

ATTACHMENT C

RESPONDENT'S ARGUMENT

To the CalPERS Board of Administration:

I respectfully submit this argument challenging the Proposed Decision dated August 26, 2025, which denies my application for Industrial Disability Retirement (IDR). The decision misapplies legal precedent and disregards critical facts, statutory protections, and substantial medical evidence.

1. The Haywood Rule Was Misapplied

The Proposed Decision hinges heavily on *Haywood v. American River Fire Protection District* (1998), which bars IDR for employees terminated for cause. However, this precedent does not apply to my case:

Nature of Termination

Haywood: The employee was terminated *for cause* following disciplinary actions.

My Case: Termination was involuntary, non-disciplinary and not for cause.

The original CalPERS Employer Certification form mistakenly indicated “terminated for cause.” This was corrected in an amended form dated April 5, 2024, which properly certified “None of the above applies to this member.” The absence of the key element “*for cause*” required for *Haywood* further invalidates its application to my case.

CalPERS’s continued reliance on the original erroneous form contradicts its own Circular Letter dated 03/30/2017, which outlines disqualifying conditions—none of which apply to me.

Employment Record

Haywood: The employee had a history of disciplinary issues leading to termination.

My Case: My employment record with SFSO was impeccable. My termination was not related to any misconduct or performance issues.

Future Employment

Haywood: The termination for cause severed the employer-employee relationship, making the employee ineligible for IDR.

My Case: My termination was not restricted from future employment and my separation report from the City indicates that. Had my termination been for cause or disciplinary, I would be permanently barred from seeking future re-employment with the City. I did not sign or agree with any terms preventing future employment with the City. There’s currently a pending request directly from the Sheriff to

reinstate individuals separated solely based on the vaccine mandate. My employer-employee relationship has not been permanently severed.

Medical Condition and Disability

Haywood: His unwillingness to faithfully perform his duties was not caused by a physical or mental condition and had no valid claim for disability retirement.

My Case: My disability was present before separation and my claim was fully valid. Had the City properly handled my workers compensation case and disability request; my termination would not even been a factor of eligibility.

Moreover, my termination was also the result of a perceived presumption by my employer that I had a disabling medical condition so serious that they had to impose a medical treatment which was never required as condition of employment before.

2. My Termination Was Involuntary and Unlawful

I was separated solely for refusing a COVID-19 vaccine due to my sincerely held religious beliefs. This refusal was not misconduct, and my employment record was exemplary. The City denied my request for religious accommodation, violating:

- **Title VII of the Civil Rights Act of 1964**
- **California Fair Employment and Housing Act (FEHA)**

These violations are the subject of pending litigation (Case No. 24-1547) in the Ninth Circuit Court of Appeals. My termination was therefore **wrongful** and should not preclude IDR eligibility.

3. The Employer-Employee Relationship Was Not Permanently Severed

The Proposed Decision claims my employment was “completely severed.” This is inaccurate:

- The City’s own separation documents state the termination was **non-punitive** and that I am **free to seek reemployment**.
- The Sheriff’s Office has formally requested reinstatement of employees terminated solely due to the vaccine mandate.
- I have been contacted by SFSO Personnel regarding rehiring opportunities.
- I did not sign any agreement waiving reinstatement rights.

These facts demonstrate that the employment relationship remains viable and that reinstatement is actively being pursued.

4. My Disability Was Present Prior to Separation

My IDR application is based on cumulative trauma sustained during my service as a deputy sheriff. Medical evaluations by Dr. Richard F. Gravina, a Qualified Medical Examiner, concluded:

- I am **permanently and totally disabled** due to lumbar and cervical spine injuries, bilateral carpal tunnel syndrome, and plantar fasciitis.
- My disability is **100% industrially caused** and prevents me from performing my duties.

These findings are supported by Labor Code § 3213.2, which presumes coverage for peace officers with lower back impairments due to duty belt and other safety equipment use.

Post termination coverage is extended up to 60 months in any circumstance commencing with the last date worked in the specified capacity.

5. CalPERS Failed to Follow Statutory Mandates

Under Government Code § 21153, employers must apply for disability retirement on behalf of employees believed to be disabled. The City failed to do so, despite clear medical evidence. According to CalPERS's own Circular Letter 200-018-17, under Resolution/Determination Document for Disability Retirement section, the City was required to provide CalPERS with various documents and statements under penalty of perjury and failed to do so with complete disregard of the applicable laws. Despite being a Respondent party in the Administrative Hearing, the City did not even bother to show up.

CalPERS also failed to act equitably under § 21156(2), which prohibits the City using IDR as a substitute for disciplinary or retaliatory action.

In the case of local safety members as myself, the City is the governing body for approving/denying disability retirement claims. The City fully accepted my Workers Compensation claim and after I won my Workers Compensation case, the City was willing to approve my IDR. However, due to the administrative error that triggered *Haywood* which was subsequently corrected, the City was unable to proceed further due to CalPERS involvement.

6. Equitable Principles and Precedent Support My Claim

In *Richter v. CalPERS* (OAH No. 2020110166), the ALJ allowed IDR despite disciplinary termination, citing equitable considerations. My case is even stronger—there was no discipline, no misconduct, and no waiver of reinstatement rights.

7. Personal and Family Impact

The denial of my IDR claim has caused severe financial and emotional hardship. I am unable to work in law enforcement due to my injuries. My family has endured significant stress, and we are struggling to manage medical and living expenses. Approval of my claim would restore stability, dignity, and hope.

Conclusion

The Proposed Decision is based on a flawed application of legal precedent and ignores corrected documentation, statutory protections, and substantial medical evidence. I respectfully urge the CalPERS Board to reject the Proposed Decision and approve my IDR application.

Thank you for your time and consideration.

Sincerely,

Valerio Josif