

**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  
Industrial Disability of:**

**JOSE S. (STEVE) CARRERA, Respondent,**

**and**

**CITY OF BELL, Respondent**

**Agency Case No. 2023-1040**

**OAH No. 2024060659**

**PROPOSED DECISION**

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 17, 2024, by videoconference.

Austa Wakily, Senior Attorney, California Public Employees' Retirement System (CalPERS), represented complainant Sharon Hobbs, Chief, Disability and Survivor Benefits Division, CalPERS.

Robert W. Lucas, Attorney, Robert Lucas Law PC, represented respondent Jose Steve Carrera (Sgt. Carrera).

David J. Thomas, Attorney, Hanna, Brophy, MacLean, McAleer & Jensen, LLP, represented respondent City of Bell (City).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on December 17, 2024.

## **ISSUE**

The sole issue in this case is: may Sgt. Carrera file an application for industrial disability retirement, or is his application and eligibility for industrial disability retirement precluded by the Public Employees' Retirement Law (PERL), relevant court decisions, and CalPERS precedential decisions?

## **SUMMARY**

Sgt. Carrera settled a civil lawsuit that he filed against the City while there were disciplinary charges pending against him. In the settlement, he resigned and agreed not to seek future employment with the City. The evidence in this case established that CalPERS correctly canceled Sgt. Carrera's application for industrial disability retirement. The applicable law and cases interpreting it required CalPERS to refuse to accept his application.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. The City is a local agency participant in CalPERS. Sgt. Carrera was employed by the City from September 30, 2002, through May 11, 2019; by virtue of this employment, he is a local safety member of CalPERS.

2. On three occasions from June 7, 2019, to May 15, 2023, Sgt. Carrera applied for industrial disability retirement. CalPERS administratively cancelled each of the applications. The details of these applications and cancellations are discussed below.

3. CalPERS issued a letter giving notice of its decision to cancel Sgt. Carrera's third application on September 29, 2023. On November 27, 2023, Sgt. Carrera's counsel sent a letter to CalPERS appealing the determination.

4. Complainant signed and submitted a statement of issues on June 5, 2024. The statement of issues and required jurisdictional documents were served on respondents. Sgt. Carrera submitted a timely notice of defense, requesting a hearing. This hearing followed.

### **Administrative Investigation; Civil Action; Settlement; and Separation from Employment**

5. In 2017, Sgt. Carrera was the subject of an administrative investigation by the City that led to his suspension from work for 120 hours.

6. In 2018, Sgt. Carrera filed a complaint for damages, asserting (1) whistleblower retaliation; (2) fair employment and housing retaliation; and (3) failure to

take corrective action, in the Superior Court of California, County of Los Angeles, Case No. BC712444 (civil action). The complaint in the civil action alleged, among other things, that Sgt. Carrera was a witness in an internal affairs investigation of an officer. During the investigation, Sgt. Carrera became an investigation subject. Sgt. Carrera asserted that the investigator had a conflict of interest, and he expressed concerns about another sergeant committing timecard fraud. He complained that a female officer the City hired was ineligible for hire. The civil complaint alleged that Sgt. Carrera's suspension in 2017 was not justified.

7. Trial in the civil action was set for July 22, 2019. On March 18, 2019, counsel for the City submitted a Code of Civil Procedure section 998 offer to compromise (998 offer). The 998 offer stated its terms:

Plaintiff shall permanently separate from City employment.  
Plaintiff shall not seek future employment with the City. The City shall pay Plaintiff the sum of FOUR HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$450,000.00) in satisfaction of all claims for damages, interest, expenses, expert fees and costs, and attorneys' fees and costs, in this action, except for Plaintiffs pending Workers' Compensation claims. Workers' Board ("WCAB") Case No. ADJ10989868.

8. Under the Code of Civil Procedure, if Sgt. Carrera did not accept the 998 offer within 30 days after it was made, it was deemed withdrawn. If Sgt. Carrera failed to obtain a more favorable judgment at trial, he would be unable to recover his post-offer costs and would be required to pay the defendant's post-offer costs, potentially including defendant's expert witness costs.

9. On March 18, 2019, the same date the offer was made, Sgt. Carrera's attorneys signed acceptance of the 998 offer.

10. On April 11, 2019, Sgt. Carrera submitted a letter of separation from employment to the City. The letter stated:

I, Sergeant Steve Carrera will separate from employment from The City of Bell to pursue an Industrial Disability Retirement. The cumulative injuries I sustained while employed as a Police Officer and Police Sergeant with the City of Bell have caused me to no longer be able to physically perform my duties.

I request that my official date of separation be that of May 10th, 2019. On that date, I request that all monies owed to me such as education reimbursement, unused vacation, sick and comp hours be paid in full to me.

I reserve the right to retract the intent to separate if prior contract agreements are not satisfied.

11. On May 9, 2019, the City sent Sgt. Carrera a letter accepting his separation of employment effective May 10, 2019.

12. On May 14, 2019, City officials signed a personnel action form to be 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," and the answer "no." Gina Skibar, the City's Human Resources and Risk Manager, testified at

the hearing that the “no” answer on the personnel action form means that if Sgt. Carrera applied for a job with the City, he would not be allowed to come back to work. She testified that, according to City records, Sgt. Carrera was not terminated for cause. He resigned in lieu of termination.

## **Work Related Injuries**

13. Sgt. Carrera testified in this case that he sustained work related injuries while working for the City, that he had a workers compensation case, and was off duty due to the injuries. No other evidence of Sgt. Carrera’s work injuries was submitted.

## **Applications for Industrial Disability Retirement; Civil Writ of Mandate Action; CalPERS Cancellation of Applications**

14. Sgt. Carrera submitted an application for industrial disability retirement to CalPERS on June 7, 2019. 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 Sgt. Carrera’s separation from employment. On April 30, 2020, the City sent personnel documents concerning Sgt. Carrera to CalPERS. Included among the documents were the signed and accepted civil action 998 offer, Sgt. Carrera’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, Sergio Ibarra, Human Resources & Risk Manager for the City, answered certain questions that CalPERS had asked about the status of Sgt. Carrera’s separation from employment.

15. In response to the CalPERS question whether a disciplinary process was underway at the time of his separation from employment, Mr. Ibarra responded, “an internal affairs investigation was underway, my understanding is that the investigation

was not completed and no misconduct finding finalized and no discipline, if any, determined." Other City responses to the CalPERS questions were:

The member was terminated for cause: No.

The member resigned in lieu of termination: No.

The member signed an agreement to waive his or her reinstatement rights as part of a legal settlement (i.e., Employment Reinstatement Waiver): See the attached agreement.

The member has been convicted of or is being investigated for a work-related felony: No.

16. CalPERS notified Sgt. Carrera that it administratively cancelled the industrial disability retirement application by letter dated September 24, 2021. The letter stated the reason for CalPERS's cancellation:

Government Code sections 21154, 21156 and 21157 provide that the governing body of the contracting agency make the determination of disability. We mailed a letter to your employer dated September 3, 2020 requesting a formal determination of disability and industrial causation. The determination was due to us on March 3, 2021. We followed up with your employer on December 3, 2020 and February 1, 2021. As of today, we have not received your employer's determination. As a result, we have



administratively cancelled your application. If you wish to pursue a disability retirement, you will need to reapply.

17. On October 26, 2021, Sgt. Carrera filed a second application for industrial disability retirement with CalPERS. CalPERS again sent letters and emails to the City requesting it to make the required determination. Sgt. Carrera signed a waiver of time for the City to make its determination on February 6, 2021. On January 17, 2023, CalPERS sent a letter to Sgt. Carrera notifying him that the extension of time had passed and the City had not made its required determination about his disability. CalPERS administrative canceled the application and notified him that he would need to reapply if he wished to pursue a disability retirement.

18. On May 15, 2023, Sgt. Carrera filed his third application for industrial disability retirement with CalPERS.

19. On September 13, 2023, Sgt. Carrera filed a petition for writ of mandate and complaint for declaratory relief in the Superior Court of California, County of Los Angeles, Case No. 23NWCP00370, seeking an order directing the City to make a determination on his industrial disability retirement application (writ petition). CalPERS was named as a real party in interest in the writ petition. The outcome of the writ petition was not provided in the evidence presented in this case.

20. On September 29, 2023, CalPERS issued a letter declining to accept Sgt. Carrera's application for industrial disability retirement. The letter stated:

We have determined that you left employment for reasons which were not the result of a disabling medical condition. Therefore, you are not eligible for disability retirement. For

that reason, CalPERS cannot accept your application for disability retirement.

Your application has been cancelled. You will not be eligible to apply for disability retirement in the future unless you return to work for a CalPERS-covered employer and subsequently become unable to perform your job duties because of a physical or mental condition.

[¶] . . . [¶]

You may wish to consider the following alternatives:

1. Advise your last employer to notify us that you wish to have your accumulated contributions remain in the Retirement Fund. At a future date, you may request service retirement (if you have attained age 50).
2. Submit a written request for a refund of your accumulated contributions. Once the refund is mailed, your membership and eligibility for health insurance with CalPERS terminates, and no retirement benefits can be paid.
3. Seek employment with another CalPERS covered employer.

21. At the hearing, the parties agreed that Sgt. Carrera is currently receiving service retirement benefits. Sgt. Carrera testified at the hearing that he would be willing to return to service with the City.

## LEGAL CONCLUSIONS

### General Authority

1. CalPERS is charged with administering the disability retirement system. It must do so according to the Public Employees' Retirement Law, Government Code sections 20000 through 21716.

2. A patrol, safety, industrial, peace officer, firefighter, or local safety member who is incapacitated for the performance of duty as the result of an industrial disability may be retired for disability. (Gov. Code § 21151, subd. (a).)

3. On receipt of a disability retirement application by a local safety member, CalPERS must request the governing body of the local contracting agency to make the disability determination. (Gov. Code § 21154.) The local governing body must make its determination within six months of the date of CalPERS's request. The member can waive this time. (Gov. Code § 21157.)

4. If an employee is on disability retirement, the employer may require the employee to undergo a medical examination to determine whether the disability continues. (Gov. Code § 21192.) If the evaluation determines that the employee is no longer incapacitated from performing their duties, the employer may reinstate the employee and his or her disability retirement terminates. (Gov. Code § 21193.)

5. A person seeking disability retirement has the burden of proving by a preponderance of the evidence that they are eligible for benefits. (*Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) In this case, Sgt. Carrera seeks to reverse CalPERS's decision declining to accept his application for disability retirement.

Each party bears the burden of proving the facts supporting their respective claims. The standard of proof is a preponderance of the evidence. (Evid. Code, §§ 115; 500.)

### **The “Haywood Rule” and its Progeny**

6. In *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*), the court held that an employee who is terminated for cause is not entitled to later apply for disability retirement. Haywood was a firefighter who was terminated from his employment based on his unwillingness to follow his superiors' orders. Before his dismissal, he had filed a workers compensation claim for psychic injuries from “excessive supervision.” After his dismissal, he filed a disability retirement application based on the depression that the disciplinary proceedings caused him. The employer denied the application. The court analyzed the distinction between the unwilling and the unable employee. The court held:

[W]hile nothing in the PERS law restricts an employer's right to fire an unwilling employee, the Legislature has precluded an employer from terminating an employee because of medical disability if the employee would be otherwise eligible for disability retirement. (§ 21153.) In such a case, the employer must instead apply for the disability retirement of the employee. (*Ibid.*) In addition, while termination of an unwilling employee for cause results in a complete severance of the employer-employee relationship (§ 19583.1), disability retirement laws contemplate the potential reinstatement of that relationship if the employee recovers and no longer is disabled. Until an employee on disability retirement reaches the age of voluntary

retirement, an employer may require the employee to undergo a medical examination to determine whether the disability continues. (§ 21192.) And an employee on disability retirement may apply for reinstatement on the ground of recovery. (*Ibid.*) If an employee on disability retirement is found not to be disabled any longer, the employer may reinstate the employee, and his disability allowance terminates. (§ 21193.)

(*Haywood*, supra, 67 Cal.App.4th at p. 1305.)

7. In *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*), the employee, Smith, was dismissed from his position as a firefighter after he failed remedial tests of his competency at required skills. He applied for disability retirement the same day his dismissal became effective. The court noted:

[T]he legislative intent underlying the disability retirement laws presupposed a continuing if abated employment relationship – the disabled annuitant can petition to return to active service, and the employing agency can compel testing to determine if the disability is no longer continuing (at which point it can insist on a return to active service.)

(*Id.* at p. 203.)

8. The *Smith* court emphasized, as did the *Haywood* court, that the rule precluding disability retirement does not apply where the cause for dismissing the employee was the result of a disabling medical condition, or where the dismissal would be “preemptive of an otherwise valid claim for disability retirement.” (*Smith*,

*supra*, 120 Cal.App.4th, at p. 205, quoting *Haywood*, 67 Cal.App.4th 1307.) The key issue for the *Smith* court was whether Smith's right to a disability retirement matured before he separated from service. (*Smith*, 120 Cal.App.4th at p. 206.)

9. CalPERS extended the *Haywood* rule by precedential decision in the *Matter of the Disability Retirement of Vandergoot* (2013) CalPERS Precedential Decision No. 12-01 (*Vandergoot*), which held that, when an employee settles a pending termination for cause action and agrees not to seek reemployment, this is "tantamount to a dismissal for cause," and therefore precludes a disability retirement. The *Vandergoot* extension of the *Haywood* rule to a settlement in a pending termination case was approved by the Court of Appeal in *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156.

10. CalPERS adopted a second precedential decision, *In the Matter of Accepting the Application of MacFarland* (2016) CalPERS Precedential Decision 16-01 (*McFarland*). McFarland was a clinical psychologist working in the prison system. After progressive discipline and an internal investigation, his employer filed a notice of adverse action against him seeking his dismissal. Prior to the adverse action, McFarland had filed more than one workers' compensation claim based on work injuries. Two days after he was served with the adverse action, he signed a letter that he was "officially retiring" and filing for disability retirement. His employer completed a personnel action form that stated the "separation type" was "retirement." McFarland filed a disability retirement application the same day he signed the "retirement" letter.

11. MacFarland contended that he had a matured right to disability retirement at the time of his separation because he had long-standing work injuries that had prevented him from working due to knee pain and post-traumatic stress disorder from working in the prison environment. The *McFarland* decision held that at

the time he severed his employment relationship, he had no unconditional right to immediate payment of a disability retirement and his application for disability retirement could not be accepted.

## **Evaluation**

12. Sgt. Carrera had the burden of proving his entitlement to apply for disability retirement. The reasoning of *Haywood*, other cases, and precedential decisions applies here. Sgt. Carrera 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.

13. There was no evidence that Sgt. Carrera had a matured unconditional right to disability retirement before his separation from employment. The fact that he had a workers' compensation case does not establish a right to disability retirement. The fact that he referenced filing a disability retirement application in his letter of separation similarly does not establish his matured right to claim disability retirement. The evidence in this case showed he left his employment for reasons that were not the result of a disabling medical condition.

14. The civil action settlement completely severed Sgt. Carrera's relationship with the City. The City had no right to compel him to come back to work and he had no right to request reinstatement. As the *Haywood* and *Smith* courts emphasized, this

ability to reinstate a disabled employee whose disability has ended is a crucial factor in the public employee retirement law. The fact that Sgt. Carrera testified in this case that he is willing to return to work at the City does not reverse the civil action settlement's complete severance of his employment relationship with the City.

15. The fact that CalPERS did not invoke the *Haywood* basis for canceling Sgt. Carrera's first two disability retirement applications, and instead sent requests to the City to solicit the City's disability determination, does not preclude CalPERS from invoking the *Haywood* rule in response to his third application. Assuming this was a processing mistake by CalPERS, it is entitled to, and in fact required, to correct such mistakes. (Gov. Code § 20160.)

## **ORDER**

CalPERS's determination that Jose S. (Steve) Carrera may not file an application for industrial disability retirement is affirmed. Respondent Jose S. (Steve) Carrera's appeal is denied.

DATE: January 14, 2025

*Alan R. Alvord*

ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings