ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Application for Industrial Disability Allowance of:

LANIECE P. CLAUSELL AND CALIFORNIA STATE PRISON, CORCORAN, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondents

Agency Case No. 2020-0962

OAH No. 2020120640

PROPOSED DECISION

Dena Coggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on March 2, 2021, from Sacramento, California.

Charles H. Glauberman, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Steven Rosales, Attorney at Law, represented respondent Laniece P. Clausell (respondent).

No one appeared for or on behalf of respondent California State Prison, Corcoran, California Department of Corrections and Rehabilitation (CDCR}, its default was entered, and this matter proceeded as a default proceeding pursuant to Government Code section 11520 as to CDCR.

Oral and documentary evidence was received. The record was left open to allow CalPERS to submit evidence of an earlier filed application for disability benefits submitted by respondent and CalPERS' denial of the application, and to allow respondent to lodge objections thereto; the documents were marked as Exhibits 12 through 15, for identification purposes only. Additionally, the parties were given an opportunity to submit written closing briefs; CalPERS' closing brief was marked as Exhibit 16, and respondent's closing brief was marked as Exhibit E, for identification purposes only. The record closed and the matter was submitted for decision on April 6, 2021.

SUMMARY

Respondent resigned from her employment at CDCR with no right of reemployment effective May 2018, pursuant to a Stipulated Settlement Agreement and Release entered into by respondent and CDCR in July 2018. CalPERS received respondent's application for industrial disability retirement in December 2019. CalPERS notified respondent she was not eligible for industrial retirement pursuant to the appellate court's decision in *Haywood v. American River Fire Protection District* (1998} 67 Cal.App.4th 1292 *(Haywood),* and its progeny. The sole issue on appeal is whether respondent's application for industrial disability retirement is precluded by operation of law. Based on review of the evidence provided at hearing, respondent's appeal from CalPERS' determination of ineligibility is denied. CalPERS' determination is affirmed.

FACTUAL FINDINGS

Jurisdictional Matters

1. Keith Riddle, Chief of CalPERS' Disability and Survivor Benefits Division, signed the Statement of Issues on December 8, 2020, solely in his official capacity.

2. On December 18, 2019, respondent signed, and CalPERS subsequently received, a Disability Retiremen_t Election Application for industrial disability retirement (application). She identified her disabilities as "complex regional pain syndrome Rt Foot/Leg," which she stated occurred on July 7, 2015.[1]

3. CalPERS acknowledged receipt of the application in a July 14, 2020 letter, which explained the following, in pertinent part:

> We received your application for industrial disability retirement; however, we have found you are not eligible for disability retirement benefits at this time....

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[1] On December 23, 2019, respondent signed and CalPERS subsequently received a second Disability Retirement Election Application for disability retirement (second. application). She identified her disabilities as "PTSD, MOD/Recurrent," which she stated occurred in 2016. Respondent's initial application, signed on December 18, 2019, for industrial disability retirement is the only application identified in the Statement of Issues as being at issue here. Therefore, no finding is made as to the second application.

> 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. ...

4. In July 2020, respondent timely appealed CalPERS' determination that she was not eligible for industrial disability retirement.

Employment History

5. Respondent began her employment with CDCR as a licensed clinical social worker in 2009, and continued in that position until she resigned in May 2018, discussed more fully below. By virtue of her employment, respondent became a state safety member of CalPERS subject to Government Code section 21154.

6. On May 4, 2018, CDCR served respondent with a Notice of Adverse Action, suspending her without pay for 49 consecutive working days, from May 14, 2018 through July 23, 2018, based upon the following causes set forth in Government Code section 19572:

> (d) Inexcusable neglect of duty;

(f} Dishonest;

(m} Discourteous treatment;

(o} Willful disobedience;

(t} Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.

7. The Notice of Adverse Action contained a statement of facts that detailed a domestic violence incident that occurred on July 10, 2017, between respondent and her former partner. On that day, respondent's former partner informed officers that respondent assaulted him by forcing her way into his home. Respondent allegedly yelled profanities at another woman in the residence and damaged the woman's phone after throwing it across the room. The Notice of Adverse Action further alleged that respondent asked a law enforcement officer not to include her employer in the police report. During an internal investigation, on October 11, 2017, respondent denied asking the officer to exclude her employer from the police report and denied forcing entry into her former partner's residence.

8. On May 16, 2019, a *Skelly* hearing was conducted relating to the Notice of Adverse Action, to allow respondent an opportunity to respond to allegations of misconduct prior to the imposition of discipline. After review of the *Skelly* Officer's recommendation and the case factors, on May 22, 2018, CDCR informed respondent of its decision to sustain the Notice of Adverse Action as written.

9. On July 23, 2018, respondent and CDCR entered into a Stipulated Settlement Agreement and Release, which states the following, in relevant part:

> [T]HE PARTIES STIPULATE AND AGREE AS FOLLOWS:
>
> 1. EMPLOYEE, by her signature on this document, agrees not to file an appeal to the Notice of Adverse Action effective May 14, 2018, and waives any right she may have to appeal the Notice of Adverse Action either before the State Personnel Board or any court of law which might have jurisdiction over this matter. Specifically, EMPLOYEE waives any rights she may have as set forth in Section V of the Notice of Adverse Action ...
>
> 2. EMPLOYER, agrees to withdraw and hereby does withdraw the Notice of Adverse Action suspending [respondent] for 49 working days.
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> 3. On start of business May 14, 2018, EMPLOYEE agrees that she will be deemed to have resigned. This resignation is irrevocable and is not contingent on the action of any other State agency, now or in the future. EMPLOYEE further agrees, as part of the consideration and inducement for the execution of this Agreement, to never apply for or accept employment with the CDCR, [California Correctional Health Care Services], or any entity providing services to inmates or wards within CDCR. ...

10. On July 26, 2018, the State Personnel Board adopted, and issued a decision, approving the Stipulated Settlement Agreement and Release.

Respondent's Testimony

11. Respondent testified at the hearing. She has a master's degree in social work. In July 2015, she injured her foot while walking on the prison yard. She had foot surgery in 2016, and was diagnosed with complex regional pain syndrome. She received worker's compensation relating to her injury, but her first application for industrial disability retirement submitted in 2017, was denied; that decision is not at issue here. Respondent was diagnosed with posttraumatic stress disorder (PTSD) in March 2016.

12. Respondent testified about the domestic violence incident involving her former partner and disagreed with the factual findings contained in the Notice of Adverse Action. According to respondent, she resigned from her position at CDCR so that she did not have to work with her former partner, who also worked at CDCR, because she felt unsafe being on the same prison yard as him.

13. Respondent submitted an August 10, 2017 letter authored by Abdelmonim Affany, M.D., from the Permanente Medical Group, Inc., that confirmed respondent has received treatment and management of PTSD, domestic violence, depression, and anxiety, since March 2016. She also submitted evidence that she applied for victim compensation from the Victim's Compensation Board based upon domestic violence occurring in her prior relationship with her former partner.

Discussion

14. As explained in detail in the Legal Conclusions below, the holdings in *Haywood* and its progeny are that the permanent termination of the employer-employee relationship renders the former employee ineligible for disability retirement, so long as termination is neither the ultimate result of a disability nor preemptive of a valid claim for disability retirement. It does not matter whether termination of the relationship was caused by the former employee's dismissal from employment for cause *(Haywood),* her voluntary resignati?n and permanent waiver of any right to reinstate to her former position (*Vandergoot*)[2], or that there was an impending ruling on a claim for disability pension that was delayed *(Smith)*[3]. 1

15. Respondent permanently terminated her employer-employee relationship with CDCR when she entered into the July 2018 Stipulated Settlement Agreement and Release. Termination of the employer-employee relationship was based upon her voluntary resignation and waiver of any right to reinstate to her former position, effective May 14, 2018. She did not submit her application until December 19, 2019. There was insufficient evidence that her voluntary resignation and waiver of right to reinstate to her former position was related to any disability from which she m y have suffered at the time or was preemptive of a valid claim for disability retirement. Respondent voluntarily resigned after receiving the Notice of Adverse Action. The evidence did not show that she would have had a valid claim for

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[2] *In re Vandergoot(2013)* CalPERS Precedential Bd. Dec. No. 13-01 (*Vandergoot,.*

[3] *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 *(Smith).*

disability retirement at the time she chose to resign from her position. Accordingly, respondent is not eligible for industrial disability retirement benefits based upon her application.

16. Finally, respondent's arguments presented to support her case have been considered and are rejected.

LEGAL CONCLUSIONS

1. CalPERS has the burden of proving respondent's Disability Retirement Election Application is barred by *Haywood* and its progeny. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to ·each fact the existence of nonexistence of which is essential to the claim for relief or defense that he is asserting."].) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Bd of Retirement* (1984) 152 Cal.App.3d 775, 783.) And to be "substantial," evidence must be reasonable in nature, credible, and of solid value. *(In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

Applicable Law

2. The appellate court held that an employee's termination for cause rendered him ineligible for disability retirement benefits in *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292. The court explained, "while termination of an unwilling employee for cause results in a complete severance of the employer-employee relationship (citation), disability retirement laws contemplate the potential reinstatement of that relationship if the employee recovers and no longer is disabled. (Citation.)" *(Id,* at p. 1305.) The appellate court explained:

> [W]e conclude that where, as here, an employee is fired for cause and the discharge is neither the ultimate result of the disabling medical condition or 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.
>
> *(Id,* at p. 1307.)

3. The Board of Administration extended the rule articulated in *Haywood* to the termination of an employer-employee relationship caused by an employee's voluntary resignation and irrevocable waiver of any rights to reinstate to his former position in *Vandergoot* (2013) CalPERS Precedential Bd. Dec. No. 13-01. Mr. Vandergroot was a heavy fire equipment operator with the California Department of Forestry and Fire Protection. He was dismissed from his employment for cause, and appealed his dismissal to the State Personnel Board. He ultimately settled his appeal by agreeing to voluntarily resign his employment and waive any rights to reinstate to his former position in exchange for his employer withdrawing his dismissal for cause.

4. Concluding *Haywood* applies whether Mr. Vandergoot was terminated for cause or voluntarily resigned his employment and waived any reinstatement rights, the Board of Administration explained:

> In deciding this case, bright line distinctions need not be made in determining when and under what circumstances a resignation becomes a termination for cause for purposes of applying *Haywood* This is because *Haywood* makes it

> clear that a necessary requisite for disability retirement is the potential reinstatement of the employment relationship with the District if it ultimately is determined that respondent is no longer disabled. *(Haywood v. American River Fire Protection District, supra,* 67 Cal.App.4th at pp. 1296 - 1297.) Such is not possible here. The employment relationship has not only been severed, but the terms of the Stipulation and Settlement Agreement expressly lock respondent out from being reinstated. Such a circumstance must be viewed as wholly inconsistent with the policy behind and rationale for disability retirement ....

(*Vandergoot, supra,* CalPERS Precedential Bd. Dec. No. 13-01, at p. 7; quoting, *Haywood v. American River Fire Protection District, supra,* 67 Cal.App.4th at p. 1305.)

5. *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, involved a firefighter whose employment was terminated for cause. He filed an application for disability retirement on the effective date of his termination. The city council affirmed his termination, and the Board of Administration subsequently denied his application for disability retirement pursuant to *Haywood (Smith v. City of Napa, supra,* 120 Cal.App.4th at p. 198.)

6. Analyzing the *Haywood* court's qualification that an employer's dismissal may not preempt "an otherwise valid claim for disability retirement," the *Smith* court identified "the key issue [as] thus whether his right to a disability retirement matured before plaintiff's separation from service." *(Smith v. City of Napa, supra,* 120 Cal.App.4th at p. 206.) The court then explained that "a vested right matures when there is an unconditional right to immediate payment," and "a duty to grant the

disability pension ... [does] not arise at the time of injury itself but when the pension board determine[s] that the employee [is] no longer capable of performing his duties." *(Ibid.)* But the appellate court also recognized an equitable exception when there is an impending ruling on an application for disability retirement that is delayed, through no fault of the applicant, until after his employer-employee relationship has been terminated. *(Id.,* at pp. 206-207.)

Similar to the facts of *Vandergoot,* respondent did not initiate the process for receiving industrial disability benefits until after she resigned from her position with CDCR with no reemployment rights and there was no evidence that she was eligible for disability retirement at the time she resigned, "such that a favorable decision on her claim would have been a forgone conclusion (as perhaps with a loss of limb)." (*Vandergoot, supra,* CalPERS Precedential Bd. Dec. No. 13-01, at p. 7; quoting, *Smith,* 120 Cal.App.4th at p. 9; see also *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156 [finding that *Haywood* and *Smith* have not been superseded by legislation, are consistent with subsequent case law and *Vandergoot* remains precedential authority].)

7. Respondent permanently terminated her employer-employee relationship with CDCR with no right of reemployment for reasons unrelated to any disability she may have been suffering at the time. No evidence was submitted to show that she was suffering from a disabling medical condition at the time she resigned from her position or that the termination of the employment relationship was the ultimate result of a disabling medical condition.

ORDER

The appeal of respondent Laniece P. Clausell to be granted the right to file an application for industrial disability retirement is DENIED.

DATE: April 13, 2021

Dena Coggins (Apr 13, 2021 09:49 PDT)

DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings