



California Public Employees' Retirement System
Benefit Services Division
P.O. Box 2796
Sacramento, CA 95812-2796
TTY: (877) 249-7442
(888) CalPERS (225-7377) phone • (916) 795-1280 fax
www.calpers.ca.gov

CalPERS ID: [REDACTED]

April 14, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

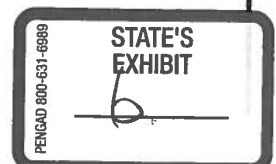
Mr. Sheldon Scarber
[REDACTED]

Dear Mr. Scarber:

We have received your application for industrial disability retirement; however, we are unable to accept it. The case of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, 79 Cal. Rptr.2d 749 holds that where "an employee is terminated for cause and the discharge is neither the ultimate result of the 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. The case of *Smith v. City of Napa* (2004) 120 Cal. App. 4th 194 and the Precedential Decision *In the Matter of Application for Disability Retirement of Robert C. Vandergoot and California Dept. of Forestry and Fire Protection (Respondents) (2013)* provide further clarification for the purposes of applying *Haywood*.

Following a review of your application and file, it 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 disability retirement.

The application has been cancelled. You will not be eligible to apply for disability retirement in the future unless you return to work for a CalPERS-covered employer and subsequently become unable to perform your job duties because of a physical or mental condition.



Mr. Sheldon Scarber
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You have the right to appeal, if desired, by filing a written appeal with the System's Sacramento office, within thirty days of the mailing of this letter, in accordance with sections 555-555.4, Title 2, California Code of Regulations. An appeal, if filed, should set forth the factual basis and the legal authorities for such appeal. If you file an appeal, the Legal Office will contact you and handle all requests for information. If you have any questions regarding this matter, you may contact this office.

Sincerely,



ANTHONY SUINE, Chief
Benefit Services Division

Enclosure

cc: Department Of California Highway Patrol
State Contract Services – Sacramento

CALIFORNIA CODE OF REGULATIONS TITLE 2, SECTIONS 555-555.4

555. ACTION OF EXECUTIVE OFFICER.

The Executive Officer is hereby authorized to act: on any application for refund of contributions, crediting of service, correction of records, retirement for disability or service, and death benefits and allowances; and to fix and authorize the payment of any refund, allowance or benefit to which such applicant may be found to be entitled; to cause medical examination of retired persons; and to reinstate such persons from retirement upon his determination that disability does not exist. The Executive Officer may refer the question of an applicant's entitlement to any refund, allowance or benefit or of his reinstatement from retirement to a hearing officer for hearing.

The Executive Officer is hereby authorized and empowered to delegate to his subordinates authority to take any such action on his behalf.

555.1. RIGHT OF APPEAL.

Any applicant dissatisfied with the action of the Executive Officer on his application, other than his referral of the matter for hearing, may appeal such action to the Board by filing a written notice of such appeal at the offices of the Board within thirty days of the date of the mailing to him by the Executive Officer, at his most recent address of record, of notice of the action and right of appeal. An appeal shall contain a statement of the facts and the law forming the basis for appeal. Upon a satisfactory showing of good cause, the Executive Officer may grant additional time not to exceed 30 days, within which to file an appeal.

555.2. STATEMENT OF ISSUES.

Any applicant filing an appeal shall be entitled to a hearing, and upon the filing of an appeal in accordance with these rules, or upon the Executive Officer's referral of any question for hearing, the Executive Officer shall execute a statement of issues. Such action of the Executive Officer shall not preclude the Board from recalling the proceedings for its review or hearing.

555.3. ACCUSATION.

Any member whose retirement for disability has been requested by his employer shall be entitled to a hearing. The Executive Officer, upon determination that a member shall be retired for disability on such application, shall file an accusation and serve a copy thereof on the member and his employer.

555.4. HEARINGS.

All hearings shall be conducted in accordance with the provisions of Chapter 5, Part 1, Division 3, Title 2 of the Government Code. Each case shall be heard by the hearing officer alone. All proposed decisions of hearing officers shall be referred to the Board. The Executive Officer is hereby authorized and empowered to take, in the name and on behalf of the Board, any action which the Board is authorized or directed by law to take with respect to procedural and jurisdictional matters in connection with any case in which a statement of issues or accusation has been filed.