

ATTACHMENT A
THE PROPOSED DECISION

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

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

STEPHEN D. RENNIE,

Respondent,

and

COUNTY OF INYO,

Respondent.

Agency Case No. 2014-0634

OAH No. 2016050320

PROPOSED DECISION

Administrative Law Judge Gene K. Cheever, Office of Administrative Hearings (OAH), State of California, heard this matter on October 4, 2016, in Sacramento, California.

Cynthia A. Rodriguez, Senior Staff Attorney, represented California Public Employees' Retirement System (complainant or CalPERS).

There was no appearance by or on behalf of Stephen D. Rennie (respondent) who was duly served with the Amended Notice of Hearing. The matter proceeded as a default against respondent pursuant to California Government Code section 11520, subdivision (a).¹

Alfonso Estrada, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented respondent County of Inyo (County).

Evidence was received, the record was closed, and the matter was submitted on October 4, 2016.

¹ On September 29, 2016, respondent requested a continuance of the hearing. On September 30, 2016, OAH served an order upon respondent by email and U.S. mail denying the request.

ISSUE

Is respondent eligible to apply for industrial disability retirement based on a psychological condition, post-traumatic stress disorder, or is his eligibility for disability retirement precluded by operation of *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?

FACTUAL FINDINGS

1. The County employed respondent as a Sheriff's Corporal. By virtue of his employment, respondent was a local safety member of CalPERS subject to Government Code sections 21154 and 21156.²

The County's Termination of Respondent's Employment for Cause

2. On January 5, 2013, the County's Sheriff sent respondent a Letter of Intent to Terminate (Notice of Intent) respondent from his position as a Sheriff's Corporal. The Notice of Intent was based upon findings by an Internal Affairs investigation that respondent had violated the Sheriff's Department's Policy and Procedures Manual and the County's Personnel Rules and Regulations.

3. The termination was based upon respondent's conduct in the early morning hours on September 16, 2012. On that date, respondent returned home from a party with his wife and step-daughter. He had been drinking at the party and he continued drinking when he arrived home. He then got into a dispute with his wife in his front yard during which he yelled, broke beer bottles, and assaulted his wife by grabbing her arms forcefully and hitting her in the face. His wife suffered injuries as a result of the assault. Members of the public observed the assault and called 911. Respondent was convicted on November 26, 2012, of a violation of Penal Code section 242 for battery. As a result of the conviction, he was no longer able to possess a firearm. Respondent's inability to possess a firearm made it impossible for him to perform his job duties.

4. In response to the Notice of Intent, respondent requested a Skelly Hearing. The hearing proceeded on March 11, 2013. At the hearing, respondent did not offer any affirmative evidence to dispute the alleged violations or charges. The hearing officer reviewed the Internal Affairs investigation report, the Notice of Intent, the County Sheriff's Department's Policy and Procedures Manual, the County's Personnel Rules and Regulations, and related court documents. On March 13, 2013, the hearing officer issued his findings. He found that there was clear and sufficient evidence to support the allegations that respondent had violated provisions of the County Sheriff's Department's Policy and Procedures Manual and the County's Personnel Rules and Regulations. He also found that respondent's conviction made it unlawful for him to possess a firearm making it impossible for him to

² All further statutory references are to the Government Code unless otherwise stated.

perform his job duties. He concluded that respondent's conduct "must certainly be a bar to his suitability for continued employment in that position."

5. On March 25, 2013, the Sheriff sent respondent a Letter of Termination. It notified respondent his employment was terminated effective March 25, 2013.

Respondent's Industrial Disability Retirement Application

6. On July 12, 2013, respondent signed an application for industrial disability retirement (Application). CalPERS received the Application on August 23, 2013. In filing the Application, respondent claimed disability on the basis of a psychological condition, post-traumatic stress disorder, due to work-related incidents occurring on or about June 2009 and August 2011. He requested March 25, 2013, as his retirement date.

7. On December 19, 2013, the County sent CalPERS a letter advising CalPERS that the County had terminated respondent's employment with the County for cause on March 25, 2013. On April 1, 2014, CalPERS sent respondent a letter advising him that it had reviewed his Application but was not able to accept it. CalPERS informed respondent of the cases of *Haywood, supra*, 67 Cal.App.4th 1292, and *Smith, supra*, 120 Cal.App.4th 194. CalPERS stated:

[I]t has been determined that the facts of your case fit within the *Haywood* case. You were dismissed from employment for reasons which were not the result of a disabling medical condition. Additionally, the dismissal does not appear to be for the purpose of preventing a claim for disability retirement. Therefore, under the *Haywood* case, you are not eligible for disability retirement. For that reason, CalPERS cannot accept this application for industrial disability retirement.

Discussion

8. In *Haywood, supra*, 67 Cal.App.4th 1292, a fire district terminated a firefighter for cause who manifested an insubordinate attitude throughout his career. After his termination, he filed an application for disability retirement. The fire district denied his application, and he appealed. (*Id.* at pp. 1295-1296, 1298-1299.) The *Haywood* court held 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, the termination of the employment relationship renders the employee ineligible for disability retirement regardless of whether a timely application is filed." (*Id.*, at pp. 1306-1307.)

9. In *Smith, supra*, 120 Cal.App.4th 194, a city terminated a firefighter because he was not able to pass a skills certification test for reasons unrelated to any alleged disability. He filed an application for service-connected disability retirement. The City and CalPERS

denied his application. (*Id.*, at pp. 198-202.) The *Smith* court held that, consistent with the rationale of *Haywood*, the City's dismissal of the firefighter due to his inability to perform his duties extinguished his right to a disability retirement. (*Id.*, at pp. 203-205, 208.)

10. The *Smith* court then addressed the firefighter's claim he fell within the stated exceptions to the *Haywood* holding. It clarified that "if a plaintiff were to prove that the right to a disability retirement matured before the date of the event giving cause to dismiss, the dismissal cannot preempt the right to receive a disability pension for the duration of the disability. . . . Conversely, the 'right may be lost upon occurrence of a condition subsequent such as lawful termination of employment before it matures...' " (Citations omitted.) (*Smith, supra*, 120 Cal.App.4th at p. 206.) "The key issue is thus whether his right to a disability retirement matured before [his] separation from service." (*Ibid.*) The *Smith* court determined that maturation does not occur at the time of the injury, but rather when the pension board determined that the employee was no longer capable of performing his duties. (*Ibid.*) It further allowed consideration of equitable principles to "deem an employee's right to a disability retirement to be matured and thus survive a dismissal for cause." (*Id.* at p. 206-207.) It suggested that such a case might arise where there is "undisputed evidence" that the applicant was eligible for disability retirement "such that a favorable decision on his claim would have been a foregone conclusion (as perhaps with a loss of limb)." (*Id.*, at p. 207.) An *entitlement* to disability retirement, however, cannot rest on the applicant's medical evidence. (*Ibid.*)

11. The *Haywood* and *Smith* decisions apply to respondent's termination for cause. Respondent violated the County Sheriff's Department's Policy and Procedural Manual and the County's Personnel Rules and Regulations. In addition, respondent's battery conviction meant that respondent could no longer possess a firearm, making it impossible for him to perform his duties. The County's termination of respondent rendered respondent ineligible to apply for industrial disability retirement.

12. Further, respondent failed to put forth any evidence to establish that his termination for cause was the result of a disabling medical condition, the County's termination of him was pre-emptive of his otherwise valid claim for disability retirement, and/or respondent should be eligible to apply for industrial disability retirement based on equitable principles. CalPERS set forth evidence showing the contrary in the County's Notice of Intent letter as well as the Skelly Hearing decision. Thus, respondent's appeal fails on these grounds, too.

LEGAL CONCLUSIONS

1. "As in ordinary civil actions, the party asserting the affirmative in an administrative hearing has the burden of proof going forward and the burden of persuasion by a preponderance of the evidence." (*McCoy v. Board of Retirement* (1980) 183 Cal.App.3d 1044, 1054.) As the applicant, respondent had the burden of proving by a

preponderance of the evidence that he was eligible to apply for industrial disability retirement under Government Code section 21152 after his termination for cause.

2. Section 21152, subdivision (d), provides that an application for disability retirement of a member may be made by, “[t]he member or any person in his or her behalf.”

3. Section 21154 provides in pertinent part:

The application shall be made only (a) while the member is in state service, or ... (c) within four months of discontinuance of 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 an application for disability retirement of a member... the board shall, or of its own motion it may, order a medical examination of the member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty....

4. Respondent’s Application is precluded by *Haywood, supra*, 67 Cal.App.4th 1292, and *Smith, supra*, 120 Cal App.4th 194. (Factual Findings 8-12.) Respondent’s termination for cause extinguished his right to file his Application. Respondent’s termination was not the result of a disabling medical condition and was not pre-emptive of an otherwise valid claim for disability retirement. There is not sufficient evidence to show, based on equitable principles, respondent should be eligible to apply for industrial disability retirement.

ORDER

CalPERS’s decision to cancel respondent Stephen D. Rennie’s Application is **AFFIRMED**. Respondent Stephen D. Rennie’s appeal is **DENIED**.

DATED: October 14, 2016

DocuSigned by:
Gene Cheever
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GENE K. CHEEVER
Administrative Law Judge
Office of Administrative Hearings