

**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 the  
Industrial Disability Retirement of:

CAJETAN N. NWAGBARA,

Applicant/Respondent.

and

DEPARTMENT OF STATE HOSPITALS,  
COALINGA SECURE TREATMENT  
FACILITY,

Employer.

Case No. 2015-1182

OAH No. 2016050578

PROPOSED DECISION

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on September 19, 2016.

Senior Staff Attorney John Shipley represented Anthony Suine, Chief, Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS), State of California.

Respondent, Cajetan N. Nwagbara, represented himself.

No one appeared on behalf of the Department of State Hospitals, Coalinga Secure Treatment Facility.

The matter was submitted on September 19, 2016.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED 18 Oct 20 116  
*July 11 11*

## ISSUE

**Is respondent eligible to submit an application for industrial disability retirement?**

## SUMMARY

Respondent is not eligible to submit a disability retirement application because he was terminated, for cause, from his employment with Coalinga and his termination was not based on any disabling medical condition, nor was his termination preemptive of an otherwise valid claim for disability retirement. Accordingly, CalPERS properly rejected respondent's application for industrial disability retirement.

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. Respondent was employed by Coalinga as a Psychiatric Technician. At all relevant times, respondent was working in a probationary status. By virtue of his employment, respondent was a state safety member of CalPERS subject to Government Code sections 21151 and 21154.
2. On October 2, 2014, respondent signed, and thereafter submitted to CalPERS, an application for disability retirement. Respondent claimed disability on the basis of orthopedic (neck, ankle, and hips), neurologic (head pain and dizziness) and ophthalmologic (vision) conditions.
3. By letter, dated September 2, 2015, respondent was notified of CalPERS' determination that he was not permanently disabled or incapacitated from the performance of his duties as a Psychiatric Technician.
4. On September 16, 2015, respondent timely appealed CalPERS' determination.
5. In May of 2016, CalPERS received documents from Coalinga establishing that respondent was rejected/terminated during his probationary period of employment. Respondent's rejection/termination from employment, effective August 9, 2012, was due, in part, to the following: respondent failed training examinations; respondent was late for work; respondent forged the signature of his Shift Leader on an Authorization for Extra Hours Worked; "unprofessional displays of conduct"; failure to follow instructions; failure to adhere to dress code; inappropriate conversations with fellow workers; sleeping on duty; and disrespect/insubordination.
6. On June 17, 2016, CalPERS notified respondent that, based on additional information, CalPERS was precluded from accepting his application for disability retirement.

On July 15, 2016, an Amended Statement of Issues was filed, respondent timely appealed the rejection of his application and requested a hearing, and the instant hearing ensued.

*Respondent's Termination from Employment*

7. The documentary evidence received in evidence established that based on the conduct summarized in Finding 5, above, respondent was terminated for cause, based on his lack of qualifications, unsatisfactory job performance, and his constant failures to demonstrate merit, efficiency, fitness for duty and good moral character. His termination was not based on any disabling medical condition, nor was his termination preemptive of an otherwise valid claim for disability retirement.

*Respondent's Testimony*

8. Respondent testified that on March 20, 2012, he got into an altercation with an inmate. The inmate "beat me up" and respondent went home. Employer called respondent at home and told him not to return to work. Respondent sought medical treatment at Coalinga Regional Medical Center. He was off work for one month before his doctor cleared him to return to work. When he returned to work he was "transferred to another position" working for his "old boss." Respondent told his boss that he was having trouble with his eyesight. Respondent's boss began "picking on me" and "writing me up." Termination proceedings were initiated against respondent and he had notice and an opportunity to be heard concerning the appropriateness of his termination. Respondent chose not to avail himself of the opportunity to be heard by failing to appear for his termination hearing. Accordingly, his appeal of his termination was deemed withdrawn and he was terminated, for cause (Findings 5 and 7), effective August 9, 2012. It was not until October 2, 2014, that respondent applied for disability retirement.

During cross-examination respondent made the following statements: "I don't know what I am doing here, I couldn't afford a lawyer"; and "I got injured on the job – that is the bottom line, it doesn't matter when I applied [for disability retirement]."

**LEGAL CONCLUSIONS**

1. Government Code section 21154 provides, in part:

The application [for disability retirement] 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

....

2. Where an employee is terminated 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.4<sup>th</sup> 1292, 1297.)

3. As set forth in Findings 5 and 7, respondent's termination was not based on any disabling medical condition, nor was his termination preemptive of an otherwise valid claim for disability retirement. Consequently, respondent is ineligible for disability retirement and CalPERS properly rejected his disability retirement application.

#### ORDER

Respondent's appeal is denied. He is ineligible for disability retirement; therefore, CalPERS properly rejected his disability retirement application.

DATED: October 17, 2016

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Roy Hewitt  
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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings