

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Valeriu Iosif AKA Valerio Josif (Respondent) petitions the Board of Administration (Board) to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated August 26, 2025. For reasons discussed below, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

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, and 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. Respondent also requested reasonable accommodations that would permit him to continue working as a Deputy Sheriff. Respondent's request for accommodation included Covid-19 testing and wearing a mask. The City denied the requests.

On December 5, 2021, the City issued its decision to place Respondent 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 he could return to his position if he were to come into compliance with the vaccine mandate prior to

April 1, 2022. Respondent did not comply with the Covid-19 vaccination policy. Therefore, the City separated him from his permanent civil service appointment 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 applied for industrial disability retirement based on claims of cumulative trauma to his “lumbar and cervical injuries (pain), bilateral hand/wrist pain, traumatic,” and plantar fasciitis as of December 6, 2021. CalPERS 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.

Respondent appealed this determination and exercised his right to a hearing before an ALJ with the Office of Administrative Hearings. A hearing was held on July 30, 2025. Respondent represented himself.

Respondent testified at the hearing about a City memorandum dated July 3, 2024, stating 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, 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 rejected the City's July 3, 2024, offer of reemployment 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. Respondent further 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.

The ALJ denied Respondent's appeal because his employment relationship was completely severed. Further, the ALJ found that Respondent's application did not fall within an exception to *Haywood*.

The Board adopted the Proposed Decision (PD) on November 19, 2025. Respondent filed a Petition for Reconsideration (Petition). In the Petition, Respondent provides four grounds

for reconsideration. However, the ALJ already considered the grounds in the PD, and rejected them:

- (1) Misapplication of the *Haywood* Rule. Respondent contends that, because his termination from City employment was non-disciplinary and he was eligible to return to the City as an employee, the *Haywood* rule does not bar his application for disability retirement. However, 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. Because Respondent's employment relationship with the City was completely severed as of April 1, 2022, he is ineligible to apply for disability retirement unless he establishes that an exception applies.
- (2) Failure to Consider Medical Evidence. As discussed in the PD, Respondent's medical opinions of temporary and permanent workers' compensation disability do not provide undisputed evidence of eligibility for CalPERS disability retirement. For similar reasons, the statutory presumption of workers' compensation eligibility that may apply to Respondent does not provide undisputed evidence of eligibility for CalPERS disability retirement.
- (3) Equitable Principles under *Smith v. City of Napa*. The ALJ determined that equitable principles do not establish any matured right to disability retirement as of April 1, 2022, because Respondent cannot establish that he had an impending ruling on a claim for disability retirement that was delayed until after dismissal through no fault of his own, given that he had not yet applied for disability retirement. Accordingly, none of the exceptions to *Haywood* apply to Respondent.
- (4) Legislative Intent, i.e., Respondent's discontinuance of service was directly tied to cumulative trauma injuries, not misconduct so denying his disability retirement undermines the Public Employees' Retirement Law. In the PD, 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 bear a causal relationship to the discontinuance of service").) Here, 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.

No new evidence has been presented by Respondent in his Petition that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the November 19, 2025, meeting was well reasoned and based on the credible evidence presented at hearing. For all the above reasons, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

January 20, 2026

Austa Wakily
Senior Attorney