

ATTACHMENT A
THE PROPOSED DECISION

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

In the Matter of the Cancellation of the
Application for Disability Retirement of:

ESSENCE WILSON,

Respondent,

and

DEPARTMENT OF STATE HOSPITALS
PATTON,

Respondent.

Case No. 2014-0372

OAH No. 2014060991

PROPOSED DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on December 11, 2014, in Los Angeles, California.

Christopher Phillips, Staff Attorney, represented Petitioner Anthony Suine, Chief of the Benefit Services Division of the California Public Employees' Retirement System (PERS).

Essence Wilson (Respondent) represented herself.

The matter was submitted on December 11, 2014.

FACTUAL FINDINGS

1. Respondent was employed as an office assistant with the Department of State Hospitals Patton beginning December 1997. By virtue of her employment, Respondent was a state miscellaneous member of PERS.

2. On June 17, 2013, Respondent submitted an application for disability retirement. In filing the application, disability was claimed on the basis of elbow, wrist, neck and shoulder injuries occurring in February 2005 and August 2010.

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3. In reviewing Respondent's disability retirement application, PERS discovered that she had been terminated from her position with the Department of State Hospitals Patton effective October 28, 2010.

4. In short, in July 2010, Respondent, while delivering mail for her employer, left the unattended mail van running with the keys inside and was not forthcoming when questioned. The grounds for her termination were inexcusable neglect of duty and failure of good behavior causing discredit to her or her employer. (Exhibit 8 at p.18.) After a hearing and appeals, Respondent's termination for cause was upheld by the State Personnel Board (SPB). SPB's decision was final in July 2012.

5. Upon review of this evidence and applicable law, PERS determined that Respondent's termination for cause barred her from any entitlement to a PERS disability retirement. PERS notified Respondent, who subsequently appealed, and this hearing followed.

6. The instant appeal is limited to the issue of "whether respondent Wilson may file an application for disability retirement based on her elbow, wrist, neck and back injuries, or whether her application and eligibility for disability retirement is precluded by operation of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292."

7. Respondent testified at the hearing. She explained that she was employed as a food service worker since 1997, and became injured in 2005. Her injuries prevented her from returning to work until 2010. Even then, she was not able to resume her duties as a food service worker. Instead, she held an office assistant position which essentially required her to distribute mail. The incident with the mail truck occurred in July 2010. Her employer did not immediately discipline her. Respondent claimed that she re-injured herself in August 2010, and was out of work until October 2010. When she returned in October 2010, she was terminated. Respondent maintained that her employer terminated her because they could not find a reasonable accommodation for her. She was unaware that she might qualify for disability retirement until she applied for social security, following her termination.

8. Respondent submitted documentation regarding her injuries. (Exhibits A and B.) Peter Sofia, M.D. opined in 2009 that Respondent could work in an office capacity. (Exhibit A.) In 2012, Sofia found "few, if any, objective findings" to support her claim of injury in 2010, noting that her "clinical presentation [wa]s replete with exaggerated pain behavior." In addition, Sofia noted that Respondent's complaints of severe pain were "somewhat exaggerated vis-à-vis the objective findings or more precisely, the relative paucity thereof." (Exhibit B.) This evidence was considered to the extent necessary to determine whether Respondent's termination was the result of a disabling medical condition or preemptive of a valid claim for disability retirement.

LEGAL CONCLUSIONS

1. Because Respondent is appealing the denial of her disability retirement, Respondent bears the burden of proof by a preponderance of evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5; *see also* Evid. Code, § 115.)

2. Government Code section 21154 governs when a PERS member may apply for disability retirement. It provides 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."

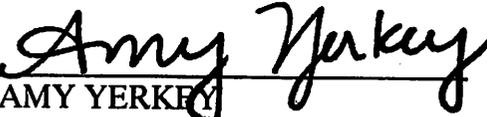
3. Also applicable here are two Court of Appeal decisions: *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194. *Haywood* held that where "an employee is fired for cause and the discharge is neither the ultimate result 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, supra*, at p. 1297.) *Smith* determined that the right to a disability retirement must have matured prior to termination, and "[a] vested right matures when there is an unconditional right to immediate payment." (*Smith, supra*, at p. 206.) In other words, when PERS determines eligibility for disability retirement. (*Id.*)

4. Respondent did not meet her burden of presenting evidence establishing that her application was cancelled in error. Respondent was terminated for cause, and there was no credible evidence that the termination was due to a physical or mental condition, nor was it preemptive of an otherwise valid claim for disability retirement. Respondent's contention that her employer fired her because it could not reasonably accommodate her was not supported by the evidence. Additionally, Respondent termination occurred years before her disability application, thus she did not have a vested right prior to her termination. Accordingly, Respondent's request to submit her disability application must be denied.

ORDER

Respondent Essence Wilson's appeal is denied.

DATED: January 7, 2015


AMY YERKEY
Administrative Law Judge
Office of Administrative Hearings