

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Application for Industrial Disability
Retirement of:**

**GENA L. CLARK-MCKNIGHT and DIVISION OF JUVENILE
JUSTICE, NORTHERN CALIFORNIA YOUTH CORRECTIONAL
CENTER, DEPARTMENT OF CORRECTIONS AND
REHABILITATION, Respondents**

Agency Case No. 2022-1004

OAH No. 2023051038

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on September 28, 2023, in Sacramento, California.

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

Cristina Castaneda, Staff Services Manager I, appeared on behalf of the California Department of Corrections and Rehabilitation (CDCR).

There was no appearance by or on behalf of Gena L. Clark-McKnight (respondent). A Notice of Hearing was properly served on respondent. Consequently, this matter proceeded as a default against respondent under Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on September 28, 2023.

ISSUE

Whether respondent is precluded from filing an application for Industrial Disability Retirement (IDR) by operation of Haywood.

FACTUAL FINDINGS

Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. (Gov. Code, § 20000 et seq.) Respondent was employed by CDCR as a clinical psychologist at the Northern California Youth Correctional Center in Stockton. By virtue of her employment, respondent became a state safety member of CalPERS subject to Government Code section 21154.

2. On October 13, 2021, respondent was served with a Notice of Non-Punitive Action, informing her that her employment was being terminated, effective October 27, 2021. The reason for the termination was failure to meet a requirement for continued employment as prescribed in the class specifications for her position. She

was also notified that as an employee who was terminated for non-punitive reasons, she did not have a mandatory right to return to her former position.

3. On September 19, 2022, CalPERS received respondent's application for IDR. CalPERS notified respondent that her application for IDR was being denied by letter dated November 4, 2022. Respondent appealed the denial by letter dated December 1, 2022.

4. On May 23, 2023, Keith Riddle, in his official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, signed and thereafter filed the Statement of Issues for purposes of the appeal. The matter was set for 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.

CalPERS's Evidence

5. Respondent was hired by CDCR on October 3, 2016. The minimum qualifications of a clinical psychologist require a valid license issued by the California Board of Psychology. At the time of hire, respondent did not possess a valid license to practice psychology. As a condition of continued employment, she was required to obtain a valid license within four years of the commencement of her employment with CDCR. Under those terms, respondent was required to obtain a license by October 3, 2020.

6. On September 18, 2020, the Associate Director of Mental Health and Treatment Services, Jonathan Yip, Ph.D., notified respondent that the four-year deadline was approaching and reminded her of the requirement that she obtain licensure. He also informed her of her ability to request a one-year extension of the deadline. Respondent subsequently submitted a written request for an extension

based on extenuating circumstances related to the COVID-19 pandemic. The request was approved, and respondent was given until October 3, 2021, to obtain her license.

7. On August 30, 2021, Dr. Yip reminded respondent about the approaching extended deadline for licensure. He also informed her that since the date landed on a Sunday, respondent would be required to show proof of licensure by Friday, October 1, 2021. On August 31, 2021, respondent emailed Dr. Yip and told him her father passed away. She also said she took the licensure exam on July 8, 2021, she failed the exam by several points, and she intended to re-take the exam on September 20, 2021. Because respondent failed to obtain licensure by the extended deadline, CDCR terminated her employment for cause, effective October 27, 2021.

8. Respondent completed and signed her application for IDR on August 22, 2022. She claimed disability on the basis of bilateral ulnar neuropathy of cubital tunnel syndrome, cervical sprain/strain injury, bilateral carpal tunnel syndrome, myofascial pain syndrome, bilateral elbow epicondylitis, and thoracic sprain/strain injury conditions. In a letter denying the application on November 4, 2022, CalPERS explained:

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 a 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 medication condition nor preemptive of an otherwise valid claim for disability retirement, termination

and/or mutual understanding of separation from employment due to a pending adverse action renders the employee ineligible to apply for disability retirement.

Analysis

9. CalPERS based its determination that respondent was not eligible to apply for IDR on the rulings in *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*); and *In the Matter of Robert Vandergoot* (2013) CalPERS Precedential Bd. Dec. No. 13-01 (*Vandergoot*). *Haywood* held that civil service employees are precluded from applying for disability retirement if they have been dismissed for cause from their civil service employment, with two exceptions: (1) when the employee establishes that the dismissal was the ultimate result of a disabling condition; or (2) when the employee establishes that the dismissal preempted the employee's otherwise valid claim for disability retirement.

10. In *Vandergoot*, the CalPERS Board of Administration extended the ruling of *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 their former position. Mr. Vandergoot was a heavy fire equipment operator with the California Department of Forestry and Fire Protection. He was dismissed from employment for cause and appealed his dismissal to the State Personnel Board. He ultimately agreed 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.

11. In concluding that *Haywood* applies whether an employee is terminated for cause or voluntarily resigns and waives any reinstatement rights, the CalPERS 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. 12-01, at p. 7; quoting *Haywood v. American River Fire Protection District, supra*, 67 Cal.App.4th at p. 1305.)

12. Respondent failed to establish that she should be allowed to apply for IDR under either of the exceptions in *Haywood*. Her separation from state service was not the ultimate result of a disabling condition, and it did not preempt an otherwise valid claim for disability retirement. Rather, respondent was terminated for cause because she failed to obtain a license to practice psychology in California. Moreover,

because she was terminated from her position for non-punitive reasons, she did not have a mandatory right to return to her former position. When all the evidence is considered in light of *Haywood* and *Vandergoot*, respondent did not establish that she should be allowed to file an application for IDR. Consequently, her appeal must be denied.

LEGAL CONCLUSIONS

1. CalPERS has the burden of proving respondent's application for IDR is barred by *Haywood*. (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"].) CalPERS must meet its burden by 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"].) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) 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.) If CalPERS meets its burden, the burden then shifts to respondent to show whether either of the *Haywood* exceptions applies.

2. Government Code section 21152, subdivision (d), provides that an application to the Board for retirement of a member may be made by the member or any person on her behalf.

3. Government Code section 21154 provides:

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 a 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. On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

4. Based on the Factual Findings and Legal Conclusions as a whole, CalPERS met its burden of proof by establishing that respondent was dismissed for cause unrelated to disability, and that the dismissal did not preempt an otherwise valid disability claim. Respondent did not appear at hearing and present evidence and therefore failed to establish that either of the exceptions as outlined in *Haywood* apply. Thus, respondent was properly precluded from applying for IDR. Accordingly, her appeal from CalPERS's denial of her application must be denied.

ORDER

The appeal of respondent Gena L. Clark-McKnight to be granted the right to apply for industrial disability retirement is DENIED.

DATE: October 19, 2023

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings