

1 MATTHEW G. JACOBS, GENERAL COUNSEL
2 ELIZABETH YELLAND, SENIOR STAFF ATTORNEY, SBN 160740
3 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
4 Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811
5 P. O. Box 942707, Sacramento, CA 94229-2707
6 Telephone: (916) 795-3675
7 Facsimile: (916) 795-3659

FILED
Superior Court of California
County of Los Angeles

OCT 23 2015

Attorneys for California Public
Employees' Retirement System

Sherri R. Carter, Executive Officer/Clerk
By Annette Fajardo Deputy
Annette Fajardo

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

8 SERGIO GARCIA,)
9)
10) Petitioner,)
11) and)
12) BOARD OF ADMINISTRATION,)
13) CALIFORNIA PUBLIC EMPLOYEES')
14) RETIREMENT SYSTEM,)
15) Respondent.)

CASE NO. BS 152305
[REDACTED] JUDGMENT ON
PETITION FOR WRIT OF
MANDATE; ORDER
Hearing Date: October 13, 2015
Time: 1:30 p.m.
Hearing Location: Department 85,
Los Angeles Superior Court

15 Oral Argument in this matter was held on Tuesday, October 13, 2015, at 1:30
16 pm, in Department 85, Los Angeles Superior Court. Following oral argument, this
17 Court confirmed its Tentative Ruling as its final ruling on Petitioner Sergio Garcia's Writ
18 of Mandate. Under the Order, Petitioner's Petition and Motion are denied. ~~Approved~~
19 ~~the Tentative Ruling is affirmed.~~

20 Dated: 10/16/15

Elizabeth Yelland
ELIZABETH YELLAND
Attorney for Respondent
Board of Administration of the California
Public Employees' Retirement System

22 Approved as to form.

23 Dated: 10/16/15

Mark E. Singer
MARK E. SINGER
Attorney for Petitioner
Sergio Garcia

RECEIVED
OCT 20 2015
DEPT. 85

STATE'S
EXHIBIT
15

1 DECLARATION OF ELIZABETH YELLAND IN SUPPORT OF PROPOSED ORDER

2 I, Elizabeth Yelland, declare:

3 1. I am an attorney at law licensed to practice before this Court, and I am Senior
4 Staff Counsel for California Public Employees' Retirement System (CalPERS).
5 I am attorney of record for CalPERS in this matter.

6 2. The statements herein are based upon my personal knowledge and if called to
7 testify under oath in court I could and would so testify.


8 3. I served the [Proposed] Order on Petition for Writ of Mandate on Petitioner's
9 counsel Mark E. Singer on October 15, 2015 via email.

10 4. Petitioner's counsel Mark E. Singer has informed me he has no objections to
11 the [Proposed] Order.


12 5. There are no unresolved objections to the [Proposed] Order.

13 6. The statements made in this Declaration are true and correct, except as to
14 those matters stated upon information and belief, and to those matters I believe them to
15 be true.

16 Executed under penalty of perjury pursuant to the laws of the State of California,
17 on October 15, 2015 at Sacramento, California.

18 
19 ELIZABETH YELLAND
20 Attorney for Respondent
21 Board of Administration of the California
22 Public Employees' Retirement System

21 
22 JUDGE

22 IT IS SO ORDERED:
23 
24 HON. JAMES CHALFANT
25 Judge of the Superior Court

117A

**Sergio Garcia v. Board of Administration of
the Public Employees' Retirement System**
BS 152305

Tentative decision on petition for writ of
mandate: denied

Petitioner Sergio Garcia ("Garcia") seeks a writ of mandate compelling Respondent Board of Administration of the Public Employees' Retirement System ("CalPERS") to accept Garcia's application for industrial disability retirement.

The court has read and considered the moving papers, opposition,¹ and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioner Garcia commenced this proceeding on November 18, 2014. The Petition alleges in pertinent part as follows.

On June 7, 2012, Garcia filed an application with CalPERS for industrial disability retirement. CalPERS acknowledged receipt of the application. Garcia submitted to CalPERS medical reports in support of his application and on August 9, 2012, CalPERS requested further medical information from Garcia's treating physician.

On August 9, 2012 CalPERS indicated that Garcia's file was being reviewed to become effective January 26, 2012, which was earlier than the date of application, and requested more information. Garcia responded to CalPERS' letter. On December 24, 2012 CalPERS requested further information regarding Garcia's application. Garcia responded to that request the same day.

On March 25, 2013 CalPERS notified Garcia of an orthopedic appointment with CalPERS' Independent Medical Examiner ("IME"). Garcia attended this appointment on April 22, 2013

On June 18, 2013, after having processed his application for a year, CalPERS notified Garcia that it had cancelled his application pursuant to Haywood v. American River Fire Protection District, (1998) 67 Cal.App.4th 1292.

On June 20, 2013 Garcia appealed to CalPERS and requested a formal administrative hearing regarding its cancellation of his industrial disability retirement application. On May 8, 2014, the hearing was held at the Office of Administrative Hearings before Administrative Law Judge Samuel D. Reyes (the "ALJ"). The ALJ issued a proposed decision recommending the rejection of Garcia's disability retirement application, and on September 22, 2014 CalPERS's Board notified Garcia that it had adopted the ALJ's proposed decision.

Garcia contends that CalPERS' finding that his industrial disability retirement application should be rejected constitutes a prejudicial abuse of discretion as not supported by the weight of the evidence.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies.

¹ CalPERS 20-page opposition violates the 15-page limit of CRC 3.1113(d). The court has exercised its discretion to consider only the first 15 pages of the opposition.

Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15.

CCP section 1094.5 does not in its face specify which cases are subject to independent review, leaving that issue to the courts. Fukuda v. City of Angels, (1999)20 Cal.4th 805, 811. In cases reviewing decisions which affect a vested, fundamental right the trial court exercises independent judgment on the evidence. Bixby v. Pierno, (1971) 4 Cal.3d 130, 143. See CCP §1094.5(c). A public employee has a vested, fundamental right to a pension or retirement benefits. Strumsky v. San Diego County Employees Retirement Association, (1974) 11 Cal.3d 28, 45.

Under the independent judgment test, "the trial court not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence disclosed in a limited trial de novo." Id. at 143. The court must draw its own reasonable inferences from the evidence and make its own credibility determinations. Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, (2003) 107 Cal.App.4th 860, 868. In short, the court substitutes its judgment for the agency's regarding the basic facts of what happened, when, why, and the credibility of witnesses. Guymon v. Board of Accountancy, (1976) 55 Cal.App.3d 1010, 1013-16.

However, "[i]n exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." Fukuda, supra, 20 Cal.4th at 817. Unless it can be demonstrated by petitioner that the agency's actions are not grounded upon any reasonable basis in law or any substantial basis in fact, the courts should not interfere with the agency's discretion or substitute their wisdom for that of the agency. Bixby, supra, 4 Cal.3d 130, 150-151; Bank of America v. State Water Resources Control Board, (1974) 42 Cal.App.3d 198, 208.

The agency's decision must be based on a preponderance of the evidence presented at the hearing. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, supra, 11 Cal.3d 506, 514-15. Implicit in section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Id. at 115.

An agency is presumed to have regularly performed its official duties (Ev. Code §664), and the petitioner therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137. "[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion. Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691.

C. Applicable Law

The legislative purpose of public employee pension programs is well established. They "serve two objectives: to induce persons to enter and continue in public service, and to provide subsistence for disabled or retired employees and their dependents. . . ." Wheeler v. Board of Administration, (1979) 25 Cal. 3d 600, 605. Disability pension laws are intended to alleviate the harshness that would accompany the termination of an employee who has become medically unable to perform his duties. Govt. Code §20001.

When it is established that a member of PERS “is incapacitated physically or mentally for the performance of his or her duties in the state service and is eligible to retire for disability,” the CalPERS Board shall immediately retire the member for disability, unless the member is qualified to be retired for service. Govt. Code §21156. “Incapacitated for the performance of duty” means “disability of permanent or extended and uncertain duration, as determined by the board ... on the basis of competent medical opinion.” Govt. Code §20026.

Until an employee on disability retirement reaches the age of voluntary retirement, an employer may require the employee to undergo a medical examination to determine whether the disability continues. Govt. Code §21192. An employee on disability retirement may apply for reinstatement on the ground of recovery. *Id.* If an employee on disability retirement is found not to be disabled any longer, the employer may reinstate the employee, and his disability allowance terminates. Govt. Code §21193.

Disability retirement laws address the case of an employee who is unable to perform his duties, not an employee who is unwilling to perform. See *Schneider v. Civil Service Com.*, (1955) 137 Cal.App.2d 277, 285. Disability retirement laws are not intended to be used to allow an unwilling employee to retire early in derogation of the obligation of faithful performance of duty. *MacIntyre v. Retirement Board of San Francisco*, (“MacIntyre”) (1941) 42 Cal.App.2d 734, 736. As a policy, “[t]he pension roll is a roll of honor—a reward of merit, not a refuge from disgrace; and it would be an absurd construction of the language creating it to hold that the intention of the Legislature was to give a life annuity to persons who, on their merits, as distinguished from mere time of service, might be dismissed from the force for misbehavior.” *Id.* While nothing in the PERS law restricts an employer’s right to fire an employee, the Legislature has precluded an employer from terminating an employee because of medical disability if the employee would be otherwise eligible for disability retirement. Govt. Code §21153. In such a case, the employer must instead apply for the employee’s disability retirement. *Id.*

A complete severance of the employment relationship will extinguish the eligibility to apply for a disability retirement under the CalPERS system if not preemptive of a vested and matured right to a disability retirement or itself not the ultimate result of a disabling condition. *Haywood v. American River Fire Protection Dist.*, (“Haywood”) (1998) 67 Cal.App.4th 1292. This conclusion “is consistent with holdings in similar cases involving claims for benefits after a termination of employment” extending long before its specific application to CalPERS disability retirement. *Id.* at 1307. A severance of the employment relationship negates a “necessary requisite” of eligibility for a disability retirement: the employee’s possible return to state service should he be found no longer disabled. *Id.* at 1277, 1306. This rule recognizes that in providing an option for a disability retirement, the pension law has, as an objective, to “induce persons to enter and continue in public service, while the merit employment system recognizes that “the public is best served when department officials are permitted to eliminate unqualified or undesirable personnel, and to replace them with persons better qualified.” *Id.* at 1296; *MacIntyre, supra*, 42 Cal.App.2d at 736.

In *Smith v. City of Napa*, (“Smith”) (2004) 120 Cal.App.4th 194, the court revisited its earlier decision in *Haywood* for the express purpose of explaining what it had previously stated to be a “conceivable” exception to the general rule of precluding an application where a severance was preemptive of a matured right to a disability retirement. *Id.* at 205. This exception flows from a public agency’s obligation to apply for a disability retirement on behalf of disabled employees

rather than seek to dismiss them directly on the basis of the disability or indirectly through cause based on the disability. *Id.* Thus, if a plaintiff were able 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. *Id.* At 206. Conversely, if the employee is dismissed before the right matures, the right to disability retirement is lost. *Id.*

The Vandergoot Decision, which has been designated Precedential by the CalPERS Board of Administration, provides guidance on when an employee is entitled to disability retirement. AR 52-58F.² In Vandergoot, the employee was served with a Notice of Adverse Action ("NOAA"), and subsequently reached a stipulated settlement wherein his employer agreed to withdraw the NOAA in exchange for the employee's voluntary termination. Following the stipulation, the employee submitted his disability retirement application to CalPERS. The application was rejected on the grounds that the employee had been terminated for cause.

The Vandergoot ALJ was not persuaded by the employee's contentions that he was not precluded from applying for disability retirement because he had resigned. The ALJ concluded that the character of the disciplinary action terminating the employment did not change because the employee elected to settle the case prior to exhausting his appeal rights. But for the pendency of the disciplinary action, the employee would not have entered into a settlement agreement with his employer resigning from his position. The employee's resignation resulted in his permanent separation of service. Therefore, the employment relationship was ultimately terminated on the effective date of his NOAA. The employee's termination for cause barred his eligibility to apply for disability retirement. Under those circumstances, the employee's resignation was tantamount to a dismissal. AR 58B-58C.

D. Statement of Facts

1. The Termination

Petitioner Garcia worked as a Senior Special Investigator for the Department of Industrial Relations ("DIR") beginning on July 23, 2007. AR 3-4. On January 13, 2010, DIR filed and served on Garcia a NOAA seeking to dismiss him for cause effective on January 25, 2010. See AR 42.

Garcia appealed his dismissal. On March 6, 2012, the parties appeared for an evidentiary hearing before Jason A. Krestoff, Administrative Law Judge, State Personnel Board. AR 41. At hearing and with the assistance of ALJ Krestoff, the parties entered into a stipulation which formed the basis of ALJ Krestoff's Proposed Decision. AR 40-48.

The parties stipulated as follows. Garcia agreed to resign his employment with DIR in lieu of dismissal: AR 42-43. Garcia agreed that this resignation was irrevocable, final, and binding once the State Personnel Board approved the agreement. AR 43. Garcia further agreed not to seek

² Precedential Decision. In the Matter of Application for Disability Retirement of Robert C. Vandergoot (Respondent) and California Dept. of Forestry and Fire Protection (Respondent), dated February 19, 2013; adopted by CalPERS Board of Administration, April 17, 2013; made Precedential by the CalPERS Board of Administration, October 16, 2013. Once a final decision has been designated as precedential, it binds all future appeals to the extent that the disputed law and issues are the same. Gov. Code §11425.60.

or accept future employment by the Labor and Workforce Development Agency ("LWDA"), which includes DIR. AR 43-44. Finally, Garcia irrevocably and unconditionally released all claims and causes of action, known or unknown, arising out of his employment with DIR. AR 44. In return, DIR accepted Garcia's resignation and withdrew the NOAA from Garcia's official personnel file. AR 45. The parties agreed that the settlement agreement would have no effect on Garcia's claims for workers compensation benefits, and DIR retained the right to defend any workers compensation benefit claims using the NOAA and other documents produced at Garcia's Skelly hearing. AR 46. The agreement also had no effect on Garcia's ability to pursue a disability claim. Id.

The State Personnel Board approved the settlement stipulation on March 8, 2012. AR 50. By letter dated March 6, 2012, Garcia resigned for personal reasons effective January 25, 2010. AR 60.

2. The Disability Retirement Application

On May 25, 2012, Garcia applied for industrial disability retirement. AR 13-21. Garcia claimed disability on the basis of orthopedic and psychiatric injuries resulting from an assault on August 28, 2008. AR 14. Garcia stated that on that date, while he was attempting to gather evidence, two security guards interfered and pulled a ladder away from Garcia, injuring his left finger, right shoulder, and causing Garcia to lose consciousness. AR 87. On January 13, 2010, Garcia re-injured his right shoulder while at work. Id. Dr. Philip A. Sobel diagnosed Garcia with allodynia, increased hypersensitivity, and swelling throughout the upper right extremity. Id.

On August 9, 2012, CalPERS sent Garcia a letter requesting additional information regarding his application. AR 96. CalPERS also requested information from DIR regarding Garcia's disability claim, which DIR provided. AR 100.

3. The CalPERS Hearing

On May 8, 2014, a hearing was held on Garcia's application for disability retirement before ALJ Samuel D. Reyes. AR 109. At the outset of the hearing, the parties stipulated that Garcia's separation from employment was not the result of a disabling condition, and was not preemptive of an otherwise valid claim for disability retirement. AR 110. The only issue presented at the hearing was whether the application should be received or cancelled under Haywood and Vandergoot. AR 113.

Salzman

Attorney Ira Salzman ("Salzman") testified that he represented Garcia in the State Personnel Board proceeding which consummated with Garcia's stipulated resignation and without a concession from Garcia that his termination was proper. AR 120-21.

Under the terms of the agreement, Garcia could not seek re-employment with the agencies within LWDA: DIR, Employment Development Department, Workforce Investment Act Board, and the Agricultural Labor Relations Board. AR 43. But he could have gone back to work in his Senior Special investigator position for any State of California department other than those included within the LWDA. AR 121. Garcia could even have been reinstated to his position of Senior Special Investigator with LWDA if the LWDA chose to hire him and permit him to remain employed. AR 44. This would occur in the employer's sole discretion, but was not completely

foreclosed. AR 121-123. All parties to the settlement agreed that the agreement would not be a bar to Garcia applying for an industrial disability retirement. If it were a bar, he would not have settled. AR 123.

On cross-examination Salzman acknowledged that Garcia's resignation was irrevocable (AR 124-26) and he had given up his right to be reemployed by DIR or other member agency of the LWDA. AR 128. As a condition of the settlement, Garcia would not have any State identification, State badge, or anything indicating that he was a Senior Special Investigator. AR 127. Garcia would, however, be able to reapply for State employment. AR 128.

On re-direct Salzman agreed that the agreement provides that re-employment with an LWDA agency would be deemed a breach of the agreement. AR 130. Upon breach, Garcia agreed that the LWDA employer could dismiss him without the usual disciplinary procedural protection. AR 131. The appointing authority maintained the discretion to allow him to return to work if it so chose. AR 134.

Garcia

Garcia testified that he was born on April 17, 1956 and he began his employment with DIR on July 23, 2007. AR 135, 138. During his employment, Senior Special Investigator positions exist in the Departments of Consumer Affairs, Development and Health, Motor Vehicles, ABC, Medical Board, Automobile Services, and State Hospitals, among others. AR 136. After he was hired by DIR, he remained eligible to work in these other Senior Special Investigator positions since he had passed the exam. AR 137.

When he agreed to the settlement agreement, Garcia did not agree that he would not seek a Senior Special Investigator position other than with DIR. There were other such positions available in the State of California employment. He also did not give up his right to apply for an industrial disability retirement. AR 139-40.

Garcia was injured on August 28, 2008 and went off work on September 3, 2008. AR 138. He injured his right shoulder, head, and right index finger. AR 138.

On cross-examination, Garcia admitted that he resigned from his position, he waived his right to revoke his resignation, and his resignation was final and binding. AR 143-44. He turned in his State badges and materials as part of the settlement. AR 144. ALJ Kristof told Garcia that the DIR had the discretion to allow him to reapply for his job. AR 145. Garcia acknowledged that such re-employment would be a breach of the settlement agreement and he could be summarily dismissed. AR 146-47

4. The Decision

ALJ Reyes concluded that Garcia's case was not materially distinguishable from the Haywood. AR 155. He determined that Garcia's resignation severed his employment relationship to DIR, and his resignation was no less final than the termination for cause in Haywood. AR 155. As a result, he found that Garcia was not eligible to file a disability application and CalPERS must reject it.

CalPERS adopted the ALJ's decision on September 17, 2014. AR 187.

E. Analysis

Garcia makes three arguments in support of his contention that CalPERS is required to

consider his disability retirement application (1) the holdings of Haywood and Vandergoot are distinguishable because their rationale is based on the ability of the former employer to compel reinstatement of the employment relationship when the member is no longer disabled through a medical examination, (2) the settlement agreement did not effect a complete severance of the employment relationship, and (3) Garcia retained the opportunity to seek employment as a Senior Special Investigator with other State agencies.

1. Garcia's Effort to Distinguish Haywood and Vandergoot

In Haywood, the court stated that when an employee's 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." Haywood, supra, 67 Cal.App.4th at 1307. In Vandergoot, the CalPERS Board stated that there was little distinction between a firing for cause and a settlement in the face of charges which locks out the employee from being reinstated. AR 58B. The employment relationship has been severed, and there is no possibility of reinstatement under Govt. Code sections 21192 and 21193. The settlement was tantamount to a dismissal for purposes of applying the Haywood criteria. AR 58C.

Petitioner implicitly admits that Haywood and Vandergoot hold that where the employment relationship is severed, whether through termination (Haywood) or stipulated resignation (Vandergoot), no disability application may be considered by CalPERS unless the right to disability retirement is vested and matured, either because it already was granted or approval is a foregone conclusion. See Smith, supra, 120 Cal.App.4th at 207. While Garcia was not discharged for cause, he resigned from his position as part of a settlement agreement following an NOAA. AR 42-43. This is tantamount to a dismissal for cause because the resignation occurred under the cloud of disciplinary action. Just as in Vandergoot, Garcia's settlement agreement locks him out from being reinstated and is inconsistent with the policy behind disability retirement, which contemplates the potential for reinstatement. See AR 58B.

Petitioner distinguishes the rationale of these cases by pointing out that they rely on the fact that a necessary requisite of disability retirement is the potential reinstatement of the employment relationship if it is ultimately determined that the employee is no longer disabled. Under Govt. Code section 21192, an employer can compel a disabled retiree not of voluntary retirement age to undergo a medical examination to determine whether the disability continues. If the employee is no longer disabled, the employer can reinstate the employee. Govt. Code §21193. Yet, an employee who has been terminated for cause or by stipulated settlement cannot possibly be reinstated, thereby frustrating a necessary requirement of the disability retirement system. See Haywood, supra, 67 Cal.App.4th at 1306; Vandergoot, at AR 58B.

Petitioner argues that he had already reached the age for voluntary retirement when he filed his disability application, and DIR could not compel him to undergo a medical exam and be reinstated under Government Code sections 21192 and 21193. Petitioner concludes that the employment relationship ends upon disability retirement and there is no possibility of compelled reinstatement. Therefore, the holdings of Haywood and Vandergoot do not control.

Petitioner misses the point. Haywood holds that termination for cause results in a complete termination of the employer-employee relationship, no basis exists for a disability retirement, and to permit a disability retirement would interfere with the employer's ability to discipline

employees. 67 Cal.App.4th at 1306-07. So long as the termination was not the ultimate result of a disabling medical condition or preemptive of an otherwise valid claim for disability retirement,³ the termination renders the employee ineligible for disability retirement regardless of when the application was filed. *Id.* at 1307.

This holding is not affected by whether the employee on disability retirement can be compelled to return to service. It is true that *Haywood* stated that one of the reasons for the discharged employee's ineligibility for disability retirement was that the disability law contemplates a potential return to active service. *Id.* at 1306-07. The court noted that an employer may require an employ who has not reached the age of voluntary retirement to undergo a medical exam and reinstate the employee if no longer disabled. *Id.* at 1305, 1307 (citing Govt. Code §21192, 21193). But this discussion also noted that the employee on disability retirement also voluntarily could apply for reinstatement on the ground of recovery. *Id.* at 1305 (citing Govt. Code §21192). In other words, it is the potential for return to active service that is important, whether the employer compels it through medical exam or the employee seeks a return based on his or her recovery. Moreover, the potential for reinstatement was only one of "the reasons stated above" for determining that a termination of the employment relationship generally renders the employee ineligible for disability retirement. *Id.* at 1307. Another reason was that the disability retirement system could not be permitted to interfere in the employer's authority to discipline recalcitrant employees. *Id.* at 1306.⁴

2. The Settlement Agreement Resulted in a Complete Severance of the Employment Relationship

Petitioner contends that he retained limited rights to be reinstated within the LWDA. Mot. at 10. He is wrong.

In the settlement agreement, Garcia agreed that his resignation was irrevocable, final, and binding and further agreed not to seek or accept future employment by the Labor and Workforce Development Agency ("LWDA"), which includes DIR. AR 43-44. The settlement agreement further provides that any re-employment of Garcia by an LWDA agency would be deemed a breach of the agreement, and he could be dismissed summarily. AR 130-31.

These are not limited rights of re-employment. Garcia had no right of re-employment at all. The mere fact that an LWDA agency could chose, in its sole discretion, to overlook the settlement agreement has no bearing on this fact. The right to overlook the settlement agreement belongs to the agency, not Garcia.

3. Garcia's Right to Seek Other State Employment Does Not Aid Him

Petitioner argues that his right to re-employment has not been completely severed because he was not terminated and he retained his right to apply for any Senior Special Investigator position in State service other than the LWDA. Mot. at 10. He attempts to distinguish his case from the petitioner in *Vandergoot*, who was employed as a firefighter but agreed not to seek future employment with the fire department. Garcia claims that, because reinstatement to a position at

³ Garcia stipulated that he does not meet the exceptions to the *Haywood* holding. AR 110.

⁴ That Garcia would not seek a return to service is immaterial; it is the potential for return that is important.

the same classification is allowed under Government Code section 21193, his ability to apply to other Senior Special Investigator positions in other departments means that he could be reinstated. Mot. at 10-11.

This argument suggests that all State agencies are a single employer. They are not. As the ALJ correctly found, if Garcia obtained employment with another State agency as a Senior Special Investigator, it would not reinstate his eligibility to seek disability retirement for injuries sustained while working for DIR. Nor would it make the new employing agency responsible for those injuries. AR 165.⁵ Consequently, Garcia's right to seek other State employment does not affect the complete severance of his employment relationship with DIR.⁶

F. Conclusion

Haywood and Vandergoot control the outcome of this case. Petitioner is not eligible for a disability retirement and the petition for writ of mandate is denied. Respondent CalPERS's counsel is ordered to prepare a proposed judgment, serve it on Petitioner's counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for November 12, 2015 at 9:30 a.m.

⁵ Government Code section 21193 does not state to the contrary. It merely states that a former State employee who is no longer incapacitated for his job classification shall be reinstated to his or her former position, but acceptance of a different job terminates the right to reinstatement.

⁶ Finally, Garcia notes that the settlement agreement permitted him to apply for disability retirement. Mot. at 11. This is true, but the parties did not agree on any result for that application.

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On October 19, 2015, I served the foregoing document described as:

(PROPOSED) JUDGMENT ON PETITION FOR WRIT OF MANDATE;
ORDER- Sergio Garcia v. Board of Administration, CalPERS

Case No. BS152305; Case No. 2014-1234; OAH No. 2013080710.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and/or e-filed as follows:

Mark Ellis Singer
Faunce, Singer & Oatman
12501 Chandler Blvd., Suite 200
North Hollywood, CA 91607

Superior Court of California, County of Los Angeles
Stanley Mosk Courthouse, Department 85
111 North Hill Street
Los Angeles, CA 90012

Sergio Garcia
Faunce, Singer & Oatman
12501 Chandler Blvd., Suite 200
North Hollywood, CA 91607

[X] BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address(es) within 24 hours by overnight delivery service.

Executed on October 19, 2015, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

KADY PASLEY
NAME


SIGNATURE

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On December 4, 2015, I served the foregoing document described as:

NOTICE OF ENTRY OF JUDGEMENT AND COURT ORDER - Sergio Garcia v. Board of Administration, CalPERS

Case No. BS152305; Case No. 2014-1234; OAH No. 2013080710.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and/or e-filed as follows:

Mark Ellis Singer
Faunce, Singer & Oatman
12501 Chandler Blvd., Suite 200
North Hollywood, CA 91607

Clerk of the Court (Stanley Mosk Courthouse)
Superior Court of California,
County of Los Angeles
111 North Hill Street
Los Angeles, CA 90012

Sergio Garcia
Faunce, Singer & Oatman
12501 Chandler Blvd., Suite 200
North Hollywood, CA 91607

Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142-0603

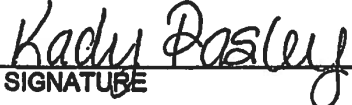
Department of Industrial Relations
Theresa Wassman
455 Golden Gate Avenue
San Francisco, CA 94105

[X] BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address(es) within 24 hours by overnight delivery service.

Executed on December 4, 2015, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Kady Pasley
NAME


SIGNATURE