

**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:**

**ROBERT A. STORY, Respondent,**

**and**

**CALIFORNIA HIGHWAY PATROL, Respondent.**

**Case No. 2022-0694**

**OAH No. 2023010772**

**PROPOSED DECISION**

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 1, 2023, by videoconference from Sacramento, California.

Noelle Lamprecht, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Robert A. Story (respondent) appeared and represented himself.

There was no appearance by or on behalf of the California Highway Patrol (CHP), and a default was taken pursuant to Government Code section 11520.

Evidence was received, the record closed, and the matter submitted for decision on August 1, 2023.

## **ISSUE**

Is respondent precluded from filing an application for disability retirement by operation of *Haywood* and *Smith*?

## **FACTUAL FINDINGS**

1. Respondent was employed by the CHP as a CHP Officer. By virtue of this employment, respondent became a state safety (patrol) member of CalPERS pursuant to Government Code section 20930, and is subject to Government Code sections 21151, 21154, and 21156.

2. On February 13, 2019, the CHP served respondent with a Notice of Adverse Action (NOAA), notifying him that he was dismissed from his position as a CHP Officer, effective March 7, 2019. The CHP served the NOAA based on allegations that respondent engaged in off-duty misconduct including physical assault and vandalism of private property in January 2017, and vandalism of private property in October 2017. Respondent did not appeal the dismissal to the State Personnel Board.

3. On February 25, 2022, CalPERS received respondent's application for industrial disability retirement, with an effective retirement date of March 7, 2019. Respondent claimed disability based on back injuries and mental trauma, including

posttraumatic stress disorder, depression, and suicidal ideations resulting from an on-duty traffic collision on July 10, 2018. On July 9, 2022, CalPERS sent a letter to respondent stating he is not eligible for disability retirement because his employment ended for reasons not related to a disabling medical condition.

4. On July 22, 2022, respondent timely appealed CalPERS's determination that he is not eligible to apply for disability retirement. This hearing followed. Respondent did not testify or present evidence at the hearing.

## **Discussion**

5. CalPERS determined respondent was precluded from applying for disability retirement under *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*). *Haywood* and *Smith* hold that civil service employees are precluded from applying for disability retirement if they have been dismissed from their civil service employment. *Haywood* and *Smith* recognized two exceptions to this preclusion: (1) when the employee established that the dismissal was the ultimate result of a disabling condition; and (2) when the employee established that the dismissal preempted the employee's otherwise valid claim for disability retirement.

6. Respondent did not establish that he should be allowed to apply for disability retirement under either of the two exceptions recognized in *Haywood* and *Smith*: (1) his separation from state service was not the ultimate result of a disabling condition; and (2) his separation from state service did not preempt an otherwise valid claim for disability retirement. Respondent's misconduct, not his physical or psychological condition, is what caused the CHP to serve the NOAA, leading to the termination of respondent's employment.

7. Nor did respondent establish that his separation from state service preempted an otherwise valid claim for disability retirement. There was no indication in the NOAA or any other competent evidence presented at the hearing that anyone at the CHP was aware that respondent had or contended he had a disabling physical condition before it served the NOAA. Nor is there any evidence that the CHP instituted dismissal proceedings against respondent to preempt him from filing an application for disability retirement based upon a disabling physical condition.

8. In sum, when all the evidence is considered, respondent did not establish that he should be allowed to file an application for disability retirement. Consequently, respondent's appeal must be denied.

## **LEGAL CONCLUSIONS**

### **Burden of Proof**

1. CalPERS has the burden of proving that respondent was terminated for cause prior to seeking disability retirement, or that he resigned under circumstances which are tantamount to a dismissal for cause. (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"]; *Haywood, supra*, 67 Cal.App.4th 1292.) The standard of proof is a preponderance of the evidence. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence"].) If CalPERS meets its burden, the burden then shifts to respondent to show whether either of the *Haywood* exceptions applies.

## Applicable Law

2. Government Code section 21152 states in pertinent part:

Application to the board for retirement of a member for disability may be made by [¶] . . . [¶]

(d) The member or any person in his or her behalf.

3. By virtue of his employment, respondent became a state safety (patrol) member of CalPERS pursuant to Government Code section 20930, and is subject to Government Code section 21154, which provides in relevant part:

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.

4. CalPERS met its burden of proof by establishing that respondent was dismissed for cause, and that the dismissal did not preempt an otherwise valid disability claim. Respondent did not establish that any of the *Haywood* exceptions apply. Thus, under the criteria set forth in *Haywood* and its progeny, respondent was properly precluded from applying for disability retirement. Accordingly, respondent's appeal from CalPERS's cancellation of his application must be denied.

## ORDER

The appeal of respondent Robert A. Story to be granted the right to file an application for disability retirement is DENIED.

DATE: August 30, 2023

*Timothy Aspinwall*

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings