

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DECLINE TO ADOPT THE PROPOSED DECISION AND REMAND TO THE OFFICE OF THE ADMINISTRATIVE HEARINGS**

Christopher M. Thompson (Respondent) was employed by the California Department of Forestry and Fire Protection (Respondent CAL FIRE) as a Fire Captain Paramedic. By virtue of his employment, Respondent was a state safety member of CalPERS.

On May 13, 2022, Respondent was found to have violated Respondent CAL FIRE's policies prohibiting the use of drugs and alcohol while on duty. On May 27, 2022, Respondent CAL FIRE issued a Notice of Adverse Action (NOAA) for termination of Respondent, effective June 7, 2022. The NOAA advised Thompson of his right to appeal to the State Personnel Board (SPB) by written appeal within 30 calendar days after the date of the NOAA. The NOAA stated that "[i]f you fail to answer within the time specified, or after answer, withdraw your appeal, the Adverse Action taken by the appointing power shall be final." The effective date of the NOAA was identified as June 7, 2022, meaning that Respondent had until July 7, 2022, to file an answer or appeal with SPB.

In response, on June 2, 2022, Respondent resigned from Respondent CAL FIRE. Respondent also filed for service retirement with CalPERS, and sought an effective date of retirement the same date as his resignation. Respondent has been receiving service retirement benefits since that time. By letter to Respondent titled "Resignation After Service of a Notice of Adverse Action," dated January 17, 2025, Respondent CAL FIRE acknowledged Respondent's resignation effective as of June 2, 2022, and that the NOAA would remain within Respondent's Official Personnel File ("OPF").

On March 10, 2023, Respondent signed an application for Industrial Disability Retirement (IDR) which was received by CalPERS on March 14, 2023. Respondent claimed disability on the basis of "Post Traumatic Stress Disorder, Back and Knee."

CalPERS reviewed Respondent's IDR application and requested information from Respondent CAL FIRE. Respondent CAL FIRE provided information and documents surrounding Respondent's resignation and the preceding disciplinary action.

On August 16, 2023, CalPERS informed Respondent of its determination that he was ineligible to apply for IDR under *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*); *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*); and, CalPERS Precedential Decision *In the Matter of the Accepting the Application for Industrial Disability Retirement of Phillip MacFarland* (2016) Precedential Decision No. 16-01 (*MacFarland*). In particular, the basis of CalPERS' determination was that Respondent had resigned with a pending adverse action seeking his termination. Respondent was given appeal rights.

In *Haywood*, the court found that when an employee is fired for cause and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement, termination of the employment relationship renders the employee ineligible for disability retirement. The ineligibility arises from the fact that the discharge is a complete severance of the employer-employee relationship. 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 “discharge for cause” to be legally incompatible.

In *MacFarland*, the employee resigned after being served a NOAA that sought his termination. The employee resigned prior to the NOAA taking effect and although he had filed an appeal of the NOAA with the SPB, he later withdrew the appeal. At the hearing in *MacFarland*, the employer testified that the employee was unable to seek reemployment with the employer and that if he did, the NOAA would be reissued and enforced.

The administrative law judge in *MacFarland* reasoned that although the employee had resigned prior to the NOAA taking effect, the employment relationship had been severed once the NOAA seeking his termination was served and the appeal with SPB was withdrawn. Coupled with the employee being prohibited from returning and the NOAA being reapplied if he returned, the administrative law judge held that *Haywood* applied, and the employee was ineligible for disability retirement. *MacFarland* was adopted and designated by the CalPERS Board of Administration as a Precedential Decision under Government Code section 11425.60.

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 November 24, 2025. Respondent and Respondent CAL FIRE did not appear at the hearing, despite both receiving timely and appropriate notice of the hearing. Therefore, a default was taken under Government Code section 11520 as to both Respondent and Respondent CAL FIRE.

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.

At the hearing, CalPERS called a Staff Services Manager III (Manager) within the human resources division at Respondent CAL FIRE, to testify as to Respondent’s employment and the circumstances relating to his separation. The Manager was responsible for overseeing hiring, personnel discipline, employee relations, and policy compliance for Respondent CAL FIRE employees within units in the Northern Region, which included Respondent’s unit. The Manager testified and confirmed that Respondent resigned as of June 2, 2022, and that the basis for Respondent’s termination was not related to a disabling medical condition nor preemptive of a claim

for disability retirement. She testified that, although Respondent would retain the ability to submit an application for reemployment in the future with Respondent CAL FIRE, the NOAA within his OPF would prevent him from being reemployed. Furthermore, in the event of an error that Respondent was reemployed in the future, the NOAA would be reissued and his termination would be sought once again. The Manager also testified that she was not aware whether Respondent had filed an answer with SPB by the July 7, 2022, deadline, or otherwise whether Respondent had exhausted his judicial remedies with respect to the NOAA.

After considering all the evidence introduced, as well as argument by CalPERS, the ALJ granted Respondent's appeal. The ALJ found that CalPERS did not meet its burden to establish that Respondent's resignation permanently severed his employer-employee relationship with Respondent CAL FIRE. The Proposed Decision does not discuss or analyze whether Respondent is ineligible for IDR under *MacFarland* despite the decision being identified as a direct issue within the Statement of Issues, the ALJ taking official notice of and admitting it into evidence, and CalPERS identifying it as dispositive of the issue in closing argument.

Accordingly, the Proposed Decision should be remanded to OAH for the taking of additional evidence regarding: (1) Respondent's exhaustion of his judicial remedies with respect to the NOAA and, (2) discussion and analysis/application of *MacFarland*.

For all the above reasons, staff argues that the Board of Administration should decline to adopt the Proposed Decision and remand the matter back to OAH for the taking of further evidence.

January 20, 2026

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