

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Laniece P. Clausell (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated April 13, 2021. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

On May 4, 2018, Respondent California State Prison, Corcoran, California Department of Corrections (Respondent CDCR) served Respondent with a Notice of Adverse Action (NOAA), suspending her without pay for 49 consecutive working days, from May 14, 2018 through July 23, 2018. The NOAA alleged multiple policy violations stemming from a purported July 10, 2017 domestic violence incident between Respondent and her former romantic partner.

CDCR conducted a *Skelly*¹ hearing on May 16, 2019, relating to the NOAA, to allow Respondent an opportunity to respond to allegations of misconduct prior to the imposition of discipline. After review of the *Skelly* Officer's recommendation and the case factors, on May 22, 2018, Respondent CDCR informed respondent of its decision to sustain the NOAA as written.

On July 23, 2018, Respondent and Respondent CDCR entered into a Stipulated Settlement Agreement and Release (Agreement). Through the Agreement, Respondent agreed that she would not appeal the NOAA, and would instead voluntarily resign from her position. Respondent further agreed that she would never apply for or accept future employment from Respondent CDCR. In exchange, Respondent CDCR agreed to withdraw the NOAA from Respondent's official personnel file.

Later, on July 26, 2018, the State Personnel Board adopted, and issued a decision, approving the Stipulated Settlement Agreement and Release (Decision).

Nearly a year and one half later, on December 18, 2019, Respondent signed an application for industrial disability retirement which was received by CalPERS on December 18, 2019. Respondent claimed disability on the basis of a complex regional pain syndrome condition.²

Based on the NOAA, Agreement, and Decision, CalPERS determined that Respondent was ineligible for disability/industrial disability retirement pursuant to *Haywood v.*

¹ *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 gives certain employees the opportunity to respond to allegations of misconduct prior to the imposition of discipline. This procedure is generally referred to as a *Skelly* hearing.

² One week later, Respondent filed another application for industrial disability retirement claiming disability on the basis of a psychological condition. That application is not referenced in the statement of issues, and was not at issue in this appeal.

American River Fire Protection District (1998) 67 Cal.App.4th 1292 (*Haywood*); *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*); and *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* dated February 19, 2013, and made precedential by the CalPERS Board of Administration on October 16, 2013 (*Vandergoot*).

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.

Respondent appealed this 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 March 2, 2021. Respondent was represented by counsel at the hearing. Respondent CDCR did not appear at the hearing.

Respondent testified on her own behalf. Respondent disputed the factual findings of the NOAA related to the alleged domestic abuse incident. Respondent then stated that she resigned from CDCR so that she did not have to work with her former partner, who worked as a captain at the same CDCR facility, because she felt unsafe being in the same prison yard as him.

The NOAA, Agreement, and Decision were all admitted into evidence.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent permanently terminated her employer-employee relationship when she permanently waived her right

to reinstate to her former position through the Agreement. The ALJ also determined that there was insufficient evidence that Respondent's separation was the ultimate result of a disabling medical condition, or that the separation was preemptive of an otherwise valid claim for disability retirement. The ALJ's Proposed Decision (PD) also rejected all of Respondent's arguments and concluded that CalPERS was correct in rejecting Respondent's application.

The Board of Administration adopted the PD as its own Decision at the June 16, 2021 meeting.

Respondent fails to present any new evidence in support of her Petition. Instead, she argues that *Haywood* and *Smith* do not apply, which is the same argument that the Board already rejected when it adopted the PD.

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 Court of Appeal upheld this principle in *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156. The Board was thus correct to adopt the PD as its own Decision. Respondent's resignation from Respondent CDCR completely severed her employment relationship, ultimately rendering her ineligible for industrial disability retirement.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the June 16, 2021, meeting was well reasoned and based on the credible evidence presented at hearing.

July 14, 2021

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