

ATTACHMENT C

RESPONDENTS ARGUMENTS

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August 26, 2025

File No. 310-1250

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

**Re: Appeal of Denial of Industrial Disability Retirement
Jonathan Rush (Agency Case No. 2024-0328)**

Dear Board Unit Services Coordinator:

This letter is written regarding the above-referenced matter, following the administrative law judge's decision to uphold the denial of Mr. Rush's application for industrial disability retirement. This office represents Mr. Rush, so please send any further correspondence regarding this matter to the undersigned.

I. Introduction

Respondent Jonathan Rush respectfully requests that the Board reverse CalPERS's March 13, 2024 denial of his industrial disability retirement application. This appeal focuses on the matured-right exception recognized in *Smith v. City of Napa* and *Haywood v. American River Fire Protection District*. Mr. Rush's work-related shoulder injury produced clear medical findings and a formal course of treatment that established an enforceable right to disability benefits well before any disciplinary or separation events. CalPERS's reliance on *Vandergoot*, *MacFarland*, and *Martinez* cannot override this matured-right exception.

This appeal further demonstrates that the reinstatement-waiver clause in Mr. Rush's settlement agreement—understood only to bar future employment with the Azusa Police Department—was not calculated to affect his statutory right to file for Industrial Disability Retirement (IDR). Mr. Rush testified that he believed he had filed for an IDR prior to becoming aware of any disciplinary proceedings here that would, or could, lead to termination. Mr. Rush also testified that if he was medically able to do so, he would have worked for another police department in California which, of necessity, would be public employment that would once again involve payment of retirement income into the CalPERS system. Had Mr. Rush known the waiver would nullify his IDR claim, he would not have agreed to that term.

II. Statement of Facts

The medical and administrative timeline demonstrates that Mr. Rush's entitlement to industrial disability retirement ripened long before his separation:

1. Mid-December 2021
 - Sustained a shoulder injury in the course of duty; injury exposure form completed that day. Reported injury to Concentra under workers compensation; diagnosed with right shoulder strain, prescribed pain medication, physical therapy, and x-ray completed.
2. January 2022
 - After eight sessions of physical therapy without relief, treated by Concentra primary care doctor; doctor ordered an MRI.
3. February 2022
 - MRI confirmed a labral tear; referred to an orthopedic surgeon who scheduled corrective surgery.
4. June 10, 2022
 - Issued notice of Internal Affairs (IA) investigation for “efficiency,” removed from assignment as detective, and re-assigned to work dispatch.
5. June 27, 2022
 - Interview for IA. Mr. Rush truthfully disclosed his limited involvement in a case primarily handled by fellow Azusa Police Officer Lauren Ferrari. He also reported what he reasonably believed to be misconduct by Officer Ferrari, who is the mother of Azusa Police Chief Rocky Wenrick’s children.
6. July 2022
 - Underwent arthroscopic labral repair; placed off work for post-operative recovery and physical therapy. Also IA interview as witness to suspected misconduct.
7. October 2022
 - Cleared by treating surgeon for light-duty work, subject to official fitness-for-duty evaluation, but subsequently placed on paid administrative with no explanation as to why.
8. November 2022
 - Ongoing pain reported; follow-up with physician reaffirmed restricted duty and established permanent work restrictions pending further treatment.
9. December 2022
 - December 1, 2022, Mr. Rush filed his IDR estimate application to Cal PERS. This was sent back to Mr. Rush due to an IDR process well before any discipline imposed on him that would have led to termination.
 - December 27, 2022, served with intent to discipline for “efficiency” IA.

10. February 2023

- Repeat MRI revealed a torn rotator cuff requiring further surgical intervention, and physical therapy.

11. March 2023

- Discipline served. 5 days off without pay and demoted from Corporal to Police officer.

12. April 10, 2023

- Served with intent to discipline, which was termination, for IA involving the suspected misconduct of Officer Lauren Ferrari. To which Mr. Rush was never made aware that he was the subject of investigation.

13. Mid-April, 2023

- Unexpectedly and freely contacted by City's counsel regarding Mr. Rush's termination case. Obvious signs of wrongful termination, thus, settlement talks began.

14. June 2, 2023

- Underwent rotator cuff repair; prescribed physical therapy.

15. June 30, 2023

- Resigned under a settlement agreement resolving independent internal affairs actions unrelated to medical status.

16. Settlement agreement and reinstatement waiver

- Mr. Rush waived any right to reinstatement solely "with the City" of Azusa, understanding it applied only to future Police Department employment.
- He was never informed that this waiver would preclude his IDR application.
- He would not have agreed to the waiver had he known it would extinguish his statutory disability rights.

17. Post-employment evaluations

- Awarded a 30% permanent disability rating for the shoulder and 10% for an earlier back claim.
- April 2025 MRI showed further micro-tears and degenerative changes, such as mild glenohumeral chondral thinning (deterioration of cartilage in the shoulder joint). Although rare, this can occur following shoulder surgery.
- To date, Mr. Rush lacks full range of motion and cannot safely perform police duties.

III. Legal Argument

A. The Matured-Right Exception Protects Mr. Rush's Claim

Haywood and *Smith* define an exception allowing a terminated-for-cause employee to retain disability rights when entitlement has matured prior to the conduct prompting separation. *Smith* held that “if an employee has a matured right to disability retirement prior to the conduct which prompted the termination, the subsequent dismissal does not preempt the otherwise valid claim.”

In March 2022, Mr. Rush had:

- A definitive MRI diagnosis of a labral tear that occurred in December of 2021
- A scheduled surgery date
- Medical directives imposing permanent or extended-duration restrictions

These undisputed facts created an enforceable right to industrial disability retirement under Government Code section 20026 that could not be undone by later disciplinary or separation events.

B. Mr. Rush's Right Matured Long Before His Resignation

CalPERS's Proposed Decision improperly treats the June 30, 2023 resignation as extinguishing entitlement. Under *Smith*, once a member's disability right matures during active service, later separation—even by voluntary resignation—cannot bar the claim. Mr. Rush's entitlement matured by March 2022 and was reinforced by his July 2022 surgery and subsequent medical restrictions. Mr. Rush made his IDR estimate inquiry _____.

C. Precedential Cases Do Not Preclude the Matured-Right Exception

CalPERS relied on *Vandergoot*, *MacFarland*, and *Martinez*, but each involved applicants without a fully matured right before separation. Those decisions uphold the general rule that an unestablished or disputed claim can be barred by dismissal. Here, by contrast, the medical record solidified Mr. Rush's right well in advance of any adverse action or settlement.

D. The Reinstatement-Waiver Clause Does Not Bar IDR Eligibility

CalPERS's Proposed Decision treats Mr. Rush's waiver of reinstatement as equivalent to a dismissal-for-cause, but that reading imposes a collateral forfeiture never disclosed or bargained for:

- Waiving a statutory right requires clear, informed consent. The settlement form did not warn Mr. Rush that forfeiting reinstatement with the City would extinguish his IDR claim.
- The waiver's plain language and negotiating context show it applied only to future employment with the Azusa Police Department.
- Ambiguities in waivers of statutory benefits must be construed against the drafter—the City—and cannot penalize a member who lacked notice of collateral effects.

- CalPERS may not rely on this ambiguous clause to defeat Mr. Rush's matured entitlement without violating due process and legislative intent.

E. Equity and Legislative Intent Support Acceptance

Denying Mr. Rush's claim penalizes him for pursuing medically required treatment and frustrates the Legislature's purpose in providing industrial disability retirement to protect injured public servants. The Board should not allow unrelated disciplinary settlements to override a fully matured statutory right.

IV. CalPERS Handbook

In addition, we think that it is important to also mention that during the preparation of his IDR application, and throughout the process, he communicated with several CalPERS employees both over recorded telephone lines and in person. On multiple occasions, he inquired whether a member remained eligible to receive an IDR after resigning. Each employee he spoke with confirmed that a member could. Mr. Rush, given these facts and his belief he had already begun the process by requesting an estimate from CalPERS, believed he had begun the IDR process long before these disciplinary issues arose in the first instance.

The CalPERS handbook does not state that resignation renders a member ineligible for IDR. During multiple conversations with CalPERS staff—both on recorded lines and in person—Mr. Rush was told the opposite: that eligibility remained. These conversations were undertaken with CalPERS precisely because Mr. Rush believed his submission of the estimate began his application process. The application form itself creates further ambiguity, as its checkboxes do not explain whether selecting certain options disqualifies a member, merely Gov. Code 21156.

This code, as you may know, regards disciplinary actions. He was not disciplined; he resigned and waived his right to return to the Azusa Police Department, *not all California departments or public agencies*. Indeed, there is no evidence – and none exists – that Mr. Rush if medically able could not return to any department within the state. He cannot do so, however, because his medical impairment makes that impossible. Again, Mr. Rush is not seeking a determination of the IDR, only the right to submit his application in the first instance. Mr. Rush made this choice as we think anyone that has experienced what he did would do the same.

Respectfully, regardless of the decision in Mr. Rush's individual case, we respectfully recommend that CalPERS provide clear guidance in its handbook and related publications on this issue. Doing so would reduce confusion, promote consistency, and allow members to make more informed decisions regarding their retirement and disability options.

V. Conclusion and Requested Relief

For the foregoing reasons, Respondent Jonathan Rush respectfully urges the Board to:

1. Reverse the Proposed Decision denying his application. Find that Mr. Rush's right to industrial disability retirement matured by March 2022 and survived his June 2023 resignation.
2. Disregard any effect of the reinstatement-waiver clause on his IDR application.

Board Services Unit Coordinator

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3. Order CalPERS to accept his application and proceed with the mandatory disability evaluation.

Very truly yours,

SHEWRY & SALDAÑA, LLP

A handwritten signature in blue ink, appearing to read "C. Saldaña", is positioned above the printed name.

Christopher C. Saldaña, Esq.

CCS:td

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