

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Imelda P. Fiesta (Respondent) was employed by Substance Abuse Treatment Facility, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Registered Nurse. By virtue of her employment, Respondent was a state safety member of CalPERS.

Respondent CDCR served Respondent with a Notice of Adverse Action (NOAA) terminating her effective September 12, 2007. The NOAA listed various causes for her dismissal including her failure to make required patient record entries. Respondent appealed her dismissal. During the pendency of the appeal, Respondent and Respondent CDCR executed a Stipulation for Settlement. As a condition of settlement, Respondent voluntarily resigned from her position effective December 12, 2007, and agreed to withdraw her appeal. She also agreed never to apply for employment with Respondent CDCR in the future. The State Personnel Board approved the Stipulated Settlement on August 31, 2009.

On May 31, 2023, Respondent submitted an application for Industrial Disability Retirement (IDR). Respondent listed her retirement date as December 14, 2007, and claimed disability on the basis of an orthopedic condition.

CalPERS reviewed Respondent's IDR application and requested information from Respondent CDCR. Respondent CDCR provided information and documents surrounding Respondent's dismissal, appeal, and Stipulated Settlement. CalPERS determined that Respondent 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*); *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156 (*Martinez*); CalPERS Precedential Decision 13-01 *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (*Vandergoot*); and CalPERS Precedential Decision 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.

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 in order to resolve a dismissal action and agreed to waive all rights to return to his former employer.

The *Martinez* court affirmed the holding in *Haywood* and refused to overturn more than twenty years of legal precedent. The *Martinez* court also affirmed *Vandergoot* as a logical extension of *Haywood*. Both *Martinez* and *Vandergoot* involved employees who agreed to resign following a settlement of a NOAA terminating their employment and waiving any right to reinstatement as part of a settlement agreement.

In *MacFarland*, the Board determined that the character of the disciplinary action does not change because a resignation was submitted prior to the effective date of the NOAA. The Board held that a resignation preceding the effective date of the NOAA bars a member from applying for industrial disability retirement on the basis of *Haywood* or *Smith*.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.

Respondent appealed CalPERS’ determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 10, 2024. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing and a default was taken as to Respondent CDCR pursuant to Government Code section 11520, subdivision (a).

CalPERS called Respondent CDCR’s Personnel Manager to testify at the hearing that Respondent was permanently separated from her employment and had no automatic reinstatement rights. The Personnel Manager also authenticated Respondent CDCR’s termination documents, which were then admitted as direct evidence.

Respondent testified on her own behalf that the NOAA contained misrepresentations and was not accurate. She also asserted that she had a matured right to disability because she was found to have a permanent and stationary condition in her workers’ compensation case prior to her separation.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that CalPERS had cause to cancel Respondent’s IDR application because she is ineligible for disability retirement. Respondent’s resignation and agreement never to seek or accept employment with

Respondent CDCR precludes her eligibility for disability retirement. Further, the ALJ found that Respondent CDCR's dismissal action against Respondent was not the result of a disabling medical condition. The NOAA arose from Respondent's failure to properly enter nursing notes for patients under her care. Respondent resigned from her employment effective December 12, 2007, and did not have a valid claim for disability retirement at that time. She did not sign her IDR application until 16 years later, on May 31, 2023. Thus, the ALJ found that CalPERS properly canceled Respondent's IDR application because it is precluded by operation of applicable case law.

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

January 13, 2025

Cristina Andrade
Senior Attorney