

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Statement of Issues
Against:

SHEILA T. CRAWFORD,

Respondent,

and

CITY OF INGLEWOOD,

Respondent.

Case No. 2015-0164

OAH No. 2015090315

PROPOSED DECISION

The hearing in the above-captioned matter took place on March 17, 2016, at Glendale, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Elizabeth Yelland, Senior Staff Counsel, California Public Employees' Retirement System (CalPERS). Respondent Sheila T. Crawford (Respondent) appeared and represented herself with the assistance of her sister, Quandra Crawford. There was no appearance by the City of Inglewood (City).

Evidence was received at the hearing. The record was held open until April 1, 2016, for Respondent to submit further documents. On March 31, 2016, Respondent electronically filed a copy of a letter dated July 23, 2012, that she had written to the City's Human Resources Director. On April 1, 2016, she submitted another copy of that letter, and a letter addressed to the ALJ, from Quandra Crawford. They were not available to the ALJ until April 5, 2016, and on that date an OAH clerk verified that Ms. Yelland had received the documents. There was no objection to the documents by Complainant. All three documents are received as Exhibit A.

Thereafter, the record was re-opened so that Complainant's counsel might speak to the issue raised by two of the documents that make up exhibit A, and especially a letter to Respondent from her union representative. Ms. Yelland was

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given until May 13, 2016 to submit a written brief. CalPERS Second Closing Brief was timely received, and is marked for identification as exhibit 12.

The matter was again deemed submitted, as of May 13, 2016. The ALJ hereby makes his factual findings and legal conclusions, and order.

STATEMENT OF THE CASE

Respondent seeks disability retirement from CalPERS. Respondent was employed by the City as a Special Enforcement Officer. The City took steps to terminate her for cause, and she was informed she would be terminated. She appealed the termination. During the time that she was facing termination, she had a stroke and was suffering the after-effects of it. Her union representative told her that the City had agreed she could resign and take a "medical" retirement. Thus, in July 2012 she sent her written resignation to the City, stating that she was resigning effective August 17, 2011.

CalPERS asserts that Respondent's termination was for cause, and that she therefore cannot receive disability benefits under governing case law, regardless of whether she is otherwise disabled from performing her usual and customary duties. Respondent asserts that she was not terminated because of the alleged agreement her union representative reached with the City. In response, CalPERS argues that under that agreement, she could not return to work for the City, and therefore is barred from obtaining disability retirement under applicable law.

FACTUAL FINDINGS

The Parties and Jurisdiction:

1. Complainant Anthony Suine filed the Statement of Issues in the above-captioned matter while acting in his official capacity as Chief of the Benefits Services Division of CalPERS.

2. Respondent Crawford was previously employed by the City as a Special Enforcement Officer. She is a local miscellaneous member of CalPERS within the meaning of Government Code sections 21154 and 21156.¹

3. On February 15, 2013, Respondent's Disability Retirement Election Application (Application) was received by CalPERS. The Application listed

¹ All statutory references will be to the Government Code unless otherwise noted.

Respondent's effective retirement date as being August 17, 2011. (Ex. 3, p. 1.)

4. The application stated that Respondent was disabled because she had cerebrovascular disease, peripheral neuropathy and arthritis, and that her disability began on July 10, 2010. She stated she had trouble with her balance and strength and concentration.

5. Thereafter, on July 1, 2015, CalPERS wrote to Respondent, stating that it could not accept her application, because Respondent had been terminated for cause by the City, and because the termination was not the ultimate result of the disabling medical condition, nor was the termination an attempt by the City to preempt her from applying for disability retirement. The letter set out various alternatives Respondent might pursue, including an appeal of the denial of disability retirement.

6. Respondent wrote to CalPERS on July 31, 2015, appealing the denial of disability retirement. This proceeding followed. All jurisdictional requirements have been satisfied.

Termination Action by the City

7. There is no dispute that the City took steps to terminate Respondent; the dispute focuses on the outcome of that process. It began in July 2010, when Respondent was placed on administrative leave by the City because she was accused of being under the influence of alcohol while on the job. It appears from the record that Respondent's primary task was parking and traffic enforcement within the City.

8. Nearly one year after she was placed on administrative leave, the City took the next step to terminate Respondent. Thus, on June 14, 2011, Respondent was served with a Notice of Intent to Terminate. Thereafter, on July 20, 2011, a "Skelly" hearing was conducted by Jacqueline Seabrooks, then Chief of Police.

9. Meanwhile, Respondent had had a stroke in February 2011, after she was placed on administrative leave, but before the Notice of Intent to Terminate was served. The hearing was held at the place where Respondent was recovering from her stroke. Mr. Jose Martinez, Respondent's union representative, primarily spoke on Respondent's behalf during the Skelly hearing. (Ex. 6, p. 1.)

10. Chief Seabrooks issued a written Notice of Termination on August 11, 2011, giving Respondent notice that she was to be terminated by the City. Chief Seabrooks rejected the factual assertions and arguments advanced by Respondent's representative (Martinez), and the statements made by Respondent. The termination was based on Respondent's alleged intoxication while on duty. According to City records, Respondent was terminated by the City effective August 17, 2011. (Ex. 7.)

11. Respondent was given notice that she had the right to file a grievance in the matter. (Ex. 6, p. 3.)

12. Respondent did file a grievance, though paperwork indicating such was not transmitted from the City to CalPERS after the Application. However, there was testimony from Respondent and her sister to the effect that a grievance was filed. That claim is corroborated by a letter from Mr. Martinez, in July 2012; Mr. Martinez informs Respondent about the agreement for a medical retirement. Because the text of the letter is important to resolving this matter, the entire text follows.

13. The letter is on the letterhead of Respondent's union, SEIU. It is dated July 12, 2012, addressed to Respondent, although in the salutation she is referred to as Mr. Crawford. It goes on to state:

After your recent detailed medical evaluation, your physician came to the conclusion that it would not be in your interest to subject yourself to the anticipated rigors of an appeal in front of the Civil Service Commission further concluding that even if the hearing itself had no negative impact on you, you would not be able to return to the City service in any capacity including your former position. I concur in that assessment.

We therefore have two very limited options in front of us: first is to simply do nothing and let the discharge stand for the reasons stated; second is to accept the offer of the City, and resign. Leaving through resignation would be a voluntary action and therefore preserve your record from the stain of discharge. Should you recover sufficiently at a later date and wish to seek employment in another venue, you would not have to inform your new employer of a discharge, but only that you chose to leave Inglewood for personal reasons. Your subsequent medical history would surely explain any time after that. This latter option would be the best.

I have therefore, crafted a brief Resignation for you to sign and it is included. You need to sign it and send it to Jack Hoffman, Human Resources Director This should be done immediately. You should send me a copy. Once I receive it, I will withdraw your appeal and you can get on with your life.

You may have existing retirement options that would still be available to you even if you resign, and you can explore them by contacting the same address. Their phone number is 310.412.5460.

(Ex. A, p. 2.)

14. Respondent sent the resignation letter, dated July 23, 2012, to Jack Hoffman, Director of Human Resources. It states: "Accept my resignation effective August 17, 2011." (Ex. A, p.3.)

15. The resolution set out in Mr. Martinez' July 12, 2012 letter, is not shown in the documents obtained from the City by CalPERS when it investigated the matter. Whether the Civil Service Commission might possess other documents is unknown.

LEGAL CONCLUSIONS

1. Respondent is a local miscellaneous member of CalPERS within the meaning of sections 21154 and 21156. Jurisdiction was established to determine whether Respondent is entitled to disability retirement. This conclusion is based on sections 21154 and 21156 and Factual Findings 1 through 6.

2. A person seeking disability retirement bears the burden of establishing the right to that benefit. (Evid. Code, § 500; *Lindsay v. County of San Diego Ret. Bd.* (1964) 231 Cal.App.2d 156, 160-61.) The standard of proof is preponderance of the evidence. (Evid. Code, § 115.)

3. (A) If a member is terminated for cause, they are barred from obtaining disability retirement because they cannot meet the requirements of section 21154, based on applicable case law. The applicable case law is found in *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*). Further, a precedential decision issued by CalPERS takes that position as well. That decision came in the case is *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergroot, Respondent, and California Department of Forestry and Fire Protection, Respondent*, Precedential Decision 13-01 (*Vandergroot*).

(B) In *Haywood*, the Court of Appeal held that if an employee has been terminated for cause, then there has been a complete severance of the employer-employee relationship, which eliminates a required condition for disability retirement. That condition is the potential reinstatement of the employee, if there is physical recovery to the point that the employee is no longer disabled. (*Haywood, supra*, 67 Cal.App.4th at 1297.)

(C) *Smith* and *Vandergroot* follow the reasoning of *Haywood*, and make clear that if Respondent was terminated for cause, then she may not apply for disability retirement.

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4. (A) *Vandergroot*, however, stands for the proposition that if a member facing termination for cause resigns from service as part of a resolution of the termination case, they may still be barred from disability retirement.

(B) In *Vandergroot*, a state employee was facing termination. Like Respondent in this case, his notice that he was to be terminated was upheld after a Skelly hearing. He appealed his termination to the State Personnel Board. While his appeal there was pending, the matter was settled, pursuant to a stipulation—a written agreement—between the State and *Vandergroot*. Under that agreement, the notice of termination was withdrawn, and was entitled to resign for “personal” reasons. However, the stipulation also contained a clause to the effect that the employee would never seek reinstatement with the agency, in that case the Department of Forestry and Fire Protection. If he did so, it was agreed he would be immediately dismissed.

(C) Administrative Law Judge Jonathon Lew, the author of the precedential *Vandergroot* decision, concluded that the employment relationship had been severed, and that the employee could not be required to submit to a medical exam pursuant to section 21192, and could not be reinstated under section 21193, two statutes relied upon by the *Haywood* court.

5. (A) There are some distinctions between this case and *Vandergroot*. First, there is no stipulation barring reinstatement. While Complainant cites the language from the Martinez letter to the effect that Respondent can not return to work with the City, the context of the statement appears to be the examining physician’s belief that Respondent’s health would not allow her to handle the personnel commission hearing, and that her health, not a bar from the City, would prevent her from returning to work. This may have been why the City was willing to make the agreement with Respondent’s representative, Martinez.² This case differs from *Vandergroot* and *Haywood* in that it does not appear that Respondent could be compelled to provide a physical under section 29192 because it appears that she has reached the age when she can apply for service retirement.

(B) However, the balance of the letter alludes to the fact that Respondent would not reapply to the City for employment. Thus, in the second paragraph of the letter, Mr. Martinez states that if Respondent sufficiently recovered physically, and she sought employment “in another venue, you would not have to inform your new employer of a discharge.” (Factual Finding.13.) And, the issue of the applicability of section 21193 remains open.

² And perhaps the City found this to be the safest course. Respondent asserted in this matter that she was not given a breathalyzer test even though she was ultimately supervised by the Chief of Police. This may well have been perceived as a problem with the City’s case in a formal proceeding, as opposed to what amounted to a bedside *Skelly* hearing.

6. Respondent provided evidence that there was not cause for termination. The ALJ does not have authority to rule that the termination was unjustified. That was in the province of the Civil Service Commission, but its authority terminated with Respondent's resignation and subsequent withdrawal of her appeal, which followed the July 2012 agreement. The ALJ cannot determine the matter at this late date.

7. The ALJ believes, based on the limited evidence in this case, that Respondent is otherwise disabled because she suffered a stroke and has not fully recovered from the deleterious effects of that stroke. However, under the facts and circumstances of this case, CalPERS is barred from considering her application for disability retirement because there is insufficient evidence that she could be reinstated.

ORDER

The appeal of Respondent Sheila T. Crawford is denied, and she shall not receive disability retirement benefits from CalPERS.

June 12, 2016

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Joseph D. Montoya
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Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings