

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Application for Disability
Retirement of:

THOMAS STAWICKI,

Respondent,

and

SAN DIEGO UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. 2013-0290

OAH No. 2013060949

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 3, 2014, in San Diego, California.

Elizabeth Yelland, Senior Staff Attorney, represented petitioner, Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System.

No appearance was made by or on behalf of respondent Thomas Stawicki or respondent San Diego Unified School District.

The matter was submitted on June 3, 2014.

DEFAULT

On proof of compliance with Government Code sections 11505 and 11509, this matter proceeded as a default pursuant to section 11520.

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CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED July 7 2014
C. Hendrix

ISSUE

Is Mr. Stawicki precluded from filing an application for disability retirement, by operation of *Haywood v. American River Fire Protection*, because he was terminated for cause before he filed his disability retirement application?

FACTUAL FINDINGS

Preliminary Matters

1. Respondent Thomas Stawicki was employed as a custodian by respondent San Diego Unified School District, a contracting entity with the Public Employees' Retirement System (CalPERS). By reason of his employment, Mr. Stawicki was a local agency member of CalPERS and subject to Government Code section 21154.

2. On July 3, 2012, Mr. Stawicki signed a Disability Retirement Election Application that he filed with CalPERS. CalPERS received Mr. Stawicki's application the same day. In his application, Mr. Stawicki claimed the right to receive a disability retirement, effective April 18, 2012, on the basis of an injury to his lumbar spine he suffered on August 8, 2007. No medical records are part of this record to substantiate Mr. Stawicki's claim that an injury to his lumbar spine qualifies him for disability retirement.

3. By letter dated February 14, 2013, CalPERS notified Mr. Stawicki of its determination that he was not entitled to a disability retirement because on April 17, 2012, Mr. Stawicki was terminated for cause from his employment as a custodian with the San Diego Unified School District, and, pursuant to the case of *Haywood v. American River Fire Protection* (1999) 67 Cal. App.4th 1292, he was no longer a district employee and was precluded from filing an application for disability retirement.

4. By letter dated March 8, 2013, Mr. Stawicki timely appealed CalPERS's adverse determination. In this letter, Mr. Stawicki claimed that he was not able to work due to his medical condition at the time he was terminated from the San Diego Unified School District.

5. On June 21, 2013, petitioner signed the Statement of Issues in his official capacity. The Statement of Issues and other jurisdictional documents were served on Mr. Stawicki and the San Diego Unified School District.

6. On June 26, 2013, petitioner served a Notice of Hearing on Mr. Stawicki at the address specified in his March 8, 2013 appeal letter. That notice advised Mr. Stawicki that the hearing in this matter had been set for June 3, 2014, before an administrative law judge with the Office of Administrative Hearings (OAH), at the OAH offices, 1350 Front Street, Suite 3005, San Diego, California, to commence at 9:00 a.m. Despite this notice, Mr. Stawicki did not appear on June 3, 2014.

Employment Background and Termination

7. Mr. Stawicki was an employee with the San Diego Unified School District from April 10, 2000, to April 17, 2012. On April 17, 2012, after a hearing *In the Matter of the Termination of Thomas Stawicki, a Permanent Classified Employee of the San Diego Unified School District*, before Hearing Officer Daniel E. Eaton, Mr. Stawicki was terminated for cause.

8. In its decision, the District found that Mr. Stawicki's termination from employment was appropriate, fully warranted and justified. It found that he engaged in the following acts of misconduct:

1. Mr. Stawicki refused to clean his assigned restroom on September 29, 2010. As a result he was found insubordinate, in violation of Employment Regulations for the Classified Service of the San Diego Unified School District (district Regulations) Article VI, section 1, subsection (b);
2. Mr. Stawicki failed to obey reasonable regulations or directives, in violation of district regulation Article VI, Section 1, subsection (c) in his handling of doctors' appointments on December 13, 2011 and a court appointment on December 15, 2011;
3. Mr. Stawicki dishonestly requested leave to attend his workers' compensation hearing when that hearing was cancelled, in violation of district regulation Article VI, section 1, subsection (g)
4. Mr. Stawicki falsified information he submitted to the School District when he submitted his leave request in violation of district regulation Article VI, Section 1, subsection (j);
5. Mr. Stawicki engaged in incidents of persistently discourteous treatment of employees and supervisors on October 1, 2010, November 6, 2011, and December 5, 2011, in violation of district regulation Article VI, Section I, subsection (l);
6. Mr. Stawicki was absent from duty without leave on October 1, 2010, October 26, 2011, November 3, 2011, and November 4, 2011, in violation of district regulation Article VI, Section 1, subsection (n); and

7. Mr. Stawicki had a history of and continuing absences in violation of district regulation, Article VI, Section 1, subsection (o).

9. There was nothing in the record to suggest that Mr. Stawicki appealed the decision terminating his employment. Accordingly, the decision is deemed final.

10. The sole issue in this hearing is a question of law: May Mr. Stawicki file an application for disability retirement based on an injury to his lumbar spine, or whether his application and eligibility for disability retirement are precluded by operation of *Haywood v. American River Fire Protection* (1998) 67 Cal. App.4th 1292, 1297.

LEGAL CONCLUSIONS

1. Government Code section 21152 provides, 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.

2. Government Code section 21154 reads, in pertinent 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. On receipt of any application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, on 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.

3. 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, termination of the employment relationship renders the employee ineligible for disability retirement. (*Haywood v. American River Fire Protection District* (1998) 67 Cal. App.4th 1292, 1297.) In *Haywood*, an employee was terminated for cause following a series of increasingly serious disciplinary actions against him. Following his discharge, he claimed the stress from the actions caused him to suffer depression rendering him incapable of performing his usual duties. He applied for disability retirement. The court of appeal found that Haywood was “ineligible” for disability retirement. It explained that an employee’s dismissal for cause “constituted a complete severance of the employer- employee relationship, thus eliminating a necessary requisite for disability retirement - the potential reinstatement of his employment relationship with the District if it ultimately is determined that he is no longer disabled.” (Ibid.)

4. The mere evidence of a possible medical condition will not remove an employment termination from the purview of *Haywood* unless the evidence constitutes “unequivocal medical evidence” of such nature that an approval of the application would be a “foregone conclusion.” (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.) As the court in *Smith* explained:

Conceivably, there may be facts under which a court, applying principles of equity, will deem an employee’s right to a disability retirement to be matured and thus survive a dismissal for cause. This case does not present facts on which to explore the outer limits of maturity, however. Nor, for that matter, is there undisputed evidence that the plaintiff was eligible for a CalPERS disability retirement, such that a favorable decision on his claim would have been a foregone conclusion (as perhaps with a loss of limb). (Ibid.)

No competent medical evidence, let alone unequivocal medical evidence, shows that the approval of Mr. Stawicki’s disability retirement application was “a foregone conclusion.”

Cause Exists to Preclude Mr. Stawicki from Filing a Disability Retirement Application

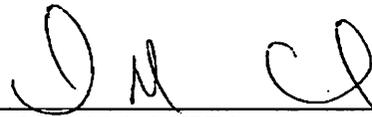
5. Mr. Stawicki was terminated for cause due to performance issues, and his termination from employment was not the ultimate result of a disabling medical condition. Mr. Stawicki filed a disability retirement application following his separation from employment, claiming he was injured on August 8, 2007 and that he became substantially incapacitated from performing his regular duties on April 18, 2012. His disability did not “mature” before the filing of the claim, and no competent medical evidence suggests that his termination was preemptive of an otherwise valid claim for disability retirement. Mr. Stawicki’s relationship with his employer, the San Diego Unified School District, had already been “completely severed” when he applied for disability on July 3, 2012. Under these facts, he was not eligible to apply for disability retirement.

6. For all the above reasons, cause exists to uphold the determination that Mr. Stawicki is not eligible for disability retirement.

ORDER

The appeal of Thomas Stawicki is denied.

Dated: July 3, 2014.

A handwritten signature in black ink, appearing to read 'A M Levy', written over a horizontal line.

ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings