

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jose Guerra (Respondent) was employed by Correctional Training Facility, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS.

On March 12, 2020, Respondent CDCR served Respondent with a Notice of Adverse Action (NOAA) based on misconduct, with an effective date of dismissal on March 19, 2020. Respondent appealed his dismissal to the State Personnel Board (SPB). On January 11, 2021, the SPB served a Board Resolution and Order, upholding Respondent's dismissal. Respondent did not appeal the SPB Order, so his dismissal is final.

CalPERS received Respondent's application for service pending industrial disability retirement (SR pending IDR) on August 22, 2022. Respondent claimed disability on the basis of orthopedic conditions (bilateral knee, left heel). Respondent identified his last day on payroll as March 20, 2020, and he requested a retirement date of March 21, 2020. His first retirement benefit check was issued October 2, 2022.

Because Respondent's employment relationship with Respondent CDCR was permanently severed due to his termination via the NOAA, CalPERS determined that he was ineligible to apply for CalPERS disability retirement pursuant to *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*) and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*).

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.

On February 1, 2023, CalPERS informed Respondent that his application for IDR had been canceled based on *Haywood* and *Smith*.

Respondent appealed CalPERS' 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 August 27, 2024. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing, and the matter proceeded as a default as to Respondent CDCR pursuant to Government Code section 11520, subdivision (a).

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 presented testimony from a CDCR Employee Relations Officer who reviewed Respondent's employment file with Respondent CDCR, including the NOAA and supporting documents. She testified that she saw no records indicating Respondent's employment was terminated due to a disability.

Respondent testified that the reason for his delay in applying for IDR was that no one told him he could apply for disability retirement. He admitted that he never contacted CalPERS to inquire about IDR. Respondent testified that he did not think he was eligible for IDR, but he "just applied" after more than two years.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that a preponderance of the evidence established that Respondent CDCR terminated Respondent's employment for reasons unrelated to a disabling medical condition, that his termination did not preempt an otherwise valid claim for IDR, and that Respondent did not satisfy his burden of demonstrating an equitable exception applies. Accordingly, the ALJ denied Respondent's appeal, holding that his IDR application was properly canceled.

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

January 13, 2025

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Staff Attorney