

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jonathan Rush (Respondent) was employed by City of Azusa (Respondent City) as a Police Officer. By virtue of his employment, Respondent was a local safety member of CalPERS.

Between October 2020 and October 2021, Respondent City determined through an administrative investigation that Respondent failed to timely and sufficiently complete police reports. On December 22, 2022, Respondent City issued Respondent with a Notice of Intent to Discipline (NOID) that would demote him from Corporal to Police Officer. That discipline was ultimately adopted by Respondent City on March 20, 2023. Respondent appealed Respondent City's adoption of discipline, and the appeal remained pending.

During the course of the first disciplinary process, a second administrative investigation was completed finding that Respondent had made several false statements to Respondent City investigators. Respondent City found that Respondent had again failed to timely and sufficiently complete police reports as well as maliciously filed a false complaint against a fellow police officer. Based on these findings, on April 10, 2023, Respondent City issued a NOID to Respondent that would terminate his employment.

In May 2023, Respondent and Respondent City reached a settlement agreement that resolved both disciplinary actions. Under the settlement agreement, Respondent agreed to resign effective June 30, 2023, waive all reinstatement rights, and agreed that he was prohibited from returning to any employment with Respondent City. Respondent also waived the ability to appeal or challenge the factual basis for the two disciplinary actions against him by Respondent City.

On June 26, 2023, Respondent submitted an application for Industrial Disability Retirement (IDR), a few days before the effective date of his resignation. Respondent listed his retirement date the expiration of benefits and claimed disability on the basis of an orthopedic condition.

CalPERS reviewed Respondent's IDR application and requested information from Respondent City. Respondent City provided information and documents surrounding the settlement with Respondent and the preceding disciplinary actions.

On March 13, 2024, 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 the holding in *Haywood* and refused to overturn more than twenty years of legal precedent. The *Martinez* court also affirmed *Vandergoot* as a logical extension of *Haywood*. Both *Martinez* and *Vandergoot* involved employees who agreed to resign following a settlement of a Notice of Adverse Action (NOAA) terminating their employment, and who waived any right to reinstatement as part of a settlement agreement.

In *MacFarland*, the Board determined that the character of the disciplinary action does not change because a resignation was submitted prior to the effective date of the NOAA. The Board held that a resignation preceding the effective date of the NOAA bars a member from applying for industrial disability retirement on the basis of *Haywood* or *Smith*.

Respondent timely appealed CalPERS’ 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 May 5, 2025. Both Respondent and Respondent City were represented by counsel at the hearing.

At the hearing, CalPERS called Respondent City’s Director of Administrative Services to testify that Respondent was permanently separated from his employment, that he did not have reinstatement rights and was contractually prohibited from returning to City employment. Further, Respondent City’s disciplinary actions and the settlement agreement were all admitted as direct evidence.

A CalPERS employee also testified at the hearing concerning when Respondent initiated the disability retirement application process and when his IDR application was received. Testimony and evidence established that Respondent initiated the process on December 12, 2022, after the events giving rise to both disciplinary actions against him by Respondent City.

At the hearing, Respondent testified that he underwent right shoulder surgery in July 2022, and he knew he could no longer perform his job duties afterwards. Respondent denied any wrongdoing and claimed that he resigned because Respondent City retaliated against him for reporting misconduct of another police officer. Respondent also testified that the operative settlement agreement acknowledges that Respondent City withdrew both disciplinary actions and that he resigned voluntarily without any finding of wrongdoing.

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 unable to prove by a preponderance of the evidence that he was eligible for disability retirement. The ALJ determined that Respondent's settlement agreement prohibiting his future employment constituted a complete severance of the employment relationship, thus eliminating a necessary requisite for disability retirement. The ALJ found that none of the exceptions to the *Haywood* doctrine applied. First, Respondent was not terminated because of a disabling medical condition. Second, Respondent's separation was not preemptive of a valid claim for disability retirement. Third, Respondent provided no legal support for the equitable exception under *Smith* to apply as to Respondent City's alleged "inequitable conduct." Thus, the ALJ found that CalPERS properly canceled Respondent's IDR application.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

September 17, 2025

Bryan Delgado
Senior Attorney