

ATTACHMENT B

STAFF'S ARGUMENT

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

Brandon M. Naranjo (Respondent) was employed as a Police Officer for the City of Costa Mesa (Respondent City). By virtue of this employment, Respondent was a local safety member of CalPERS.

In early October 2019, the Costa Mesa Police Department received a complaint concerning Respondent's conduct during a September 4, 2019, traffic stop involving a young female motorist. Respondent asked the female motorist for her phone number under the auspices of wanting to check on her to make sure she drove home safely. That evening, Respondent used the phone number he obtained to text the female motorist, who did not immediately respond. Respondent followed up by calling the female motorist and accusing her of misleading him to avoid a more serious citation. The complaining party subsequently learned Respondent had similar encounters with other young female motorists and expressed a concern Respondent was acting in his official capacity as a police officer to target young women, whom he solicited for dates.

On October 15, 2019, the Costa Mesa Police Department initiated an administrative investigation into the allegations against Respondent. Sergeant Jason Chamness was assigned to the investigation. Sergeant Chamness reviewed police records and interviewed approximately one dozen individuals, including Respondent.

Respondent suffered two minor injuries during training sessions held in October 2019. On October 22, 2019, Respondent attempted a right turn at five miles per hour. His motorcycle fell causing him to collide with the front windshield and lacerating his upper lip. He was placed "off of work" until October 28, 2019. On October 30, 2019, Respondent hit a traffic cone when he attempted a left turn. The motorcycle slid from beneath him and he fell to the ground. Respondent sprained his left knee and suffered abrasions to his right knee. He was placed "off of work" until November 4, 2019.

On May 24, 2020, Respondent was placed on administrative leave.

On July 13, 2020, Sergeant Chamness detailed his investigative findings in an Administrative Investigation memorandum. The memorandum provides in part:

"On numerous occasions, [Respondent] has shown favoritism towards women and solicited relationships and dates while working in the course and scope of his duties. [Respondent] said he stopped and/or contacted approximately 15-20 women and explored the possibility of having personal relationships or connections with them.

. . . [Respondent] admitted to issuing warnings instead of citations to gain favor and possible dates. He purposefully

detained multiple women longer than necessary to have personal conversations that were outside the scope of his police duties.

By his own admissions, [Respondent] had sexual relationships with at least three women he met while on duty and in uniform. [Respondent] admitted he knew his actions were wrong and unbecoming of a police officer. He knew he could be disciplined for his behavior.”

On August 18, 2020, Respondent City served Respondent with a Notice of Intent to Terminate which informed Respondent of his right to a pre-disciplinary *Skelly* hearing.

On October 12, 2020, Respondent informed Respondent City that he “decided to accept the Notice of Intent [to Terminate], bypass the *Skelly* process and acknowledge the disciplinary action. Therefore, there is no longer a need for an interview as [I understand] that the termination is now in effect.” Respondent requested a post-disciplinary due process hearing on his termination and whether Respondent City violated his rights under the Public Safety Officers Procedural Bill of Rights Act.

The Costa Mesa Police Department sought an additional administrative interview of Respondent before proceeding to a final decision on his termination. Respondent thwarted efforts to afford him an interview opportunity with a series of continuous leaves purportedly for trauma and stress-related mental health symptoms “temporarily impacting his ability to carry out work related functions.” The series of continuous leaves lasted approximately 18 months ending on April 1, 2022, after which Respondent was obligated to report to duty, which he failed to do.

On September 15, 2021, while on leave, Respondent applied for Industrial Disability Retirement alleging “orthopedic-bi-lateral knees, left shoulder” conditions.

On June 16, 2022, Respondent City formally severed its employer-employee relationship with Respondent by serving him with a Notice of Termination.

Based on the Notice of Intent to Terminate, CalPERS determined that Respondent was ineligible 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*); *Martinez v. Public Employees Retirement System* (2019) 33 Cal.App.5th 1156, as well as CalPERS Precedential Decision No. 13-01 *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (*Vandergoot*), and Precedential Dec. No. 16-01 *In the Matter of Accepting the Application for Industrial Disability Retirement of Phillip MacFarland* (*MacFarland*).

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.

The *Martinez* court affirmed the holdings in *Haywood* and *Smith* and refused to overturn more than twenty years of legal precedent. The *Martinez* court also affirmed the *Vandergoot* Precedential Decision as a logical extension of the *Haywood* and *Smith* cases. Both *Martinez* and *Vandergoot* involved employees who agreed to resign following a settlement of a Notice of Adverse Action (NOAA) terminating their employment. The employees in *Martinez* and *Vandergoot* waived any right to reinstatement as part of a settlement agreement. In *Vandergoot*, the Board held 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 concluded that an employee’s resignation was tantamount to a dismissal when the employee resigned pursuant to a settlement agreement entered in to resolve a dismissal action and agreed to waive all rights to return to his former employer.

In *MacFarland*, the court found that the character of the disciplinary action does not change because the member submitted a resignation prior to the effective date of the NOAA.

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 17, 2023. Respondent did not appear at the hearing. Respondent City was represented by counsel at the hearing.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ applied *Haywood*, *Smith* and *Vandergoot* to the facts and circumstances of Respondent’s termination and found that he is not eligible for disability retirement. The ALJ held that good cause existed for Respondent City to terminate Respondent’s employment as a Police Officer. The ALJ quoted from *Haywood* to conclude that it would be “absurd” to reward Respondent’s misconduct with disability retirement benefits.

The ALJ further held that Respondent's termination was not based on any medical condition. The undisputed evidence established that the Costa Mesa Police Department terminated Respondent for his unprofessional conduct. Respondent's employment relationship with Respondent City was severed when he was served with a Notice of Intent to Terminate on August 11, 2020. Respondent's delay tactics did not change Respondent City's decision to terminate him.

In the Proposed Decision, the ALJ concludes that the employment relationship between Respondent and Respondent City was completely severed. In the absence of a continuing employee-employer relationship, Respondent is precluded from applying for and obtaining a disability retirement.

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 adding "District" between Protection and (1998) on page 12, paragraph 27; deleting "System (PERS)" after the word Retirement and before the word Law on page 12, paragraph 1 under Legal Conclusions; adding "District" between Protection and (Haywood) on page 13, paragraph 2; adding "Industrial" between "for" and "Disability" and "Robert" between "of" and "Vandergoot" on page 16, paragraph 11; and "April 1, 2020" on page 17, paragraph 15 be changed to "April 1, 2022."

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

July 19, 2023

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