termination is adjudicated as an unlawful.

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PROOF OF SERVICE

I am a resident of the State of California, over eighteen years of age, and not a party to this action. My business address is 500 Capitol Mall, Suite 2350, Sacramento, California 95814.

On the date set forth below, I served the following document(s):

RESPONDENT’S ARGUMENT

BY ELECTRONIC SERVICE: Pursuant to court order, regulation, or agreement with opposing counsel to accept service of documents electronically, I caused the documents to be sent to the persons at the email addressed listed below by the ordinary practice of the firm from cal@callawapc.com

<p>Austa Wakily Austa.Wakily@calpers.ca.gov</p> <p>CalPERS P.O. Box 94707 Sacramento, CA 94229-2707</p>	<p>Office of Plumas County Counsel Brechtel, Josh JoshBrechtel@countyofplumas.com</p> <p>Sara G. James sarajames@countyofplumas.com</p>
<p>Board Services Unit Coordinator California Public Employees’ Retirement System Post Office Box 942701 Sacramento, CA 94229-2701</p> <p>Board@CalPERS.ca.gov</p>	

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before this Court, and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **June 27, 2024** at Sacramento, California.

Calvin Chang

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On the date set forth below, I served the following document(s):

ATTACHMENT OF RESPONDENT’S ARGUMENT IN SUPPORT OF PETITION FOR RECONSIDERATION OF THE BOARD OF ADMINISTRATION, with EXHIBIT A.

BY ELECTRONIC SERVICE: Pursuant to court order, regulation, or agreement with opposing counsel to accept service of documents electronically, I caused the documents to be sent to the persons at the email addressed listed below by the ordinary practice of the firm from cal@callawapc.com

<p>Austa Wakily Austa.Wakily@calpers.ca.gov</p> <p>CalPERS P.O. Box 94707 Sacramento, CA 94229-2707</p>	<p>Office of Plumas County Counsel Brechtel, Josh JoshBrechtel@countyofplumas.com</p> <p>Sara G. James sarajames@countyofplumas.com</p>
<p>Board Services Unit Coordinator California Public Employees’ Retirement System Post Office Box 942701 Sacramento, CA 94229-2701</p> <p>Board@CalPERS.ca.gov</p>	<p>Matthew G. Jacobs CalPERS General Counsel</p> <p>VIA FAX ONLY 916-795-3659.</p>

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before this Court, and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 16, 2024** at Sacramento, California.



ATTACHMENT OF RESPONDENT’S ARGUMENT IN SUPPORT OF PETITION FOR RECONSIDERATION OF THE BOARD OF ADMINISTRATION

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