

ATTACHMENT E

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
Industrial Disability Retirement of:**

**MICHAEL P. LILLIE and CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, Respondents.**

Agency Case No. 2023-0492

OAH Case No. 2024040791

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 1, 2024, by videoconference from Sacramento, California.

Mehron Assadi, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Michael P. Lillie (Lillie) represented himself.

There was no appearance by or on behalf of respondent California Department of Corrections and Rehabilitation (CDCR). CDCR was duly served with the Notice of

Hearing in this matter. Consequently, the matter proceeded as a default against CDCR pursuant to Government Code section 11520, subdivision (a).

Evidence was received from both parties, Lillie presented an oral closing argument, and CalPERS requested to submit a written closing argument. The record was left open until August 9, 2024, for CalPERS to submit its written closing argument and Lillie to optionally submit any additional written closing argument. On August 9, 2024, CalPERS submitted its written closing argument, which was marked as Exhibit 15. Lillie did not submit any additional written closing argument.

On August 9, 2024, Exhibit 15 was admitted as argument, the record closed, and the matter submitted for decision.

ISSUES

(1) Is Lillie eligible to apply for industrial disability retirement, considering *Haywood v. American River Fire Protection Dist.* (1998) 67 Cal.App.4th 1292 (*Haywood*) and related cases?

(2) Is Lillie eligible for retiree health benefits?

FACTUAL FINDINGS

Jurisdiction

1. Lillie was employed by CDCR as a Special Agent-In-Charge. By virtue of Lillie's employment, he was a state safety (peace officer/firefighter) member of CalPERS.

2. On December 19, 2022, CalPERS received Lillie's application for service pending industrial disability retirement (IDR) dated December 15, 2022. He was eligible for service retirement starting on August 30, 2018, when he turned 50 years old. Lillie also claimed disability on the basis of spine damage since June 29, 2002. Additionally, he claimed disability on the basis of nerve problems in both hands and arthritis in his right hand since July 6, 2014.

3. Lillie retired for service effective December 1, 2022. He started receiving his service retirement allowance around January 10, 2023.

4. By letter dated April 25, 2023, CalPERS informed Lillie that it had cancelled his application for IDR. CalPERS explained that Lillie was previously dismissed for cause from CDCR as the result of a disciplinary action. Thus, CalPERS found Lillie ineligible for IDR under *Haywood* and related cases. Lillie timely appealed CalPERS's determination concerning his application for IDR.

5. Subsequently, Lillie inquired with CalPERS about whether he could receive retiree health benefits. By letter dated February 1, 2024, CalPERS determined that Lillie was ineligible for retiree health benefits because he retired more than 120 days after his permanent separation from employment by CDCR. Lillie timely appealed CalPERS's determination concerning his retiree health benefits.

6. On April 19, 2024, Brad Hanson, in his official capacity as Interim Chief of CalPERS's Disability and Survivor Benefits Division, signed and later filed the Statement of Issues for purposes of Lillie's appeals. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Lillie's CDCR Employment History

7. Lillie started working for CDCR as a Special Agent-In-Charge in January 2010. At a date not reflected in the record, he filed a worker's compensation case against CDCR. Around January 2015, CDCR also placed Lillie on paid leave for medical reasons. He never returned to work duties at CDCR.

8. While still a CDCR employee, Lillie also worked for other entities in the following roles for the following time periods: (a) Orange County, Administrative Manager I – Human Resources, February through October 2015; (b) City and County of San Francisco, Office of Citizen Complaints Investigator, November 2015 through May 2016; and (c) University of California Davis Health, Analyst, starting in September 2016.

9. On November 18, 2016, Lillie filed a civil action for whistleblower protection against CDCR in the Superior Court of California, County of Sacramento, Case No. 34-2016-00203643 (the Civil Action).

10. On December 11, 2017, CDCR served Lillie with a Notice of Adverse Action (NAA) dated November 28, 2017. The NAA sought to discipline Lillie based on allegations that he: (1) obtained secondary employment with the three above-mentioned other entities without seeking or obtaining permission from CDCR; (2) failed to disclose some of that secondary employment on two separate promotional applications; and (3) accessed confidential CDCR documents and disclosed them without permission to third parties in his worker's compensation case. The imposed discipline was Lillie's dismissal from CDCR, effective at the close of business on December 31, 2017, the same day on which his paid leave ended.

11. Lillie appealed the NAA to the State Personnel Board (SPB). On February 5, 2019, the SPB upheld Lillie's dismissal. On April 4, 2019, Lillie filed a Petition for Writ

of Administrative Mandate against the SPB and CDCR in the Superior Court of California, County of Sacramento, Case No. 34-2019-80003116 (Writ Action).

12. On November 28, 2022, Lillie entered into a Settlement Agreement with CDCR. By virtue of the Settlement Agreement, CDCR agreed to pay Lillie a cash payment, and Lillie agreed to dismiss the Civil Action, Writ Action, worker's compensation case, and any related claims against CDCR with prejudice.

Lillie's Additional Evidence

13. Lillie presented documentary evidence and testified at hearing. He has a distinguished career in public service. He worked as a police officer for the City of San Carlos, a Special Agent and Special Agent Supervisor for the California Department of Justice, and finally as a Special Agent-In-Charge for CDCR. In the latter role, he oversaw the statewide internal affairs unit for CDCR. Prior to the NAA, he had never been the subject of any employment discipline.

14. In 2014, Lillie became aware that two of his bosses at CDCR had falsified an official CDCR report. He first brought it to their attention, but they refused to change the report. Because he had an obligation to report misconduct, Lillie reported his bosses' misconduct. He then started experiencing retaliation from CDCR, ultimately leading to the NAA.

15. Lillie believes that he was already eligible for IDR at the time the NAA issued. After injuring his back on June 29, 2002, Lillie underwent multiple surgeries in his spine and hands. Those conditions rendered him unable to work as a Special Agent-In-Charge at CDCR.

16. Lillie testified that his employment attorneys never advised him that he could lose his IDR and health benefits by entering into the Settlement Agreement. In the course of settlement negotiations, he was told to turn down reinstatement settlement offers made by CDCR on three different occasions. According to Lillie, his employment attorneys told him that reinstatement would result in a much lower cash settlement, he already owed them a substantial amount in legal fees, and that they would “come after” him for those fees if he accepted a reinstatement offer with a low cash settlement.

17. Lillie discussed service retirement and/or IDR with a CalPERS employee sometime in November 2022, around the time he entered into the Settlement Agreement. However, he never asked the CalPERS employee about the effect of the Settlement Agreement, nor did the CalPERS employee promise or guarantee that he was eligible for IDR.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the applicant, Lillie has the burden of proving by a preponderance of the evidence that he is eligible to apply for IDR and receive retiree health benefits. (Evid. Code, § 500 [“Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting”]; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) The term preponderance of the evidence means “more likely than not” (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1387), or

"evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Eligibility to Apply for IDR

2. Government Code section 21154 provides the following with respect to disability retirement applications:

The application shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion. On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. . . .

3. However, if 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, the termination of the employment relationship renders the employee ineligible for disability retirement regardless of whether a timely

application is filed." (*Haywood*, 67 Cal.App.4th at 1297, 1307.) For a dismissal for cause to be preemptive of an otherwise valid claim for disability retirement, the right to a disability retirement must have matured prior to the dismissal. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 206.) A right to disability retirement matures "when there is an unconditional right to immediate payment." (*Ibid.*) Additionally, based on principles of equity, an employee's right to a disability retirement may be deemed matured under appropriate circumstances, such as if resolution of the claim was delayed through no fault of the dismissed employee or a favorable decision "would have been a foregone conclusion." (*Id.* at pp. 206-207.)

4. Here, Lillie was dismissed for cause through the NAA. Although he appealed the NAA, first to the SPB and then through the Writ Action, he subsequently dismissed with prejudice all claims against CDCR involving the NAA through the Settlement Agreement. Thus, the NAA was never rescinded and is now final. On its face, it terminates the employment relationship between Lillie and CDCR.

5. Additionally, Lillie's dismissal was not the ultimate result of a disabling medical condition. Indeed, the NAA was issued based on allegations that he obtained secondary employment without permission, failed to disclose some of that secondary employment on promotional applications, and accessed confidential CDCR documents and disclosed them without permission.

6. Finally, the record does not establish that Lillie's dismissal preempted an otherwise valid claim for disability retirement.

First, the evidence does not show that Lillie had a matured right to disability retirement, i.e., an unconditional right to immediate payment, before his dismissal. No application for IDR was filed, let alone granted by CalPERS, before Lillie's dismissal.

Second, appropriate circumstances do not exist to deem Lillie's right to a disability retirement matured prior to his dismissal based on principles of equity. Because Lillie filed his IDR application long after his dismissal, there was no prejudicial delay in adjudicating his IDR application at play. Also, a favorable decision on his IDR application would not have been a foregone conclusion. Although Lillie's IDR application claims disability since June 29, 2002, he actually worked for many years after that date, both for CDCR and other entities. The record in this case also contains no medical evidence concerning Lillie's alleged substantial incapacity.

7. In sum, Lillie is ineligible to apply for IDR under *Haywood* and related cases. To the extent Lillie claims that his employment attorneys either coerced him into the Settlement Agreement and/or failed to advise him of the Settlement Agreement's collateral consequences, any such potential claim must be made against his former attorneys in an appropriate forum. It does not change the conclusion that CalPERS properly cancelled Lillie's IDR application under *Haywood* and related cases.

Eligibility for Retiree Health Benefits

8. Under the Public Employees' Medical and Hospital Care Act, Gov. Code, § 22750 et seq. (PEMHCA), a CalPERS-covered employee must apply for retirement within 120 days of separating from employment to receive retiree health benefits. (Gov. Code, § 22760, subd. (c); see also Cal. Code Regs., tit. 2, § 599.501, subd. (c).) Here, Lillie retired for service effective December 1, 2022, more than 120 days after separating from his CDCR employment on December 31, 2017. Thus, he is ineligible for retiree health benefits.

9. The mistake statute in Government Code section 20160 cannot salvage Lillie's eligibility for retiree health benefits. That statute provides, in part:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(Gov. Code, § 20160, subd. (a).)

10. As an initial matter, Government Code section 20160 does not apply to retiree health benefits. Although its text does not expressly disclaim application to retiree health benefits, it is part of a different statutory scheme to PEHMCA. Government Code section 20160 is located in the Public Employees' Retirement Law (PERL), codified under Title 2, Division 5, *Part 3* of the Government Code, which governs pension benefits. By contrast, PEMHCA governs health benefits and is codified in a separate part of the Government Code, Title 2, Division 5, *Part 5*.

11. Even assuming, without deciding, that Government Code section 20160 could potentially apply to retiree health benefits, Lillie does not meet all the requirements of Government Code section 20160. Specifically, he does not meet the requirement that the sought correction not provide him with a right not otherwise available to him. Lillie separated from his CDCR employment on December 31, 2017. The earliest that Lillie could retire for service was August 30, 2018, when he turned 50. Because it was impossible for Lillie to retire within 120 days of his separation date given his age at separation, he was not otherwise eligible for retiree health benefits. Thus, the mistake statute cannot be wielded to give Lillie a right to retiree health benefits not otherwise available.

Conclusion

12. Lillie is ineligible to apply for industrial disability retirement and also ineligible for retiree health benefits. Although a potentially harsh result for a lengthy career in public service, and regardless of any sympathy for Lillie's predicament, courts are constrained to apply the plain meaning of statutes enacted by the Legislature and interpreted by appellate case law.

ORDER

Respondent Michael P. Lillie's appeals are DENIED. He is ineligible to apply for industrial disability retirement and ineligible for retiree health benefits.

DATE: September 5, 2024

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings