

ATTACHMENT A

THE PROPOSED DECISION

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Accepting the Application for
Disability Retirement of:**

RUBEN D. JARAMILLO,

and

**CALIFORNIA DEPARTMENT OF WATER RESOURCES,
Respondents.**

Agency Case No. 2024-0216

OAH No. 2024080974

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on October 7, 2024, by videoconference.

Staff Attorney Mehron Assadi represented complainant, Sharon Hobbs, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System (CalPERS).

Attorney Melinda Williams represented respondent California Department of Water Resources (department).

Respondent Ruben Jaramillo represented himself.

The record was held open until October 16, 2024, for the submission of written closing arguments. The documents were received from complainant and the department. The record closed, and the matter was submitted for decision on October 16, 2024.

ISSUE

Is respondent Ruben Jaramillo ineligible to apply for disability retirement due to the severance of his employment for cause from the department?

FACTUAL FINDINGS

Background and Procedural History

1. Respondent Ruben Jaramillo was employed by the department as a Mobile Equipment Superintendent I. By virtue of his employment, respondent was a state miscellaneous member of CalPERS.

2. On February 23, 2023, the department issued a Notice of Adverse Action (NOAA) to respondent. The NOAA stated respondent was terminated from his position as a Mobile Equipment Superintendent I effective March 7, 2023. The causes for his 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.

3. On a date not established in the record, respondent appealed his termination to the State Personnel Board (SPB).

4. On May 23, 2023, respondent failed to appear at a hearing for his appeal of his termination. As a result, SPB deemed his appeal withdrawn and dismissed the appeal.

5. On November 7, 2023, respondent signed an application for disability retirement. Respondent listed his disabling conditions as "torn meniscus r knee, retinal detached neck and lower back, both hands, both knees, ankles."

6. On February 16, 2024, CalPERS issued a letter to respondent stating he was not eligible for disability retirement benefits because his separation from the department was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement. Respondent filed a timely appeal.

7. On August 13, 2024, a statement of issues was signed on behalf of Sharon Hobbs, in her official capacity as Chief of the Disability and Survivor Benefits Division, CalPERS. This hearing ensued.

Employment and Application for Disability

8. On November 18, 2013, respondent¹ began employment with the department as a heavy equipment mechanic. Respondent's application for that position stated he had been employed by the California Department of Forestry and Fire Protection (CAL FIRE) as an equipment mechanic between June 2009 and April 2010. Respondent stated on the application that he was paid \$30 per hour in that position.

9. On July 9, 2018, the department promoted respondent to the position of Mobile Equipment Superintendent I.

10. On May 31, 2019, the State Compensation Insurance Fund notified respondent that the claim he made for workers' compensation for an injury to his eye was denied. The letter stated that there was no "medical evidence to substantiate an industrial injury" to respondent's eye.

11. On August 25, 2021, the department notified respondent via letter that he was being placed on paid administrative leave (ATO) effective immediately. Respondent was being placed on ATO while an investigation into his alleged misuse of a credit card (Cal-Card) issued by the department to respondent for business related purposes. The reason respondent was placed on ATO is to prevent any attempt to improperly influence witnesses or hide evidence.

¹ For ease of reference, respondent Ruben Jaramillo will be referred to as respondent and respondent California Department of Water Resources will be referred to as department.

12. On August 23, 2021, respondent filed a workers' compensation disability claim for both hands, knees, lower back, left thumb, neck, and ankle pain. As a result, he was placed on industrial disability leave effective October 1, 2021.

13. On September 28, 2021, the department notified respondent that he must attend an administrative investigative interview on October 6, 2021, regarding his alleged misuse of his Cal-Card.

14. Respondent was treated for those injuries by Lauri Beth Hemsley, M.D. Dr. Hemsley placed modified duty. Dr. Hemsley released respondent to full duty on June 14, 2022.

15. While respondent was receiving treatment for his orthopedic workers' compensation claim, respondent also reopened a workers' compensation claim for a thumb injury that originally had been filed in June 2020. Respondent was treated by Katayon Shahrokh, M.D., for his right thumb injury.

16. On April 15, 2022, respondent sent an email to Brandon Stroh, a human resources (HR) representative with the department, stating that he had "no problem going back and doing my job as before as Mobile Equipment Superintendent 1."

17. On April 22, 2022, respondent filed a reasonable accommodation request, stating that he had surgery on his right thumb and as a result it limited his ability to do any "heavy lifting and twisting." Respondent also stated that the accommodation did not prevent him from performing his duties as a Mobile Equipment Superintendent I.

18. On May 16, 2022, Dr. Shahrokh completed an industrial work status report. In the report, Dr. Shahrokh determined that respondent was "able to return to work at full capacity."

19. On June 15, 2022, respondent was placed back on ATO. While he was returned to full duty, the investigation was still ongoing. The department did not want respondent on the premises for the reasons stated above. Respondent remained on ATO until his termination on March 7, 2023.

20. On November 14, 2022, respondent filed a complaint with the California Civil Rights Department claiming that he had been denied reasonable accommodation based on his disability and gender, that he had been discriminated against by being placed on ATO because of his race, and that he had been retaliated against by being denied work opportunities or assignments because of his disability.

21. On June 30, 2023, respondent withdrew his complaint with the California Civil Rights Department against the department.

Investigation and Termination

22. On October 19, 2021, respondent was notified by the department that he must attend an administrative investigative interview regarding his alleged misuse of his Cal-Card on October 28, 2021. Respondent did not appear for the interview.

23. On January 25, 2022, respondent was notified by the department that he must attend an administrative investigative interview on February 3, 2022. Respondent did not appear for the interview.

24. On April 18, 2022, respondent sent an email to Denise Barnes, an administrative officer for the department who was to conduct the administrative

investigative interviews of respondent, stating that he did not “plan to attend any type [sic] investigation interview” with anybody.

25. On May 2, 2022, respondent was notified by the department that he must attend an administrative investigative interview on May 5, 2022.

26. On May 2, 2022, respondent sent an email to Victoria Williams, HR supervisor with the department, reiterating what he had told Barnes. Respondent stated, “I have nothing to say at the investigation interview.”

27. On May 3, 2022, respondent was notified that if he failed to attend the interview, it would be considered insubordinate and subject him to disciplinary action.

28. Nicholas Miskovich is a Staff Manager II with the department. His testimony is summarized as follows. His job duties include reviewing adverse actions against employees. He did not take part in the investigation of respondent but reviewed the investigation file. Respondent’s application stated he worked for CAL FIRE. However, it was discovered that at the time that respondent claimed he was employed by CAL FIRE, he was actually incarcerated with the California Department of Corrections and Rehabilitation (CDCR). Respondent could have been terminated simply for the falsehood on his official state application, which was signed under penalty of perjury.

29. Greg Neill is an associate government program analyst in the disability and survivor benefits unit. The unit handles the denial of disability retirements. Neill testified that respondent was not on disability leave when he was terminated, and that respondent did not have a “vested and mature right” to disability retirement.

Respondent's Additional Evidence

30. Respondent's testimony was contradictory. When asked about his written statements saying he was ready, willing, and able to return to work, respondent he stated that he was not allowed to return to work because of the permanent restrictions imposed by his physician. Respondent stated that he was able to come back to work. Respondent falsely claimed that he was fired while he was on disability leave. Respondent had no explanation for why he did not pursue the appeal of his termination with SPB. Respondent stated that he has reinstatement rights but provided no evidence to support that contention. Respondent stated that he did not refuse to participate in the investigative interviews despite his emails to the contrary. Respondent stated that he was retaliated against because he spoke up on behalf of others but provided no credible evidence in support of this contention.

31. Respondent stated he is unable to work at all because of pain in his back and knee. He had no explanation for why his disability retirement application was submitted over six months after his termination from the department.

32. Respondent's testimony was self-serving, not credible, and not supported by any objective evidence.

LEGAL CONCLUSIONS

1. The applicant for a benefit has the burden of proof to establish the right to the claimed benefit; the standard of proof is a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115.)

2. Government Code section 21150 provides that a member of CalPERS who is incapacitated for the performance of duty shall be retired for disability, regardless of age. In determining whether a member is eligible to retire for disability, the CalPERS Board of Administration must decide based on competent medical opinion and must not use disability retirement as a substitute for the disciplinary process. (Gov. Code, § 21156, subd. (a)(2).)

3. The Public Employees' Retirement Law contemplates the potential reinstatement of a member retired on disability if the member recovers and is no longer disabled. Under Government Code section 21193, when a member receiving a disability retirement allowance is found to no longer be disabled, the employer may reinstate the member and the member's disability allowance terminates.

The *Haywood* Rule

4. In *Haywood v. American River Fire Protection Dist.* (1998) 67 Cal.App.4th 1292 (*Haywood*), the court held that when an employee is terminated for cause, the employee is ineligible for disability retirement unless an exception is established. The court explained that an employee's dismissal constitutes a complete severance of the employer-employee relationship, thus eliminating a necessary requisite for disability retirement: the potential reinstatement of the employment relationship if it ultimately is determined that the employee is no longer disabled. (*Id.* at p. 1297, 1306-1307.)

EXCEPTIONS TO THE *HAYWOOD* RULE

5. The *Haywood* court identified two instances in which a terminated employee may nevertheless apply for disability retirement: (1) where the employee establishes that the separation from service was the ultimate result of a disabling condition; or (2) where the employee establishes that the separation from service

preempted an otherwise valid claim for disability retirement. (*Haywood, supra*, 67 Cal.App.4th at p. 1297.)

6. These exceptions were clarified further in *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*). The *Smith* court explained that a disability retirement claim must have “matured” in order to find that a disciplinary action preempts the right to receive a disability retirement pension, and that the right is not mature at the time of the injury, but rather when the pension board determines that the employee was no longer capable of performing his duties. (*Id.* at p. 206.)

7. In reaching its conclusion, the *Smith* court noted: “Conceivably, there may be facts under which a court, applying principles of equity, will deem an employee’s right to a disability retirement to be matured and thus survive a dismissal for cause. This case does not present facts on which to explore the outer limits of maturity, however.” (*Id.* at p. 206-207.) The court provided two examples of facts to support an equitable exception to the general rule that a dismissal for cause precludes the granting of a disability retirement allowance: (1) if an employee “had an impending ruling on a claim for a disability pension that was delayed, through no fault of his own, until after his dismissal,” or (2) if there is “undisputed evidence” that the employee “was eligible for a CalPERS disability retirement, such that a favorable decision on his claim would have been a foregone conclusion (as perhaps with a loss of limb).” (*Id.* at p. 207.)

Discussion

8. CalPERS argues that respondent is ineligible to apply for disability retirement because of *Haywood* and that he does not fall within one of the exceptions in *Smith*.

9. Respondent disputes that he was terminated for cause claiming that it was retaliation for him speaking up on behalf of other people. Respondent had the opportunity to contest his termination and in fact filed an appeal with the SPB. However, respondent failed to follow through on his appeal and SPB confirmed his termination. Respondent was terminated for cause for the reasons stated on the NOAA on March 7, 2023.

10. Respondent also argued that he was eligible for industrial disability retirement because he was injured on the job prior to his termination. At the time of his termination, respondent was on ATO not disability leave. Respondent had been cleared to return to full duty by two different physicians, one for each of his workers' compensation claims. After being cleared to return, the department immediately placed respondent back on ATO while the investigation was still underway. Respondent filed for disability retirement almost nine months after the effective date of his termination.

11. Respondent failed to establish that his termination was the result of a disabling condition or that his termination preempted an otherwise valid claim for disability retirement. (*Haywood, supra*, 67 Cal.App.4th at p. 1297.)

12. Respondent failed to establish that he had a pending ruling on a disability claim at the time of his termination or that there was undisputed evidence that respondent "was eligible for a CalPERS disability retirement, such that a favorable decision on his claim would have been a foregone conclusion (as perhaps with a loss of limb)." (*Smith, supra*, 120 Cal.App.4th 194 at p. 207.)

ORDER

The appeal of respondent Ruben D. Jaramillo of CalPERS's finding that he is not eligible to apply for disability retirement is denied.

DATE: November 15, 2024



TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings