

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

John S. Balian (Respondent) was employed by the City of Glendale (City) as a Police Officer, Vice/Narcotics Detective, from October 19, 2004 through July 22, 2018. By virtue of his employment, Respondent became a local safety member of CalPERS subject to the California Public Employees' Retirement Law (PERL).

On May 15, 2018, Respondent was arrested in connection with a federal criminal complaint filed in the case of *United States of America v. John S. Balian*, (Case No CR-18-345-JFW), in the United States District Court for the Central District of California.

On June 5, 2018, an Information was filed in the above-entitled case against Respondent charging him with the following three felony counts: bribery of programs receiving federal funds in violation of 18 United States Code section 666(a)(1)(B); obstruction of justice in violation of 18 United States Code section 1512(c)(2); and making false statements in violation of 18 United States Code section 1001(a)(2).

On July 12, 2018, Respondent entered a plea of guilty to, and was convicted of, all three counts alleged in the Information. Shortly thereafter, the City served Respondent with a Final Notice of Disciplinary Action (Final Notice) resulting in his termination from employment as a Police Officer effective July 21, 2018. The grounds alleged in the Final Notice for Respondent's termination were his three felony convictions, and that, as a Police Officer, Respondent held a position of trust, which trust he failed to honor by the commission of his crimes.

Respondent did not appeal the Final Notice to the City's Civil Service Commission, and his termination from employment became final.

On July 30, 2022, Respondent applied for and was placed on service retirement effective August 16, 2022. Also on July 30, 2022, Respondent applied for Industrial Disability Retirement (IDR) based on meralgia paresthetica (a condition causing tingling, numbness, and burning pain in the outer thigh), high blood pressure, back pain, knee pain, and sleep apnea conditions.

On May 18, 2023, CalPERS informed Respondent that he was not eligible for IDR because he left employment for reasons that were not the result of a disabling medical condition. CalPERS cited *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292; *Smith v. City of Napa* (2004) 120 Cal.App.4th 194; *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156; and *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (2013) CalPERS Precedential Decision No. 13-01 as support for its determination.

The *Haywood* court found that termination of the employment relationship renders the employee ineligible for disability retirement where the termination is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement. The ineligibility arises from the fact that a termination results in 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 complete severance of the employment relationship 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 employment relationship ended. To be mature, there must have been an unconditional right to immediate payment before severance of the employment relationship unless, under principles of equity, the right to immediate payment was delayed through no fault of the employee or there was undisputed evidence of qualification for a disability retirement.

The *Martinez* court affirmed the holdings in *Haywood* and *Smith* and refused to overturn more than twenty years of legal precedent. The *Martinez* court also affirmed the *Vandergoot* Precedential Decision as a logical application of the *Haywood* and *Smith* cases. In *Vandergoot*, the Board held 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 concluded that an employee’s resignation was tantamount to a dismissal when the employee resigned pursuant to a settlement agreement entered in to resolve a dismissal action and agreed to waive all rights to return to his former employer. Both *Martinez* and *Vandergoot* involved employees who agreed to resign following a settlement of a Notice of Adverse Action (NOAA) terminating their employment. The employees in *Martinez* and *Vandergoot* waived any right to reinstatement as part of a settlement agreement and, as such, completely severed their employment relationship with their employer rendering them ineligible for disability retirement.

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 February 26, 2025. Respondent represented himself at the hearing. The City did not appear at the hearing, and a default was taken as to the City only.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet, answered Respondent’s questions, and clarified how to obtain further information on the process.

Respondent testified on his own behalf that his right thigh numbness, back pain, knee pain, and high blood pressure were cumulative injuries he sustained as a Police Officer well before he committed his first felony in 2015. Respondent did not report his injuries until 2017 when he filed a workers’ compensation claim and received medical treatment.

Respondent testified that he did not intend to retire in 2017 when he reported his medical maladies to his supervisor. He wanted to continue his medical treatment and continue to work as a Police Officer. However, he was arrested in May 2018, convicted and fired in 2018, and incarcerated thereafter. Respondent testified that he intended to retire when he was 50 years old, which explains why he filed his IDR application in 2022, instead of

2017. Respondent believed he was only required to apply for an IDR when he intended to retire.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent was fired by the City and thus had been separated from employment without a right of return. The ALJ also found that Respondent is ineligible to work for the City as a Police Officer because of his three felony convictions. As a matter of law, any person who has been convicted of a felony, or of any offense in any other jurisdiction that would have been a felony if committed in California, is disqualified from being employed as a peace officer. (Gov. Code, §1029, subd. (a)(1) & (2).) By operation of the *Haywood* and *Smith* cases, as well as Government Code section 1029 subdivision (a), Respondent's permanent separation from employment with the City renders him ineligible for an IDR.

The ALJ found that the two exceptions articulated in the *Haywood* and *Smith* cases do not apply to Respondent, because his separation from employment was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for a disability retirement.

In the Proposed Decision, the ALJ concludes that Respondent failed to meet his burden of establishing that he is eligible for an IDR. For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

June 18, 2025

Mark A. Schreiber
Deputy Attorney General