

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

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BEFORE THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

CAL LAW APC
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In the Matter of the Appeal of Accepting the
Application for Industrial Disability
Retirement of
TIFFANY M. WAGNER,

Respondent,

and
COUNTY OF PLUMAS;

Respondent.

OAH No. 2021010772
CalPERS Ref No. 2020-1100
**RESPONDENT’S PETITION FOR
RECONSIDERATION OF THE BOARD
OF ADMINISTRATION**

Board Meeting Date: July 17, 2024

Board Services Unit Coordinator
California Public Employees’ Retirement
System
Post Office Box 942701
Sacramento, CA 94229-2701

Board@CalPERS.ca.gov

On July 17, 2024, the CalPERS Board members¹ voted to rubber stamp CalPERS’ staff recommendations of the proposed decision of the administrative law judge (“ALJ”) without discussion or consideration of Plaintiff’s arguments (“Decision”). By doing so, each Board Member is voting that a victim sexual harassment who is terminated by her CalPERS employer for reporting sexual harassment, is not eligible to apply for industrial disability retirement

¹ David Miller, Lisa Middleton, Eraina Ortega, Jose Luis Pacheco, Kevin Palkki, Ramón Rubalcava, Deborah Gallegos for Malia Cohen, Frank Ruffino for Fiona Ma, Yvonne Walker, Mullissa Willette, and Dr. Gail Willis.

1 (“IDR”) – even if the termination was ruled unlawful by a Court. While at the same time, a
2 member who voluntarily resigns from employment can later apply for the same industrial
3 disability retirement. Neither have a “right to reinstatement.” This is Respondents central
4 argument. The ALJ’s proposed decision is conspicuously silent on Respondents central
5 argument. The CalPERS’ staff report is conspicuously silent on Respondents central argument.
6 Even though Respondents central argument was repeated throughout this Appeal, staff will not
7 analyze or even mention it in its staff recommendation before the Board. When Respondents
8 central argument is put in writing – it strains logic and fundamental fairness to dispute the
9 contradiction pointed out by Respondents central argument. Staff’s position cannot withstand
10 logical analysis and must be subject to reconsideration or judicial, stake holder, and public
11 scrutiny. Respondent therefore respectfully requests the Board reconsider its Decision.

12 **I. THE DECISION CONTAINS ERRORS IN STATUTORY APPLICATION**
13 **THAT REQUIRE RECONSIDERATION BY THE BOARD**

14 The Decision supports an erroneous application of Government Code section 21154,
15 subd. (c), which provides that: “The application shall be made only (a) while the member is in
16 state service, or (b) while the member for whom contributions will be made under Section
17 20997, is absent on military service, or (c) within four months after the discontinuance of the
18 state service of the member, or while on an approved leave of absence, or (d) while the member
19 is physically or mentally incapacitated to perform duties from the date of discontinuance of state
20 service to the time of application or motion.” (Cal Gov Code § 21154, emphasis added).
21 Specifically, the deadline to apply is to fall within four months of the discontinued relationship
22 of employment. The Board does not properly apply this section and does not address it at all in
23 its Decision. Respondent applied within four months of her discontinuance from employment.
24 Therefore, the Board should GRANT Respondent’s Petition for Reconsideration and reconsider
25 their Decision.

26 **II. THE DECISION CONTAINS ERRORS IN CASE LAW**
27 **INTERPRETATION AND APPLICATION THAT REQUIRE**
28 **RECONSIDERATION BY THE BOARD**

1 The Decision inappropriately applies the *Haywood* line of cases, regardless of the
2 differences pointed out between this matter and those cases. (See *Haywood v. American River*
3 *Fire Protection District* (1998) 67 Cal.App. 4th 1292, 1307). The Decision, by refusing to
4 acknowledge or address Respondents central argument, considers a termination for misconduct
5 as in the *Haywood* cases, to be the same as an unlawful termination ordered removed from a
6 member’s personnel record. The Decision is incompatible with the Public Employees Retirement
7 Law “PERL,” because it does not distinguish the *Haywood* line of cases that apply to
8 disciplinary terminations - from unlawful terminations. In Respondent’s central argument,
9 Respondent contends that even though her relationship is severed with her employer, she was not
10 fired for cause like in *Haywood*. Instead, her discharge had been ordered a Court to be removed
11 from her record. With the severed employment relationship, disability retirees who resign are
12 still able to apply if it is within the four months as stated in the Government Code section 21154.
13 Put another way, a member who resigns for any reason – to get another job, or even to go fishing
14 – can apply. Yet, a member who was unlawfully terminated as determined by a Court, which
15 orders the termination removed from the record, - cannot apply. That is what the Decision stands
16 for. The Decision does not address the differences and inappropriately applies the outcome of
17 *Haywood* to this matter. Respondent was found to be discharged by her employer because of
18 unlawful retaliation and she complied within the deadline of applying for the benefits, therefore,
19 the Board should GRANT the Petition for Reconsideration.

20 **III. THE BOARD ERRED IN DISREGARDING RESPONDENT WAS**
21 **ILLEGALLY TERMINATED AND A VICTIM OF SEXUAL**
22 **HARRASSMENT AND ASSAULT FROM HER EMPLOYMENT**

23 The Board’s Decision does not take into consideration Respondent’s illegal termination
24 and her being a victim of sexual harassment. Respondent was not fired for cause, and her
25 termination is removed from her personnel record. Respondent was sexually assaulted and
26 harassed by her supervisor at her employment - which directly resulted in her retaliatory and
27 illegal termination. The termination was “retaliatory on its face” according to Chief U.S. District
28 Judge Kimberly Mueller. These facts need to be considered in the application of the *Haywood*

1 line of cases. Indeed, none of the *Haywood* line of cases upon which the construct of right to
2 reinstatement prevents a member who severs their employment by resignation from afterwards
3 applying – even though such a member who resigns does not have a right of reinstatement. A
4 member whose employment is severed because they are unlawfully terminated similarly does not
5 have a right of reinstatement. It is error to engraft a requirement for the right to reinstatement that
6 is not in the PERL, to require a condition of applying - that Respondent must be reinstated in
7 order to apply. Why would such an impossible requirement be added as an additional hurdle to
8 the victim of sexual harassment – who is disabled and unable to reinstate to such a retaliatory
9 workplace that would result in certain further retaliation - when a member who simply resigned
10 need not be required to reinstate before applying. The Board should GRANT Respondent’s
11 Petition for Reconsideration.

12 IV. CONCLUSION

13 The central argument of the Respondent’s appeal was ignored: why if a
14 member can first resign and later apply for IDR within the time limit allowed, can Respondent,
15 who was illegally terminated and a victim of sexual assault and harassment as a direct result of
16 her employment, not also apply for IDR? Neither have a right to reinstatement. This must be
17 answered.

18 The Board of Administration has ample grounds to RECONSIDER the Decision,
19 including:

- 20 a. An erroneous application of Government Code section 21154, which fails to consider
21 that Respondent applied within the deadline stated by the statute;
- 22 b. Erroneous interpretation and application of *Haywood* as it applies to the Respondent
23 by disregarding the difference between a disciplinary termination and an unlawful
24 separation; and
- 25 c. The disregard of important policy implication of a misapplication of the *Haywood*
26 line of cases to the unlawful and retaliatory termination and victim of sexual assault
27 and harassment.

28 Respondent was unlawfully separated from her employment as an act of unlawful

1 retaliation from the employer and should then be permitted to apply for IDR because she was
2 within the time limit allowed and her separation from her employment was not by any fault of
3 her own. For these reasons and based on the arguments set forth in this Petition as well as
4 previous submissions, Respondent asks that the Board RECONSIDER the Decision and instead
5 enter Judgment in favor of Respondent, to allow her to apply for IDR as is within her right to do.

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7 Dated: August 14, 2024

CAL LAW APC

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11 By: _____,

12 Calvin Chang, Esq.
13 Attorneys for Tiffany Goodson
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PROOF OF SERVICE

I am a resident of the State of California, over eighteen years of age, and not a party to this action. My business address is 500 Capitol Mall, Suite 2350, Sacramento, California 95814.

On the date set forth below, I served the following document(s):

RESPONDENT’S PETITION FOR RECONSIDERATION OF THE BOARD OF ADMINISTRATION

BY ELECTRONIC SERVICE: Pursuant to court order, regulation, or agreement with opposing counsel to accept service of documents electronically, I caused the documents to be sent to the persons at the email addressed listed below by the ordinary practice of the firm from cal@callawapc.com

<p>Austa Wakily Austa.Wakily@calpers.ca.gov</p> <p>CalPERS P.O. Box 94707 Sacramento, CA 94229-2707</p>	<p>Office of Plumas County Counsel Brechtel, Josh JoshBrechtel@countyofplumas.com</p> <p>Sara G. James sarajames@countyofplumas.com</p>
<p>Board Services Unit Coordinator California Public Employees’ Retirement System Post Office Box 942701 Sacramento, CA 94229-2701</p> <p>Board@CalPERS.ca.gov</p>	<p>Matthew G. Jacobs CalPERS General Counsel</p> <p>VIA FAX ONLY 916-795-3659.</p>

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before this Court, and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 14, 2024** at Sacramento, California.



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