

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Harry S. Franklin (Respondent) was employed by Santa Clara County Central Fire Protection District (Respondent District) as a Firefighter/Paramedic. By virtue of his employment, Respondent was a local safety member of CalPERS.

On February 6, 2023, Respondent District placed Respondent on administrative leave and retained an outside investigator to examine an incident involving Respondent that occurred on October 27, 2022. On March 15, 2023, the investigator issued a report concluding that Respondent had engaged in conduct unbecoming of a Respondent District employee during the incident and his subsequent arrest, in violation of several District policies. The report also found that Respondent made several dishonest statements during the investigation.

Based on the investigator's report, Respondent District issued Respondent a "Notice of Intended Disciplinary Action – Termination" (Notice) on May 16, 2023, proposing his termination. Respondent was given the opportunity to respond at a pre-disciplinary *Skelly* hearing. The parties subsequently entered into a settlement agreement whereby Respondent District agreed to rescind the Notice in exchange for Respondent's irrevocable resignation. Respondent then submitted his resignation, effective June 23, 2023. Upon his resignation, Respondent did not have reinstatement rights.

On June 20, 2023, CalPERS received Respondent's signed application for Service pending Industrial Disability Retirement ("SR pending IDR", or "IDR" where appropriate). Respondent claimed disability on the basis of an orthopedic condition (lower back). CalPERS reviewed Respondent's SR pending IDR application and requested information from Respondent District. In response, Respondent District provided documentation and information regarding Respondent's disciplinary history, medical records involving a workers' compensation matter, and the settlement agreement.

Based on the disciplinary history and the settlement agreement, CalPERS determined that Respondent was ineligible for industrial disability retirement pursuant to *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 *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot*, dated February 19, 2013, and made precedential by the CalPERS Board of Administration on October 16, 2013.

The *Haywood* 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.

The *Smith* court explained that to be preemptive of an otherwise valid claim, the right to a disability retirement must have matured before the employee was terminated. To be mature, there must have been an unconditional right to immediate payment at the time of termination unless, under principles of equity, the claim was delayed through no fault of the terminated employee or there was undisputed evidence of qualification for a disability retirement.

In *Vandergoot*, the Board agreed that “a necessary requisite for disability retirement is the potential reinstatement of the employment relationship” with the employer if it is ultimately determined by CalPERS that the employee is no longer disabled. The Board held that an employee’s resignation was tantamount to a dismissal when the employee resigned pursuant to a settlement agreement entered into to resolve a dismissal action and agreed to waive all rights to return to his former employer.

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 May 21, 2026. Respondent was represented by counsel at the hearing. Although an employee from Respondent District appeared to testify at the hearing, pursuant to a subpoena, neither a representative nor counsel appeared at the hearing on behalf of Respondent District. Accordingly, a default was entered against Respondent District under Government Code section 11520.

At the hearing, CalPERS called the Director of Personnel Services from Respondent District to testify as to Respondent’s disciplinary history and circumstances involving his separation. This witness provided credible testimony detailing the process and findings surrounding the administrative investigation of Respondent. The employee further authenticated key documents that were admitted into evidence, including the Notice, the operative settlement agreement, and Respondent’s resignation letter. By operation of the settlement agreement, the Director further testified that Respondent did not have reinstatement rights and was prohibited from seeking reinstatement with Respondent District.

Respondent testified on his own behalf and sought to admit medical records related to his workers’ compensation matter, which were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but cannot be used to directly support a finding. Respondent further testified that he had several injuries and was off work at the time of the investigation into the October 2022 incident that gave rise to his proposed termination. At the hearing, Respondent’s attorney argued that since Respondent had resigned and was not terminated, *Haywood* did not apply, and that the settlement agreement did not expressly state his resignation was in lieu of termination.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ reasoned that Respondent's resignation without reinstatement rights resulted in the complete severance of his employment relationship and the IDR portion of his application was barred under *Haywood* and its progeny. The ALJ rejected Respondent's argument that since the Notice was withdrawn, he was not under threat of termination nor had he resigned in lieu of termination. Both the testimony from the Respondent District's Director of Personnel Services and the settlement agreement itself established that Notice was only rescinded in exchange for Respondent's irrevocable resignation.

In determining whether an exception to *Haywood* applied, the ALJ reasoned that the basis for Respondent's severance of the employment relationship was for misconduct—and not his alleged disabling condition. Furthermore, the ALJ found that Respondent did not have a matured right to IDR because Respondent's medical records concerning his workers' compensation matter did not establish that he was incapacitated for duty, let alone prior to the incident in October 2022. The ALJ concluded that CalPERS properly precluded Respondent from applying for IDR and that Respondent failed to establish an exception to *Haywood* applied.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends that "disability retirement" be changed to "industrial disability retirement" at: (1) page 2, in both the paragraph under the Issue heading and paragraph 3; (2) page 6, paragraphs 1 and 2; and (3) page 10, paragraphs 12 and 13; and that "a disability" be changed to "an industrial disability" at: (1) page 5, paragraph 14; and (2) page 9, paragraph 11."

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

July 15, 2026

Bryan Delgado
Senior Attorney