

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application for Disability  
Retirement of:

RAMONA V. WALLS,

Respondent,

and

DEPARTMENT OF HEALTH CARE  
SERVICES,

Respondent.

Case No. 2014-1307

OAH No. 2015050537

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 17, 2016, in Sacramento, California.<sup>1</sup>

John Shipley, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Ramona V. Walls represented herself.

Donald R. Aaron, Attorney IV, represented the Department of Health Care Services.

Evidence was received, the record was closed, and the matter was submitted for decision on October 17, 2016.

<sup>1</sup> This matter initially commenced on July 29, 2016, before Administrative Law Judge Timothy J. Aspinwall, but was continued due to Ms. Walls's family emergency. The parties subsequently waived their respective rights to have the continued matter heard by Administrative Law Judge Aspinwall.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED NOV 10 2016  
Kadij K. Kelly

## SUMMARY

Two years after Ms. Walls's application for disability retirement was approved, CalPERS determined she was no longer substantially incapacitated for the performance of her usual duties as a Tax Compliance Representative with the Department of Health Care Services. Therefore, it initiated this action to have her reinstated to her former position. During the pendency of this action, CalPERS learned Ms. Walls terminated her employee-employer relationship with the Department of Health Care Services as part of the settlement of her workers' compensation claims, and amended the Accusation to allege she was no longer eligible to receive disability retirement benefits based on the holding in *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, and its progeny. Eventually, CalPERS chose to pursue only its claim that Ms. Walls is no longer eligible for disability retirement benefits, and filed the Statement of Issues. The persuasive evidence established that the termination of Ms. Walls's employee-employer relationship with the Department of Health Care Services was "the ultimate result of a disabling medical condition," and does not affect her eligibility to continue receiving disability retirement benefits. Therefore, her appeal should be granted.

## FACTUAL FINDINGS

### *Procedural History*

1. Anthony Suine, Chief of CalPERS's Benefit Services Division, signed the Statement of Issues on September 21, 2016, solely in his official capacity. The sole issue raised by the Statement of Issues is whether Ms. Walls is no longer eligible to receive disability retirement benefits based on the holding in *Haywood* and its progeny.

### *Prior Employment*

2. At all times relevant, Ms. Walls was employed by the Department of Health Care Services as a Tax Compliance Representative. She was a miscellaneous member of CalPERS by virtue of her employment.

### *Application for Disability Retirement*

3. On October 16, 2012, Ms. Walls signed and submitted to CalPERS a Disability Retirement Election Application, claiming her specific disabilities to be "Left hand and arm. Doctor labeled permanent disability RT hand did not heal properly and RT arm in pain due to the use right after surgery." She stated her disabilities occurred after "Two Failed Surgeries on the left hand from carpal tunnel." And she explained she "cannot type, right, grip, grasp" due to her disabilities, and her "employer stated I needed both hands to perform my job duties."

4. CalPERS approved Ms. Walls's application on the basis of an orthopedic (left wrist) condition on May 31, 2013. CalPERS's letter of approval stated, in part:

Your application for disability retirement has been approved. You have been found substantially incapacitated from the performance of your usual duties as a Tax Compliance Representative with the Department of Health Care Services, based upon your Orthopedic (left wrist) condition. Your disability retirement will be effective immediately, unless you remain on the payroll to the extent of your unused sick leave. In this case, your retirement will not become effective until the day after the expiration of your sick leave credit. Subject to the regular requirements of the law and/or local rules or ordinances governing the use of sick leave, the effective date of your retirement cannot be earlier than the day following the last day of sick leave with compensation *or* earlier than the first day of the month in which the application is received. The retirement effective date would be either the day after the expiration of your sick leave credit *or* if the application is filed within nine months of the discontinuance of service, the application shall be deemed filed on the last day for which salary was payable. You may request an earlier retirement date if these circumstances do not apply.

(Italics in original.)

*Reevaluation of Ms. Walls's Substantial Incapacity*

5. Ms. Walls was 39 years old when CalPERS approved her application for disability retirement, which is younger than the minimum age for voluntary service retirement for miscellaneous members of CalPERS. Therefore, on April 7, 2014, CalPERS sent her correspondence advising that her "file is currently under review" to determine whether she continued to be substantially incapacitated for the performance of her usual job duties as a Tax Compliance Representative.

6. CalPERS scheduled Ms. Walls for an independent medical evaluation by an orthopedic surgeon. After the independent medical examination, the evaluating physician prepared a report opining Ms. Walls was no longer substantially incapacitated for the performance of her usual job duties and sent the report to CalPERS. CalPERS agreed with the physician's conclusion, and sent Ms. Walls correspondence dated August 7, 2014, advising that she was being reinstated to her former position pursuant to Government Code section 21192. The correspondence also advised her of her right to appeal CalPERS's decision to reinstate her to her former position.

7. Ms. Walls timely appealed CalPERS's decision to reinstate her to her former position. CalPERS filed an Accusation seeking a proposed decision that Ms. Walls was no longer substantially incapacitated and should be reinstated to her former position as a Tax Compliance Representative with the Department of Health Care Services.

8. CalPERS subsequently sent Ms. Walls correspondence on July 6, 2016, which stated, in part:

We are serving you with an Amended Accusation. As you are aware, CalPERS previously made the determination that you were no longer substantially incapacitated and that you should be reinstated to your position as a Tax Compliance Representative with the Department of Health Care Services (DHCS). You have appealed that determination and the hearing on the matter is scheduled to take place on July 29, 2016.

On June 28, 2016, CalPERS was informed by representatives of the DHCS that you were ineligible to be reinstated due to a Waiver of Employment agreement you entered into with DHCS. It is DHCS' position that you agreed to never seek nor accept employment with DHCS. As a result of this agreement, CalPERS has determined that you are not eligible to receive CalPERS disability retirement benefits. For this reason, CalPERS has amended the Accusation you were previously provided to include an additional issue, and we are serving you with the Amended Accusation at this time. Therefore, the issues that will be before the Office of Administrative Hearing [sic] Administrative Law Judge are (1) whether you are eligible to receive CalPERS disability retirement benefits as a result of the complete severance of the employee-employer relationship you had with DHCS, and (2) if the Court determines you are eligible to receive disability retirement benefits, whether you remain substantially incapacitated or are currently capable of performing your usual duties as a Tax Compliance Representative.

9. On September 12, 2016, CalPERS sent Ms. Walls correspondence which read, in part:

As you are aware, CalPERS previously made the determination that you are no longer substantially incapacitated and that you should be reinstated to your position as a Tax Compliance Representative with the Department of Health Care Services (DHCS). A letter informing you of CalPERS' determination was provided to you on or around August 7, 2014.

Based on additional information received subsequent to CalPERS' determination, CalPERS is withdrawing this determination and is no longer seeking to have you reinstated to your former position with the DHCS.

CalPERS has not changed its determination that you are not eligible to receive CalPERS disability retirement benefits as a result of the Waiver of Employment agreement you entered into with DHCS. CalPERS is in the process of drafting and filing a Second Amended Accusation/Statement of Issues that will provide the only issue before the Office of Administrative Hearings Administrative Law Judge on day two of the hearing, currently scheduled to take place on October 17, 2016, is whether you are eligible to receive CalPERS disability retirement benefits as a result of the complete severance of the employee-employer relationship you had with DHCS.

By withdrawing CalPERS' determination, CalPERS is not waiving the right to require you to undergo a medical examination pursuant to Government Code section 21192 and be reinstated pursuant to Government Code section 21193, if it is determined that you are eligible to receive disability benefits and that you are no longer substantially incapacitated.

CalPERS clarified at hearing that it is not seeking to terminate Ms. Walls's disability retirement benefits retroactively, but prospectively from the date of the Board of Administration's final decision in this matter.

#### *Workers' Compensation Claims*

10. Ms. Walls filed five separate claims for workers' compensation benefits between April 21, 2006, and February 14, 2011, for physical injuries she suffered to both arms, her left wrist and hand, and her neck, and for psychological injuries she suffered while working as a Tax Compliance Representative for the Department of Health Care Services. On March 17, 2015, she settled all of those claims, and executed a Compromise and Release.

11. The terms of the settlement required her to sign a Waiver of Employment, and she did so on May 13, 2015. That waiver provided, in part:

Although I have retired or may no longer be employed with the Department of Health Care Services, I understand that I may have mandatory or permissive reinstatement rights to employment with the Department of Health Care Services. Upon my own initiative and after consultation with my attorney(s), to induce the State of California and its

representatives to enter into a compromise and release agreement as final resolution to the above-referenced claim(s), I waive any and all mandatory or permissive rights to reinstatement or rehire by the Department of Health Care Services. In the event the Department of Health Care Services inadvertently hires me, I agree to be immediately dismissed with cause and hereby waive all rights of appeal from said dismissal. I agree not to challenge or move to set aside this voluntary resignation and waiver. The parties agree that the terms set forth herein shall be null and void and not binding upon the parties if finalization by compromise and release is not approved by the Workers' Compensation Appeals Board.

The Workers' Compensation Appeals Board approved the Compromise and Release by order dated May 13, 2015.

12. Maribeth Ennis-Leu is the current workers' compensation manager for the Department of Health Care Services. Her predecessor, Melissa Naranjo, was the manager during the pendency and resolution of Ms. Walls's workers' compensation claims. Ms. Ennis-Leu testified at hearing based on her review of the Department of Health Care Services's workers' compensation file for Ms. Walls, as well as her understanding of the laws and regulations and the Department of Health Care Services's policies and procedures for handling workers' compensation claims. Her testimony was persuasive and uncontroverted.

13. Ms. Ennis-Leu explained there are two ways an injured employee may settle her workers' compensation claims against the Department of Health Care Services – by stipulation or by compromise and release. The former method involves the parties agreeing to a set amount for permanent disability benefits, and an agreement to pay for future medical expenses as they are incurred. The latter method, on the other hand, involves a lump sum payment for all benefits the injured-employee is entitled under the workers' compensation system, including payment of any future medical expenses.

14. Ms. Ennis-Leu explained that as a matter of practice the Department of Health Care Services will not settle workers' compensation claims by compromise and release, unless the injured-employee is no longer working for the Department of Health Care Services and agrees to waive all mandatory and permissive rights to reinstate to her former position. In Ms. Walls's case, she had retired for disability and had been receiving disability retirement benefits for almost two years when the Department of Health Care Services agreed to settle her workers' compensation claims by compromise and release.

*Discussion*

15. It was undisputed that Ms. Walls had been receiving her disability retirement benefits for nearly two years when she settled her workers' compensation claims by

Compromise and Release. The Compromise and Release required her to waive all permissive and mandatory rights to reinstate to her former position as a Tax Compliance Representative with the Department of Health Care Services. Therefore, she permanently and irrevocably terminated her employee-employer relationship with the Department of Health Care Services, effective May 13, 2015, the date on which the Compromise and Release was approved by the Workers' Appeals Board.

## LEGAL CONCLUSIONS

### *Applicable Burden/Standard of Proof*

1. CalPERS has the burden of proving Ms. Walls is no longer eligible to receive disability retirement benefits. (Evid. Code, § 500 [“Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting”].) And it must do so by a preponderance of the evidence. (Evid. Code, § 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence”].) Evidence that is deemed to preponderate must amount to “substantial evidence.” (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) To be “substantial,” evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

### *Applicable Law*

#### Involuntary reinstatement from disability retirement

2. Once Ms. Walls retired for disability, the Board of Administration had authority to require her to undergo medical evaluation at any time prior to her reaching the minimum age for voluntary retirement for service. (Gov. Code, § 21192.) “If the determination pursuant to Section 21192 is that [she] is not so incapacitated for duty in the position held when retired for disability ... and ... her employer offers to reinstate her, ... her disability retirement allowance shall be canceled immediately ... .” (Gov. Code, § 21193.) The minimum age for voluntary retirement for service applicable to Ms. Walls is 50. (Gov. Code, § 21060, subd. (a).) Ms. Walls was 39 years old when her application for disability retirement was approved on May 31, 2013.

#### Eligibility for disability retirement benefits

3. In *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, the appellate court held that an employee's termination for cause rendered him ineligible for disability retirement. The court explained, “while termination of an unwilling employee for cause results in a complete termination of the employer-employee relationship [citation], disability retirement laws contemplate the potential reinstatement of that relationship if the employee recovers and no longer is disabled. [Citation.]” (*Id.*, at p. 1305.)



Therefore:

[W]e conclude that where, as here, an employee is fired for cause and the discharge is neither the ultimate result of a disabling medical condition or 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.*, 1307.)

4. The Board of Administration extended the rule articulated in *Haywood* to the termination of an employer-employee relationship caused by an employee's voluntary resignation and irrevocable waiver of any rights to reinstate to his former position in *In re Vandergoot* (2013) CalPERS Precedential Bd. Dec. No. 13-01. Mr. Vandergoot was a heavy equipment operator with the California Department of Forestry and Fire Protection. He was dismissed from his employment for cause, and appealed his dismissal to the State Personnel Board. He ultimately settled his appeal by agreeing to voluntarily resign his employment and waive any rights to reinstate to his former position in exchange for his employer withdrawing his dismissal for cause.

5. Concluding *Haywood* applies whether Mr. Vandergoot was terminated for cause or voluntarily resigned his employment and waived any reinstatement rights, the Board of Administration explained:

In deciding this case, bright line distinctions need not be made in determining when and under what circumstances a resignation becomes a termination for cause for purposes of applying *Haywood*. This is because *Haywood* makes it clear that a necessary requisite for disability retirement is the potential reinstatement of the employment relationship with the District if it ultimately is determined that respondent is no longer disabled. (*Haywood v. American River Fire Protection District, supra*, 67 Cal.App.4th at pp. 1296 - 1297.) Such is not possible here. The employment relationship has not only been severed, but the terms of the Stipulation and Settlement Agreement expressly lock respondent out from being reinstated. Such a circumstance must be viewed as wholly inconsistent with the policy behind and rationale for disability retirement ... .

(*In re Vandergoot, supra*, CalPERS Precedential Bd. Dec. No. 13-01, at p. 7; quoting, *Haywood v. American River Fire Protection District, supra*, 67 Cal.App.4th at p. 1305.)

6. *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, involved a firefighter whose employment was terminated for cause. He filed an application for disability retirement on the effective date of his termination. The city council affirmed his termination, and the Board of Administration subsequently denied his application for disability retirement pursuant to *Haywood*. (*Smith v. City of Napa, supra*, 120 Cal.App.4th at p. 198.)

7. Analyzing the *Haywood* court's qualification that an employer's dismissal may not preempt "an otherwise valid claim for disability retirement," the *Smith* court identified "the key issue [as] thus whether his right to a disability retirement matured before plaintiff's separation from service." (*Smith v. City of Napa, supra*, 120 Cal.App.4th at p. 206.) The court then explained that "a vested right matures when there is an unconditional right to immediate payment," and "a duty to grant a disability pension ... [does] not arise at the time of injury itself but when the pension board determine[s] that the employee [is] no longer capable of performing his duties." (*Ibid.*) But the appellate court also recognized an equitable exception when there is an impending ruling on an application for disability retirement that is delayed, through no fault of the applicant, until after his employer-employee relationship has been terminated. (*Id.*, at pp. 206-207.)

8. *In re MacFarland* (2016) CalPERS Precedential Bod. Dec. No.16-01, involved a clinical psychologist employed by the California Department of Corrections and Rehabilitation, California Correctional Health Care Services (CCHCS). CCHCS served Mr. MacFarland with notice that his employment would be terminated, effective the close of business July 26, 2013. Two days later, Mr. MacFarland signed a letter addressed to CCHCS "stating that he was 'officially retiring effective July 23, 2013 [*sic*] and filing for disability retirement and not returning to CPS sac [*sic*] as per my doctor's orders as my injuries sustained at CSP Sac prevent me from returning to work in the prison environment.'" He subsequently applied for disability retirement.

9. Concluding Mr. MacFarland was ineligible for disability retirement benefits pursuant to the holdings in *Haywood* and its progeny, the Board of Administration explained:

The record is clear that applicant's employer made its decision to terminate him on or before it issued the July 7, 2013 NOAA [Notice of Adverse Action], advising that his employment would be terminated on July 23, 2013. Applicant service-retired from his employment three days before the effective date of his termination for cause. Had applicant not service-retired on July 23, 2013, his employment would have been terminated on July 26, 2013. The evidence is persuasive that should applicant attempt to reinstate with his employer, the NOAA would be enforced and he would be barred from reinstatement. Additionally, applicant waived any appeal rights and would be barred from seeking to overturn the NOAA.

Furthermore,

The law does not respect form over substance. [Citation.] The courts look to the “objective realities of a transaction rather than to the particular form the parties employed. Thus, we focus on the actual rights and benefits acquired, not the labels used.” [Citation.] Here, the evidence is persuasive that applicant retired to avoid termination from employment. His relationship with his employer had been severed prior to his retirement, when the NOAA was served on him. His severance became irrevocable when he withdrew any appeal he filed. Applicant is barred from returning to his former employment and thus the holdings in *Vandergoot* and *Haywood* render him ineligible for disability retirement, unless he meets an exception identified in *Haywood* and *Smith*.<sup>2</sup>

### Conclusion

10. Ms. Walls had been receiving her disability retirement benefits for nearly two years when she decided to settle her workers’ compensation claims against the Department of Health Care Services. Ms. Walls would not have been offered the terms of the settlement she ultimately accepted if she had not already retired or otherwise left her employment with the Department of Health Care Services. She permanently severed her employee-employer relationship with the Department of Health Care Services solely because of her disability. Therefore, termination of that relationship was “the ultimate result of a disabling medical condition,” and does not affect her eligibility to continue receiving disability retirement benefits. (*Haywood v. American River Fire Protection District, supra*, 67 Cal.App.4th at p. 1307.)

### ORDER

Respondent Ramona V. Walls’s appeal from CalPERS’s determination that she is no longer eligible to receive CalPERS’s disability retirement benefits is GRANTED.

DATED: October 31, 2016

DocuSigned by:  
*Coren D. Wong*  
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COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> None of the exceptions articulated in *Haywood* and *Smith* are applicable here.