

ATTACHMENT E

THE PROPOSED DECISION

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

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

IMELDA P. FIESTA,

Respondent,

and

**SUBSTANCE ABUSE TREATMENT FACILITY, CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION,**

Respondent.

Agency Case No. 2024-0034 (Statement of Issues)

OAH No. 2024060716

PROPOSED DECISION

Erlinda Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 10, 2024.

Cristina Andrade, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Imelda P. Fiesta (respondent) was present and represented herself.

No appearance was made by or on behalf of Substance Abuse Treatment Facility, California Department of Corrections and Rehabilitation (CDCR), even though it was properly served with a Notice of Hearing. Therefore, the matter proceeded as a default against CDCR pursuant to Government Code section 11520.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on October 10, 2024.

Subsequently, on October 23, 2024, the ALJ issued an order reopening the record for CalPERS to submit a complete copy of Exhibit 9. On October 29, 2024, CalPERS timely filed with OAH and served respondent with a complete copy of Exhibit 9. CalPERS uploaded the complete document to Case Center to replace the incomplete copy of Exhibit 9. No objection was received from respondent by November 6, 2024. The record closed and the matter was resubmitted for decision on November 7, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent was employed by CDCR as a Registered Nurse. By virtue of this employment, respondent is a state safety member of CalPERS pursuant to Government Code section 20405 and subject to Government Code sections 21154 and 21156.

2. On May 31, 2023, respondent signed an application for service pending industrial disability retirement. (Exh. 3.) In filing the application, respondent claimed disability on the basis of an orthopedic (lumbar) condition.

3. CalPERS reviewed information regarding respondent's employment status with CDCR. CalPERS determined respondent was not eligible for disability retirement because her employment with CDCR was terminated for cause, and her discharge was neither the result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement.

4. By letter dated October 18, 2023, CalPERS notified respondent of its determination she was not eligible for disability retirement and, thus, CalPERS could not accept her application for industrial disability retirement. In the letter, CalPERS explained the basis for its determination, as follows:

We have determined that your employment ended for reasons which were not related to a disabling medical condition. When an employee is separated from employment as a result of disciplinary action or the employee enters into a settlement agreement where the employee chooses to voluntarily resign in lieu of termination, and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement, termination and/or a mutual understanding of separation from employment due to a pending adverse action renders the employee ineligible to apply for disability retirement.

(Exh. 4.)

5. The October 18, 2023 letter informed respondent of her appeal rights. The letter also informed respondent that, although her disability retirement application was cancelled, she would continue to receive her service retirement benefits.

6. By letter dated December 15, 2023, respondent filed an appeal and requested an administrative hearing.

7. On May 26, 2024, Sharon Hobbs, Chief of the Disability and Survivor Benefits Division for CalPERS, made and filed the Statement of Issues in her official capacity. As noted in the Statement of Issues, the issue in this appeal is whether respondent may file an application for industrial disability retirement, or whether her application and eligibility is precluded by applicable case law. (Exh. 1, p. A6.)

Respondent's Employment with CDCR

8. Respondent worked as a Registered Nurse for CDCR at the Corcoran State Prison. In September 2007, CDCR served respondent with a Notice of Adverse Action (NOAA), notifying her she was dismissed from her position as a Registered Nurse effective September 12, 2007. The NOAA indicated the grounds for adverse action included, but were not limited to, inefficiency, inexcusable neglect of duty, dishonesty, willful disobedience, and other failure of good behavior, pursuant to Government Code section 19572. The NOAA notified respondent of her appeal rights.

9. The NOAA arose from respondent's failure to complete her nurse's notes on the Nursing Care Records for nine patients under her care on September 5, 2006. She was off work for the next three days, September 6, 7 and 8. Upon returning to work on September 9, respondent allegedly made entries on the Nursing Care

Assessment Records for certain patients who had been under her care on September 5th "by entering generic information as a late entry for September 5, 2006" and entering the information "with different entry times, in an attempt to make it appear as if [she] had appropriately entered this information." (Exh. 6, p. A53.) The NOAA also alleged respondent was intentionally misleading when she entered information for one patient for September 5, 2006, but did not indicate it was a late entry or that the information was not entered on September 5th. (*Ibid.*) The NOAA alleged respondent's actions "demonstrate a lack of integrity for the charting for inmate patients assigned to her care" and "an unwillingness to perform the essential functions of [her] job as a Registered Nurse." (*Ibid.*)

10. No findings are made in this case respecting the factual basis underlying CDCR's adverse action against respondent. The matters in Finding 9, above, were considered for the sole purpose of determining whether respondent's termination from employment with CDCR was the result of a disabling medical condition. CalPERS correctly determined it was not.

11. Respondent appealed the NOAA. On September 19, 2007, CDCR held a *Skelly* hearing regarding respondent's appeal. Following the *Skelly* hearing, on October 9, 2007, CDCR notified respondent, in writing, that the NOAA was upheld and her dismissal would become effective on October 12, 2007. (Exh. 8.) CDCR issued an amended NOAA, notifying respondent the termination of her employment as a Registered Nurse would be effective on October 12, 2007. (Exh. 7.)

12. Respondent appealed the NOAA to the State Personnel Board (SPB) in SPB Case No. 07-3790. While the SPB appeal was pending, respondent and CDCR entered into a stipulation for settlement. The settlement was agreed to by respondent

and CDCR at a prehearing conference held before an SPB Administrative Law Judge (SPB Judge) on August 4, 2009.

13. On August 5, 2009, the SPB Judge issued a Proposed Decision that incorporated the terms of the stipulation for settlement between respondent and CDCR. (Exh. 9, pp. A66-A68.) Under the settlement terms, CDCR agreed to rescind the NOAA, accept from respondent a resignation letter dated December 12, 2007, and pay respondent two months' back pay. As stated in the Proposed Decision at paragraphs 4, 5, and 6, respondent agreed to the following:

4. [Respondent] agrees to withdraw her appeal from SPB Case No. 07-3790, and to seek no further appeal to the NOAA and to waive any right she may have to appeal the NOAA before the SPB or any court of law which may have jurisdiction over the matter.

5. [Respondent] agrees to submit a resignation letter to CDCR, dated December 12, 2007, resigning from her former classification of Registered Nurse.

6. [Respondent] agrees, as part of the consideration and inducement for settlement, to never apply for or accept employment with CDCR, or any entity providing services to inmates or wards within the CDCR.

(Exh. 9, p. A67.)

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14. On August 31, 2009, the SPB issued a Decision Approving Stipulation for Settlement, which adopted the stipulation for settlement contained in the Proposed Decision as its decision in the case. (*Id.*, p. A65.)

15. On November 2, 2009, as required by the settlement, respondent submitted a resignation letter to CDCR indicating she was resigning her position as a Registered Nurse effective December 12, 2007. (Exh. 10.)

16. Gladys Miranda has been employed by CDCR since 2005. She is currently a Staff Services Manager I in the Personnel Office. Ms. Miranda testified, based on respondent's resignation letter, respondent separated from state service as of December 12, 2007. Ms. Miranda testified respondent has no right to mandatory reinstatement with CDCR.

Respondent's Contentions

17. Respondent contends the NOAA contained misrepresentations and false statements and was not fully accurate. Respondent claimed her supervisor initiated the NOAA because she made a complaint against the supervisor for harassment and a hostile work environment. Respondent's claims contesting the validity and veracity of the NOAA may not be asserted in this hearing. Her SPB appeal was the appropriate forum for raising such claims. However, pursuant to the settlement agreement, respondent waived any right she had to appeal the NOAA "before the SPB or any court of law which may have jurisdiction over the matter." (Exh. 9, p. A67.)

18. (A) Respondent disagrees that she was terminated from employment by CDCR. Respondent contends her dismissal was "cancelled" and she separated from CDCR based on a "resignation without fault." Respondent presented two documents titled "Notice of Personnel Action, Report of Separation" issued on January 16, 2010,

by the State of California, Personnel Services Division. (Exhs. B10, B11.) These two Notices merely describe the implementation of the settlement between respondent and CDCR that resolved her SPB appeal of the NOAA.

(B) One of the Notices refers to respondent's "Dismissal" effective October 12, 2007, and states: "The Action Described Has Been Cancelled." (Exh. B11.) This Notice reflects CDCR rescinding the NOAA for respondent's dismissal effective October 12, 2007, discussed in Findings 11 and 13, above. The other Notice refers to respondent's "Resignation Without Fault" effective December 12, 2007. (Exh. B10.) This Notice corresponds to respondent submitting a resignation letter dated December 12, 2007, discussed in Finding 13, above.

19. Respondent contends her case is different from the precedential decisions relied on by CalPERS. For example, she contends the grounds for dismissal in the precedential decisions involved willful disobedience and dishonesty. Respondent claims she did not receive any order from her supervisors that she was disobedient or dishonest. She asserted that all she did was make late entries in the nursing notes, and she was allowed to return to work.

20. Respondent also contends her case is different from the precedential decisions because she was found to have a "permanent and stationary" condition in her workers' compensation case. In her application for disability retirement, respondent indicated she had a workers' compensation claim for a lumbar condition resulting from an injury in 2005. (Exh. 3, p. A42.) She presented a Primary Physician's Permanent and Stationary Report for that injury. (Exh. C9.) However, "a workers' compensation ruling is not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties is different." (See *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.) A finding of disability under the workers'

compensation laws is not the same as a finding of disability for disability retirement with CalPERS. Whether respondent does, in fact, have a condition that qualifies her for disability retirement is not at issue in this hearing. The sole issue in this hearing is whether respondent is eligible to apply for disability retirement in the first place.

LEGAL CONCLUSIONS

1. In state administrative hearings, unless indicated otherwise, the standard of proof is "persuasion by a preponderance of the evidence." (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) A preponderance of the evidence means 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.)

2. Government Code section 21152, subdivision (d), provides that an application to the [CalPERS] board for retirement of a member for disability may be made by the member or any person their behalf.

3. CalPERS contends respondent is precluded from filing a disability retirement application under applicable case law including *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*), and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*), and the Precedential Decision of *In the Matter of Application for Disability Retirement of Vandergoot* (2013) CalPERS Precedential Dec. No. 13-01 (*Vandergoot*).

4. In *Haywood*, the court held that "where . . . 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." The *Haywood* court explained that "while termination of an unwilling employee for cause results in a complete severance of the employer-employee relationship, disability retirement laws contemplate the potential reinstatement of that relationship if the employee recovers and no longer is disabled." (*Haywood, supra*, 67 Cal.App.4th at p. 1305.)

5. In *Smith*, the court held that a terminated employee may qualify for disability retirement if they had a "matured right" to a disability retirement prior to the conduct which prompted the termination. The *Smith* court recognized that an employee's "dismissal for cause . . . extinguished his right to a disability retirement." (*Smith, supra*, 120 Cal.App.4th at p. 208.)

6. In *Vandergoot*, CalPERS determined that a stipulated settlement agreement in which an employee settled a pending dismissal action by agreeing both to resign and to give up all return rights was "tantamount to a dismissal" for purposes of applying *Haywood* and *Smith*. (See Exh. 12, pp. A92-A93, A96.) The reasoning in *Vandergoot* was approved and found to be "eminently logical" in *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156, 1176.

Analysis

7. Cause exists for CalPERS to cancel respondent's application for industrial disability retirement because she is ineligible for disability retirement. Respondent's resignation and her agreement never to seek or accept employment with CDCR, as provided in the settlement agreement, was "tantamount to a dismissal" that precludes her eligibility for disability retirement. (Factual Findings 1-16.)

8. CDCR's dismissal action against respondent was not the result of a disabling medical condition. The NOAA arose from respondent's failure to properly

enter nursing notes for patients under her care. The dismissal action also was not preemptive of an otherwise valid claim for disability retirement. Respondent resigned from CDCR effective December 12, 2007, and did not have a valid claim for disability retirement at that time. Respondent did not sign her disability retirement application until 16 years later, on May 31, 2023.

9. Based on the foregoing, CalPERS properly cancelled respondent's application for disability retirement. Respondent's application and eligibility for disability retirement is precluded by applicable case law. Respondent's appeal shall be denied.

ORDER

Respondent Imelda P. Fiesta's appeal from CalPERS's decision to cancel her application for disability retirement is denied.

DATE: **12/06/2024**



ERLINDA SHRENGER

Administrative Law Judge

Office of Administrative Hearings