

**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 Retirement of:**

**RUBEN G. ROBLES and CALIFORNIA HIGHWAY PATROL,  
Respondents.**

**Agency Case No. 2022-0646**

**OAH Case No. 2023040580**

**PROPOSED DECISION**

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 16, 2023, by videoconference and telephone from Sacramento, California.

Nhung Dao, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Sergio Fregosi, Attorney at Law, KFL Law Group, APC, represented respondent Ruben G. Robles (Robles).

There was no appearance by or on behalf of respondent California Highway Patrol (CHP). CHP was duly served with the Notice of Continued Hearing in this matter.

Consequently, the matter proceeded as a default hearing against CHP pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on November 16, 2023.

## **ISSUE**

Is Robles ineligible to apply for industrial disability retirement by virtue of *Haywood v. American River Fire Protection Dist.* (1998) 67 Cal.App.4th 1292 (*Haywood*)?

## **FACTUAL FINDINGS**

1. Robles was employed by CHP as a Highway Patrol Officer. He started working for CHP on March 24, 2003. By virtue of his employment, Robles became a state safety member of CalPERS.
2. On July 5, 2018, Robles sustained an injury to his dominant right hand and wrist while on duty. He has not worked since that day.
3. On May 3, 2019, CHP served Robles with a Notice of Adverse Action (NAA). The NAA sought to discipline Robles based on allegations that between July 25, 2017, and April 20, 2018, Robles: (1) submitted falsified documents that resulted in compensation for overtime he had not worked; and (2) failed to perform his assigned duties as the Area Court Liaison Officer, resulting in dismissal of numerous misdemeanor court cases. The proposed discipline was Robles's dismissal from CHP, effective at 5:00 p.m. on May 24, 2019.

4. Robles appealed the NAA to the State Personnel Board (SPB). On February 24, 2020, Robles and CHP entered into a Settlement and Release of All Claims (Settlement). Under the Settlement, CHP agreed to withdraw the NAA and remove it and all supporting documents from Robles's personnel file. In exchange, Robles agreed to withdraw his SPB appeal and "resign voluntarily for personal medical reasons" effective at the close of business on May 24, 2019. CHP agreed to accept that resignation. The Settlement did not contain any provision prohibiting Robles from seeking or accepting future employment with CHP. On February 25, 2020, the SPB adopted the Settlement as its decision in the case.

5. On November 2, 2021, Robles signed an application for industrial disability retirement (IDR), which CalPERS received on November 16, 2021. Robles claimed disability on the basis of an orthopedic (right hand and wrist) condition.

6. On March 24, 2022, CalPERS approved Robles's IDR application. It found that he was substantially incapacitated from the performance of his usual duties as a Highway Patrol Officer with CHP.

7. On May 3, 2022, CalPERS reversed its decision. It explained that CHP had notified CalPERS that Robles's employment with CHP "ended for reasons which were not related to a disabling medical condition." Consequently, CalPERS cancelled Robles's IDR application.

8. By letter dated May 23, 2022, Robles appealed CalPERS's determination. On April 12, 2023, Keith Riddle, Chief of CalPERS' Disability and Survivor Benefits Division, signed and thereafter filed the Statement of Issues for purposes of the appeal. 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.

## LEGAL CONCLUSIONS

1. As the applicant, Robles has the burden of proving by a preponderance of the evidence that he is eligible to apply for IDR. (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.) 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. 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 pp. 1297, 1307.) Here, CHP agreed to withdraw the NAA and Robles agreed to voluntarily resign as part of the Settlement. Thus, at first glance, it does not appear that Robles was dismissed for cause.

3. Nevertheless, binding case authorities have also held that a resignation as part of settling a pending termination for cause can, under the right circumstances, be tantamount to a dismissal for purposes of applying the *Haywood* criteria. (See *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156 [*Martinez*]; *In the Matter of the Application for Industrial Disability Retirement of*

*Robert Vandergoot* (2013) CalPERS Prec. Dec. No. 13-01 [*Vandergoot*].) In the settlements at issue in *Martinez* and *Vandergoot*, the employers similarly agreed to withdraw the NAA and the employees similarly agreed to voluntarily resign. Crucially, however, the employees also agreed not to seek or accept future employment with the employers. *Martinez* and *Vandergoot* found that the complete severance of the employment relationship, with no possibility of future reinstatement, was inconsistent with disability retirement.

4. The instant case's facts are distinguishable from *Martinez* and *Vandergoot* for two reasons. First, Robles's settlement with CHP did not contain any provision prohibiting Robles from seeking or accepting future employment with CHP. Thus, the possibility of his future reinstatement is not precluded as it was in *Martinez* and *Vandergoot*. Second, Robles's accepted resignation was expressly for "personal medical reasons." Such a resignation is wholly consistent with the pursuit of IDR.

5. In sum, CalPERS erred in canceling Robles's application on the basis that he was ineligible to apply for industrial disability retirement by virtue of *Haywood* and its progeny. CalPERS must consider the application on its merits.

//

//

//

//

## ORDER

1. The appeal of respondent Ruben G. Robles is GRANTED.
2. Respondent Robles is eligible to apply for industrial disability retirement, and CalPERS shall consider his application on its merits.

DATE: December 6, 2023

*Wim vanRooyen*

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings