

## **ATTACHMENT B**

### **Staff Argument**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

John M. Kilpatrick (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated April 16, 2025. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

Respondent was last employed as a Police Officer with the City of Chula Vista (Respondent City). By virtue of his employment, Respondent was a local safety member of CalPERS.

On July 2, 2004, Respondent received a fitness for duty evaluation by a clinical Psychologist who determined that he met the minimum psychological qualifications to return to work. The following month, Respondent City issued a Notice of Intended Termination to Respondent for violations of multiple civil service rules generally involving two excessive force incidents while he was on duty as a Police Officer.

On September 2, 2004, Respondent City issued a Last Chance Agreement to Respondent, giving him a chance to retain his employment. In December 2004, Respondent violated the terms of the Agreement in three separate incidents. As a result, on January 19, 2005, Respondent City issued a Notice of Intended Termination to Respondent. Five days later, Respondent filed an Industrial Disability Retirement (IDR) Application, but did not specify his claimed disability. Respondent City considered and denied this application because at the time he filed, Respondent was able to perform Police Officer duties as determined by his Fitness for Duty examination.

A *Skelly* hearing was held on January 31, 2005. The next day, Respondent City issued a Notice of Termination to Respondent, effective February 2, 2005. Respondent never appealed the Notice of Termination. But on February 1, 2005, Respondent submitted a resignation letter to Respondent City, stating that he was vacating his position effective immediately for unspecified "medical reasons."

Eight years later, Respondent filed a second IDR Application, dated April 8, 2013, seeking a retirement date of February 1, 2005. He left the majority of this application blank. CalPERS sent Respondent City letters requesting further information to ascertain Respondent's eligibility for IDR. Respondent City informed CalPERS that it considered Respondent's application on its merits and determined that he was not substantially incapacitated to perform his usual duties at the time he resigned.

Between 2013 and 2017, multiple workers' compensation cases were litigated between Respondent and Respondent City. On August 1, 2017, Respondent filed a Service Retirement application. He has been receiving service benefits since that date.

On September 8, 2023, CalPERS informed Respondent that he was ineligible to apply for industrial disability retirement pursuant to *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*); *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*); *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* made precedential by the CalPERS Board of Administration on October 16, 2013 (*Vandergoot*); and *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156 (*Martinez*). Respondent was given appeal rights.

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 entered into to resolve a dismissal action and agreed to waive all rights to return to his former employer.

The *Martinez* court affirmed *Vandergoot* as a logical extension of *Haywood*. Both *Martinez* and *Vandergoot* involved employees who agreed to resign following the settlement of a Notice of Adverse Action (NOAA) terminating their employment, and who waived any right to reinstatement as part of the settlement agreement.

Respondent timely 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 March 17, 2025. Respondent represented himself at the hearing. Respondent City was represented by counsel.

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.

At the hearing, Respondent testified on his own behalf. Respondent claimed that at the time he resigned in 2005, he did not know he was going to be terminated. Respondent argued that he had serious medical issues prior to his resignation, so cancellation of his IDR Application pursuant to *Haywood* was improper. Respondent further argued that the mistakes he made which led to the decision that he be terminated were caused by Post Traumatic Stress Disorder.

At the hearing, CalPERS presented evidence and testimony establishing that CalPERS correctly canceled Respondent's 2013 IDR Application due to operation of *Haywood* and its progeny. CalPERS also presented testimony from two witnesses from Respondent City who established that Respondent would have been terminated the day after he submitted his resignation.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that a preponderance of the evidence did not support a finding that Respondent was entitled to file an application for IDR benefits. The ALJ determined that Respondent's termination was already in progress when he resigned, and the fact that Respondent wrote he resigned for "medical reasons" does not make it so. Respondent's employment with Respondent City was severed as of February 1, 2005, so he was not eligible to apply for IDR in 2013. His severance was permanent and occurred while disciplinary action was pending. The ALJ further found that the evidence did not show that Respondent's separation was the ultimate result of a disabling medical condition or preemptive of an otherwise valid claim for IDR, so none of the exceptions set forth in case law applies. In the Proposed Decision, the ALJ concluded that Respondent's IDR Application was properly canceled based on *Haywood* and its progeny.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the June 18, 2025, meeting was well-reasoned and based on the credible evidence presented at the hearing.

For all the above reasons, staff argues that the Petition for Reconsideration should be denied.

July 16, 2025

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