

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jose S. (Steve) Carrera (Respondent) was employed by the City of Bell (City) from September 30, 2002, through May 11, 2019. By virtue of this employment, he is a local safety member of CalPERS.

In 2017, Respondent was the subject of an administrative investigation by the City that led to his suspension from work for 120 hours. In 2018, Respondent filed a complaint in the Superior Court of California, County of Los Angeles (civil action). The complaint asserted damages for: (1) whistleblower retaliation; (2) fair employment and housing retaliation; and (3) failure to take corrective action. The complaint in the civil action alleged that Respondent was a witness in an internal affairs investigation of an officer and that during the investigation, Respondent became an investigation subject.

On March 18, 2019, the City offered to settle the civil action. The settlement offer stated in part:

[Respondent] shall **permanently** separate from City employment. [Respondent] **shall not seek future employment** with the City. The City shall pay [Respondent] the sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$450,000.00) . . . (emphasis added)

Respondent accepted the settlement the same day, and on April 11, 2019, Respondent submitted a letter of separation from employment.

On May 9, 2019, the City sent Respondent a letter accepting his separation of employment, effective May 10, 2019. On May 14, 2019, City officials signed a personnel action form, effective May 10, 2019. In a section of the form marked "disciplinary action" no information was provided. In a section of the form marked "termination" a box for "resignation" was checked, along with a box stating, "would you re-hire," with the answer checked "no."

On June 7, 2019, Respondent applied for industrial disability retirement (IDR). On multiple occasions, CalPERS sent letters to the City asking it to make a disability determination. In addition, CalPERS requested information from the City about the circumstances of Respondent's separation from employment.

On April 30, 2020, the City sent Respondent's personnel documents to CalPERS, including the accepted settlement offer, Respondent's letter of separation, the City's acceptance of his separation, and the Personnel Action Form dated May 14, 2019.

By letter dated May 8, 2020, the City's Human Resources & Risk Manager answered CalPERS' questions about the status of Respondent's separation from employment.

On September 24, 2021, CalPERS notified Respondent that it administratively cancelled his IDR application because of the City's failure to issue a disability determination.

On October 26, 2021, Respondent filed a second IDR application which was also administratively canceled after the City failed to make a disability determination.

On May 15, 2023, Respondent filed his third IDR application with CalPERS. The City again failed to make a disability determination.

On September 13, 2023, Respondent filed a Petition for Writ of Mandate seeking an order directing the City to make a disability determination on his industrial disability retirement application.

On September 29, 2023, CalPERS advised Respondent that he was not eligible for disability retirement because he left employment for reasons that were not the result of a disabling medical condition. CalPERS cited *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292; *Smith v. City of Napa* (2004) 120 Cal.App.4th 194; *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156; and *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (2013) CalPERS Precedential Decision No. 13-01 as support for its determination.

The *Haywood* court found that termination of the employment relationship renders the employee ineligible for disability retirement where the termination is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement. The ineligibility arises from the fact that a termination results in 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 complete severance of the employment relationship 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 employment relationship ended. To be mature, there must have been an unconditional right to immediate payment before severance of the employment relationship unless, under principles of equity, the right to immediate payment was delayed through no fault of the 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 application of the *Haywood* and *Smith* cases. 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. 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 and, as such, completely severed their employment relationship with their employer rendering them ineligible for disability retirement.

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 December 17, 2024. Both Respondent and the City were represented by counsel at the hearing.

Respondent testified that he sustained work related injuries while working for the City, that he had a workers compensation case, and was off duty due to his injuries. No other evidence of Respondent's work injuries was submitted. Respondent also testified at the hearing that he would be willing to return to service with the City.

The City presented testimony from its Human Resources and Risk Manager who stated that if Respondent applied for a job with the City, he would not be allowed to come back to work. Respondent was not terminated for cause. He resigned in lieu of termination.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the reasoning of *Haywood*, other cases, and precedential decisions applies to Respondent. Respondent filed his civil action while disciplinary charges were pending against him. When he settled his civil action, he terminated his employment with the City and agreed not to seek future City employment. Whether the City filed a disciplinary case to terminate his employment, or whether he filed a preemptive civil action against the City, is a distinction without a difference. There were disciplinary charges against him, and he resolved those charges through a settlement with the City that severed his employment. His separation was tantamount to a termination for cause.

The ALJ further held that the fact that CalPERS did not invoke the *Haywood* basis for canceling Respondent's first two disability retirement applications, and instead sent requests to the City to solicit the City's disability determination, did not preclude CalPERS from invoking *Haywood* in response to his third application.

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

February 19, 2025

Austa Wakily
Senior Attorney