

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Valeriu Iosif AKA Valerio Josif (Respondent) was employed by the City and County of San Francisco (City) as a Deputy Sheriff. By virtue of this employment, Respondent is a local safety member of the California Public Employees' Retirement System (CalPERS).

On September 8, 2021, the City informed Respondent that he was required to comply with the City's Covid-19 vaccination policy as a condition of his employment. Respondent was informed that he must register his "fully vaccinated" status with the City by September 30, 2021.

On October 1, 2021, the City informed Respondent that he would be placed on administrative leave by October 14, 2021, if he was not fully vaccinated or approved for an exemption as a reasonable accommodation for a medical condition or sincerely held religious belief. The City's letter states that Respondent could be disciplined or subject to non-disciplinary separation for failure to meet minimum qualifications for employment.

Respondent reported to the City that he was unvaccinated for Covid-19 and requested an exemption from the City's vaccination policy based on a sincerely held religious belief. The City denied his exemption request on October 19, 2021.

On November 6, 2021, the City placed Respondent on a 30-day period of paid administrative leave.

On November 23, 2021, the City served Respondent a "Notice of Employment Action Regarding Non-Disciplinary Separation and Due Process Hearing ('Skelly Meeting')" concerning its intent to dismiss him from his position for not having complied with its Covid-19 vaccination policy. The notice stated that Respondent's non-vaccinated status prohibits him from entering high-risk settings including the jail and hospitals, and therefore, "you no longer meet minimum requirements for employment."

Respondent requested a Skelly hearing, which was held on December 3, 2021. At his Skelly hearing, Respondent argued, inter alia, that the City's actions violated his right to be free from discrimination against a sincerely held religious belief because the Covid-19 vaccines were developed using methods that conflict with his religious beliefs. Respondent requested accommodations including to test at his own expense and wear a mask. The City did not agree to Respondent's accommodation request.

On December 5, 2021, the City issued its decision to place him on unpaid administrative leave and dismiss him from his position as Deputy Sheriff for failure to comply with the City's Covid-19 vaccination policy.

On December 30, 2021, the City informed Respondent that his separation would be held in abeyance, and he could return to his position if he were to come into compliance with the vaccine mandate prior to April 1, 2022.

On March 30, 2022, the City informed Respondent that he would be separated from his permanent civil service appointment for failure to comply with the City's vaccination policy, effective April 1, 2022. The letter stated, "[t]his separation is non-punitive, and you are free to seek re-employment with the San Francisco Sheriff's Office or other City positions if in the future you meet the minimum qualifications."

On November 23, 2022, a lawsuit was filed against the City in the United States District Court, Northern District of California, in which Respondent is one of 135 plaintiffs. The lawsuit, *Debrunner, et al. v. City and County of San Francisco, et al.*, 4:22-cv-07455-JSW, alleges religious and disability discrimination claims, among others, for denying current and former City employees' reasonable accommodations from the mandate to receive the Covid-19 vaccine.

On March 24, 2023, Respondent filed an application for industrial disability retirement with CalPERS. Respondent stated he was disabled based on cumulative trauma as of December 6, 2021, due to "lumbar and cervical injuries (pain), bilateral hand/wrist pain, traumatic," and plantar fasciitis.

CalPERS obtained and reviewed information relating to Respondent's application for industrial disability retirement and determined that he was precluded from receiving disability retirement pursuant to the holdings in *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292; *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.

The *Haywood* court found that a complete severance of the employment relationship extinguishes the right to receive a disability retirement where (1) the severance is not due to a disabling medical condition, or (2) preempts a vested and matured right to a disability retirement. 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 to be legally incompatible.

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 July 30, 2025. Respondent represented himself. The City did not appear at the hearing and a default was taken pursuant to Government Code section 11520 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 that in December 2021, he wanted to continue working as a Deputy Sheriff performing his regular duties. He stated that he "did not have medical evidence" with which to show industrial disability at the time he was separated. He eventually received medical evidence through his workers' compensation claim.

Respondent testified that he designated December 6, 2021, as his disability date on his industrial disability retirement application because he "had to pick a date," his disabilities are due to cumulative trauma, and that is the date his workers' compensation providers recommended.

Respondent also testified about a City memorandum dated July 3, 2024. The memorandum states that employees who experienced non-disciplinary separations without future employment restrictions may apply to any open City position subject to the regular civil service examination process. If selected for employment, such individuals: would enter service as a new appointee with a new seniority date and, for sworn employees, a new star number; would serve a new one-year probationary period; and would not have prior accrual time balances reinstated. Respondent stated that he considered the City's July 3, 2024, offer of reemployment but rejected it because he learned that he "would have had to lose seniority" as a new employee and that his retirement "would not be CalPERS."

Respondent testified that he believes the Debrunner lawsuit is likely to secure reinstatement for plaintiffs, including him. As of the hearing date, he was not reinstated to employment with the City.

At the hearing, Respondent argued that *Haywood* does not apply to him, because his termination from City employment was non-disciplinary and he is not precluded from obtaining employment with the City in the future.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that CalPERS correctly applied *Haywood* in finding Respondent ineligible for industrial disability retirement. The ALJ explained that *Haywood* stands for the proposition that a public employee whose employment relationship severed for reasons unrelated to disability is not eligible for disability retirement. (*Haywood*, 67 Cal.App.4th at 1307 (PERL "reflects a legislative intent that a claimed disability bears a causal relationship to the discontinuance of service").)

In the Proposed Decision, the ALJ concludes that Respondent's employment terminated because his vaccination status precluded him from meeting the minimum qualifications of his position. His separation from employment was not the result of a disabling medical

condition. Even though the separation was characterized as non-disciplinary, and Respondent was not barred from applying to work for the City, his employment relationship through his civil service appointment was completely severed on April 1, 2022. The ALJ found that Respondent's application did not fall within an exception to *Haywood*, therefore, he is ineligible for industrial disability retirement benefits.

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

November 19, 2025

Austa Wakily
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