

ATTACHMENT B

STAFF'S ARGUMENT

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

Nicholas Peelman (Respondent) was employed by the City of Upland (Respondent City) as a Police Detective. By virtue of his employment, Respondent was a local safety member of CalPERS.

On March 2, 2023, Respondent was investigated for public intoxication and was subsequently demoted from Police Sergeant to Police Detective. In January 2024, Respondent was investigated for two separate off-duty incidents involving public intoxication and the negligent discharge of a firearm; he was later charged with a felony under Penal Code section 246.3(a) for negligently discharging a firearm.

On March 8, 2024, Respondent submitted an application for Industrial Disability Retirement (IDR) to CalPERS. Respondent claimed disability on the basis of orthopedic conditions (bilateral elbow and right wrist).

On May 1, 2024, while three separate misconduct investigations were still pending, Respondent resigned from his position with Respondent City. The resignation was without any right of reinstatement, and the report of separation identified that he was ineligible for rehire. Although factual findings were sustained in each of the three investigations, Respondent's resignation prevented the imposition of any further disciplinary action.

Based on review of Respondent's resignation without reinstatement rights, CalPERS determined that he was ineligible for IDR, 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 (*Vandergoot*).

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 adopted *Vandergoot*, which held that an employee’s resignation to settle a pending termination for cause was tantamount to a dismissal when the employee resigned and relinquished any reinstatement rights.

Respondent timely appealed and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. The hearing was held on March 16, 2026, by videoconference. Respondent was represented by counsel. Respondent City did not appear at the hearing, although a Human Resources Director for Respondent City testified as a witness in response to a subpoena. The record was reopened on multiple occasions for supplemental briefing and a response to a request for official notice, and the record was finally closed on July 23, 2026.

At the hearing, a Human Resources Director for Respondent City testified that Respondent had no reinstatement rights, citing personnel records identifying he was not eligible for rehire. At the time of his separation Respondent was not in good standing due to his demotion from Sergeant and the circumstances surrounding the pending investigations. Official notice was taken of Respondent City’s Merit System Rules and Regulations, which require, among other things, that a former employee seeking re-employment have resigned in good standing.

Respondent testified that he was reduced in rank from Sergeant to Police Detective because of one of the off-duty incidents, and that he last worked for Respondent City on September 12, 2023. He further testified that he was placed on administrative leave as of January 11, 2024, in connection with the pending investigations. He testified that the felony charge arising from the firearm incident resulted in a deferred entry of judgment conditioned on treatment for post-traumatic stress disorder, and that no formal discipline was imposed against him by Respondent City because he resigned before the investigations were completed. Respondent did not argue that any of the exceptions to *Haywood* applied.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that, although Respondent did not agree to waive any reinstatement rights and his separation did not occur as the result of a settlement of a disciplinary proceeding, the evidence established that he still nonetheless resigned without reinstatement rights. Respondent resigned while on a leave of absence compelled by an internal affairs investigation—one of three such investigations pending at the time of resignation, which led to findings of malfeasance against Respondent. The ALJ found the fact that no discipline was imposed to be

immaterial; Respondent had already resigned, and the City could not further discipline a former employee.

The ALJ further found that, under the City's policies, Respondent would have to show he was in good standing when his employment ended to be eligible for re-employment. Given the disciplinary history, Respondent had not resigned in good standing. The ALJ therefore concluded that Respondent failed to establish his eligibility to apply for IDR by a preponderance of the evidence and denied his appeal.

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 "(Ex. 27, p. A284.)" be changed to "(Ex 24, p. A284.)" at page 9, paragraph 28 in the Proposed Decision.

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

September 16, 2026

Bryan Delgado
Senior Attorney