

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:

Case No. 2015-0794

SCOT A. LEGEMAN,

OAH No. 2016060509

Applicant/Respondent,

and

CALIFORNIA DEPARTMENT OF
CORRECTIONS & REHABILITATION,
CALIFORNIA INSTITUTION FOR WOMEN,

Respondent.

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 12, 2016, in San Bernardino, California.

Terri L. Popkes, Senior Staff Attorney, represented Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS), State of California.

No appearance was made by or on behalf of respondent, Scot A. Legeman.

No appearance was made by or on behalf of respondent, California Department of Corrections & Rehabilitation, California Institution for Women.

The matter was submitted on December 12, 2016.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED *Dec 23 2016*
Kathy P. Kelly

DEFAULT

On proof of compliance with Government Code sections 11504 and 11509, this matter proceeded as a default pursuant to section 11520.

FACTUAL FINDINGS

Background

1. Respondent¹ was employed as a correctional sergeant with the Department of Corrections & Rehabilitation (CDCR), beginning in August 2006. By virtue of his employment, respondent was a state safety member of CalPERS subject to Government Code sections 21151 and 21154.

2. On May 12, 2012, CDCR served on respondent a Notice of Adverse Action (Notice), terminating for cause, his employment as a correctional sergeant.

3. On May 23, 2014, more than two years after his termination for cause, respondent filed an application for an industrial disability retirement, claiming the right to receive disability retirement benefits due to orthopedic conditions.

4. CalPERS reviewed respondent's application and the applicable law, and determined that respondent had been terminated for cause. CalPERS further concluded that respondent's discharge was neither the result of the claimed disabling medical condition nor preemptive of any otherwise valid claim for disability retirement. Pursuant to applicable law, CalPERS cancelled respondent's application and notified him of his right to appeal.

5. On May 11, 2015, respondent appealed the cancellation of his application.

6. On March 29, 2016, Anthony Suine, Chief, CalPERS Benefits Services Division, signed the Statement of Issues in his official capacity seeking to uphold the cancellation of respondent's application for an industrial disability retirement. This hearing ensued.

7. The issue in this appeal is limited to whether CalPERS must accept respondent's application for an industrial disability retirement, or whether respondent's application and eligibility for a disability retirement are precluded by virtue of his termination for cause.

8. When the hearing was called, there was no appearance by respondent. Complainant's counsel attempted to contact respondent from the hearing room to no avail. Complainant's counsel's secretary advised that respondent had informed CalPERS he would

¹ In this decision, the term "respondent" refers to Mr. Legeman, and not CDCR.

not be appearing and would file a notice of withdrawal. At the time the hearing commenced, no notice of withdrawal had been received by CalPERS.

9. A finding is made that respondent was properly served at his address of record and by not appearing, is in default. Complainant elected to proceed with a prove-up hearing.

Employment Background and Termination²

10. Respondent was employed with CDCR beginning in 2006.

11. The incidents leading to the Notice of Adverse Action dismissing respondent from his employment occurred between May 19, 2011, and January 30, 2012. CDCR alleged, as a basis for termination, the following: Inexcusable neglect of duty; insubordination; dishonesty; discourteous treatment of the public or other employees; willful disobedience; other failure of good behavior either during or outside the duty hours of such a nature that it caused discredit to the appointing authority or the person's employment; and unlawful retaliation against a state officer or employee who reported misconduct.

Shantle Jones, an Employee Relations Officer for CDCR, testified regarding the circumstances that led to respondent's termination. On multiple occasions, respondent lied about receiving lab results involving contraband confiscated from inmates; falsified logs regarding when he received the lab results; used the falsified date-stamped results to justify imposing discipline on inmates; lied about the falsification of the logs; disregarded an admonishment not to discuss his pending disciplinary investigation with anyone; and retaliated/harassed a lieutenant who was involved in the investigation.

According to Ms. Jones, at no time during the investigation did respondent raise any allegation of a disability or orthopedic condition, nor did the investigation relate in any way to any claimed disability.

12. The Notice of Adverse Action supports Ms. Jones's testimony regarding the underlying allegations that led to respondent's termination as well as her testimony that the discipline had nothing to do with respondent's later-claimed orthopedic condition.

² No findings are made in this case regarding the factual basis for the underlying disciplinary charges or whether respondent's termination was justified. The above matters were considered solely for the purpose of determining whether respondent's termination was the result of the disabling condition he later claimed on his application for an industrial disability retirement, or preemptive of any otherwise valid claim for disability retirement.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

Applicable Statutes

2. Government Code section 21151 provides in part that any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, regardless of age or amount of service.

3. Government Code section 21152, provides that application to the board for retirement of a member for disability may be made by the head of the office or department in which the member was last employed, the governing body of the contracting agency, or the member or someone acting on his or her behalf.

Applicable Case Law

4. The courts in *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*), *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*), and the precedential decision issued by CalPERS's Board of Administration (Board) in *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (October 16, 2013) Precedential Decision 13-01, Case No. 2012-0287, OAH No. 2012050989 (*Vandergoot*), held that civil service employees may not apply for disability retirement if they have been dismissed from their civil service employment. Two exceptions to this preclusion are recognized: (1) when the employee establishes that the dismissal was the ultimate result of a disabling condition; and (2) when the employee establishes that the dismissal preempted the employee's otherwise valid claim for disability retirement.

Evaluation

5. CalPERS argued that respondent is precluded from seeking disability retirement under the holdings of the decisions in *Haywood*, *Smith*, and *Vandergoot*. Respondent argued (in his appeal) that his alleged disabling condition "matured" prior to his termination for cause, and CalPERS should be required to accept his application for an industrial disability retirement. For the foregoing reasons, respondent's argument fails.

Respondent's termination for cause was not the result of his alleged disability and did not preempt an otherwise valid claim for an industrial disability retirement. Respondent's misconduct involved falsification of official logs, lying about his conduct, and retaliating/harassing another employee investigating the misconduct. None of his

misconduct had any relation to the orthopedic condition respondent claimed over two years later when he filed his application for an industrial disability retirement. Ms. Jones credibly testified that at no time during the investigation did respondent raise a disability claim. The Notice of Adverse Action also did not contain any information regarding any alleged orthopedic condition. There were no facts presented to indicate that, at any time prior to his termination for cause, respondent had the right to receive a disability retirement. Finally, no evidence established that the investigation or respondent's subsequent termination for cause in any way hampered his ability to properly file a disability claim.

ORDER

Respondent Scot A. Legeman's appeal is denied. CalPERS is not required to accept respondent's application for an industrial disability retirement and properly cancelled it.

DATED: December 22, 2016

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Kimberly Belvedere
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KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings