

ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE PETITION FOR
RECONSIDERATION**

To: Board of Administration, California Public Employees' Retirement System (CalPERS)

Re: Case No. 2024-0353; OAH No. 2025020216

Respondent: Valerio Josif

Date: December 14, 2025

RESPONDENT'S ARGUMENTS

Statement of Facts

Valerio Josif hereinafter the Respondent was separated from City employment on April 1, 2022, due to vaccination status requirements. The separation was expressly characterized as *not for cause, non-disciplinary*, and Respondent was not barred from future employment with the City and County of San Francisco hereinafter CCSF. At the time of separation, Respondent had not yet filed an application for industrial disability retirement due to lack of available medical documentation and deliberate retaliatory delays caused by CCSF, but subsequently pursued such relief supported by substantial medical evidence and workers' compensation findings.

Argument

I. The *Haywood* Rule Does Not Bar Respondent's Claim

CalPERS contends that *Haywood* precludes Respondent's eligibility for disability retirement because his separation was unrelated to disability. Haywood application was evaluated incorrectly by CalPERS attorney; Respondent's separation falls under the exceptions of the Haywood Rule and was the ultimate result of a perceived disabling condition, so grave that CCSF had to impose a medical treatment against Respondent's sincere held religious beliefs. However, *Haywood* applies only where the employment relationship is permanently severed for reasons wholly unrelated to disability. Here, the Respondent's separation was administrative in nature, due to a perceived disabling condition, not for cause or disciplinary, and did not extinguish his eligibility to return to employment with CCSF.

II. Non-Disciplinary Separation Preserves Eligibility

Unlike Haywood, Respondent's termination was explicitly not for good cause and non-disciplinary. The City's acknowledgment that Respondent could reapply for employment demonstrates that his civil service status was not permanently extinguished. Disability retirement rights should not be forfeited merely because of an administrative qualification which was never an issue during Respondent's 15 plus years of exemplary service with CCSF.

III. Vaccination Status Is Not a True Severance of Employment

The City's reliance on vaccination status as a qualification issue does not negate Respondent's right to disability retirement. PERL's legislative intent is to protect employees whose service is interrupted by disability, not to penalize them for unrelated administrative requirements. To hold otherwise would create an inequitable precedent where employees lose retirement rights due to temporary or changeable qualification standards.

Respondent's employee-employer relationship was not permanently severed as presented by CalPERS attorney. Respondent presented ample evidence contradicting CalPERS attorney's statement.

As an update, reinstatement of the Respondent is no longer an issue since he retired via service retirement with CalPERS. Although service retired, the Respondent is dealing everyday with his industrial disabling conditions without any compensation.

IV. Disability Retirement Rights Mature with the Existence of Disability

Although Respondent applied for disability retirement after separation, the injuries were reported and documented while the Respondent was still employed with CCSF and an active CalPERS member.

The determination on an industrial disability application of a public agency local safety member is made by the local governing body not CalPERS. In the Respondent's case, CCSF unjustly delayed the process as a retaliatory action against the Respondent's refusal of the vaccine. After the Respondent won his Workers Compensation case, CCSF accepted full responsibility and started to cooperate.

PERL does not require simultaneous filing at the moment of termination. Disability retirement rights mature when the disabling condition exists, not merely when paperwork is filed. Respondent's subsequent medical evidence and workers' compensation findings substantiate that his disabling condition existed, are 100% industrial and should be recognized.

Moreover, most of the industrial injuries sustained by the Respondent during his course of employment are covered under the presumptions of Labor Code section 3213.2 which extends coverage following termination, up to 60 months from the last date worked in the specified capacity.

V. Equitable Principles Favor Respondent

Equity supports Respondent's eligibility. The delay in filing was due to the evolving nature of his medical condition and the need for supporting evidence. Denying his claim solely on procedural timing elevates form over substance, contrary to PERL's remedial purpose.

VI. Distinguishing *Smith* and Workers' Compensation Presumptions

Respondent's medical evidence provides independent support for his claim. Workers' compensation presumptions reinforce, rather than undermine, the legitimacy of his industrial disability. The Respondent's industrial disability claim was denied through no fault of his own until after dismissal.

Conclusion

Respondent's separation was not for cause, non-disciplinary, administrative in nature, and did not permanently sever his employment relationship with the CCSF. The *Haywood* rule was fully misapplied and does not bar his application for industrial disability retirement. The respondent's rights matured with the existence of his disabling condition, and equity demands recognition of his claim.