

ATTACHMENT B

Staff Argument

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

Ruben D. Jaramillo (Respondent) was employed by the California Department of Water Resources (Respondent DWR) as a Mobile Equipment Superintendent I. By virtue of his employment, Respondent was a state miscellaneous member of CalPERS.

On February 23, 2023, Respondent was served with a Notice of Adverse Action (NOAA) with an effective termination date of March 7, 2023. The reasons for the termination were listed as fraud in securing appointment, incompetency, inefficiency, inexcusable neglect of duty, insubordination, dishonesty, willful disobedience, misuse of state property, violation of the incompatible activities rule, and failure of good behavior in a way that discredits the person's employment.

Respondent appealed his termination with the State Personnel Board (SPB). SPB dismissed the appeal upon his non-appearance at a scheduled hearing.

CalPERS received Respondent's application for disability retirement on December 1, 2023. Disability was claimed on the basis of orthopedic conditions (torn meniscus in the right knee with retinal detachment, neck and lower back, both hands, both knees, ankles). Respondent identified his last day on payroll as March 7, 2023, and requested a retirement date for that same day.

On February 16, 2024, CalPERS determined that Respondent was ineligible to apply for 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*); *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* made precedential by the CalPERS Board of Administration on October 16, 2013 (*Vandergoot*); and *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156 (*Martinez*).

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.

The *Martinez* court affirmed *Vandergoot* as a logical extension of *Haywood*. Both *Martinez* and *Vandergoot* involved employees who agreed to resign following the settlement of a NOAA terminating their employment, and who waived any right to reinstatement as part of the settlement agreement.

On February 16, 2024, CalPERS notified Respondent and Respondent DWR of its determination and their appeal rights.

Respondent timely 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 October 7, 2024. Respondent represented himself at the hearing. Respondent DWR was represented by its attorney of record, Melinda Williams.

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, Respondent testified on his own behalf. The ALJ found that Respondent had no explanation for why his disability retirement application was submitted over six months after his termination from employment.

Respondent claimed that he was physically incapable of doing his job. However, Respondent admitted to making written statements to Respondent DWR shortly before he was terminated, asserting that he believed he was ready, willing, and able to return to work. The ALJ found that Respondent’s testimony was contradictory.

The ALJ further noted that Respondent falsely claimed that he was fired while he was on disability leave. The ALJ also determined that Respondent provided no credible evidence to support his contention regarding the reason he was terminated from employment. The ALJ ultimately found that Respondent’s testimony was “self-serving, not credible, and not supported by any objective evidence.”

At the hearing, CalPERS presented evidence, including testimony regarding its review of disability retirement applications and cancellations of those applications pursuant to *Haywood*. CalPERS also presented testimony establishing that Respondent did not have a “vested and mature right” to a disability retirement and that Respondent was not on disability leave when he was terminated.

CalPERS additionally presented testimony from a Staff Manager II (Manager) with Respondent DWR. The Manger testified that while he did not take part in the investigation of Respondent, he did review the report and found that Respondent’s application stated that he worked for Cal Fire; however, at the time of that claimed employment, Respondent was a prison inmate. The ALJ found that Respondent could have been terminated for this false statement on his official state application, which he signed under penalty of perjury.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s s appeal. The ALJ found that Respondent failed to prove that he was terminated due to a disabling medical condition, and he did not present any evidence that he was eligible for disability retirement. In the Proposed Decision, the ALJ concluded that Respondent’s disability retirement application was properly canceled on the basis of *Haywood* and its progeny.

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 the word “industrial” be removed before the words “disability retirement” on page 11, paragraph number ten.

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

January 13, 2025

MEHRON ASSADI
Staff Attorney