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:

MARK R. KRANHOLD and CITY OF SACRAMENTO,

Respondents

Case No. 2019-0150

OAH No. 2019030304

PROPOSED DECISION

This matter was heard before Dena Coggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on July 15, 2019, in Sacramento, California.

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

Respondent Mark R. Kranhold (respondent Kranhold) represented himself at the hearing.

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED August 8 20 19
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No one appeared for or on behalf of respondent City of Sacramento (City), its default was entered, and this matter proceeded as a default proceeding pursuant to Government Code section 11520 as to the City.

Evidence was received, the record was closed, and the matter was submitted for decision on July 15, 2019.

SUMMARY

Respondent Kranhold resigned from his employment at the City with no right of reemployment in February 2018, after receiving the City's notice of intent to terminate his employment. CalPERS received respondent's application for industrial disability retirement in August 2018. CalPERS notified respondent he was not eligible for industrial retirement pursuant to the appellate court's decision in *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*), and its progeny. The sole issue on appeal is whether respondent Kranhold's application for industrial disability retirement is precluded by operation of law. Based on review of the evidence provided at hearing, respondent Kranhold's appeal from CalPERS's determination of ineligibility is denied. CalPERS' determination is affirmed.

Jurisdictional Matters

1. Anthony Suine, Chief of CalPERS's Benefit Services Division, signed the Statement of Issues on March 8, 2019, solely in his official capacity.

2. On August 23, 2018, respondent Kranhold signed and CalPERS received his Disability Retirement Election Application. He identified his disabilities as "R Should injury, 2 surgeries with no success," which he stated occurred on July 14, 2009. CalPERS

acknowledged receipt of the application by letter dated November 27, 2018. The letter explained:

> We received your application for industrial disability retirement; however, we have found you are not eligible for disability retirement benefits at this time. . . .
>
> We have determined that your employment ended for reasons which were not related to a disabling medical condition. . . . When an employee is separated from employment as a result of disciplinary action or the employee enters into a settlement agreement where the employee chooses to voluntarily resign in lieu of termination, and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement, termination and/or a mutual understanding of separation from employment due to a pending adverse action renders the employee ineligible to apply for disability retirement.

3. On December 13, 2018, respondent Kranhold timely appealed CalPERS's determination that he was not eligible for disability retirement.

Employment History

4. Respondent Kranhold began his employment with the City as a Utilities Operations and Maintenance Lead Worker in 2005, and continued in that position until he resigned in February 2018, discussed more fully below. He is a local miscellaneous member of CalPERS by virtue of his employment.

5. On January 12, 2018, the City sent respondent Kranhold notice of its intent to terminate his employment with the City following an investigation revealing that he had been dishonest in his submission of reimbursement requests for safety boots to the City. During the investigation, which began in February 2017, the City discovered that respondent Kranhold submitted receipts for reimbursement in 2013 and 2014, for a total of $800, using fictitious receipts. The City issued checks totaling $800 for reimbursement to respondent Kranhold. During an interview with the Labor Relations Office on November 28, 2017, respondent Kranhold admitted to submitting the fictitious receipts for reimbursement. The January 12, 2018 letter informed respondent Kranhold of his right to respond to the letter, and set a *Skelly* hearing for January 23, 2018. Respondent Kranhold participated in the *Skelly* hearing.

6. On January 26, 2018, respondent Kranhold and the City entered into a settlement agreement regarding his employment. The settlement agreement stated, in relevant part:

> 1 In lieu of termination, [respondent] Kranhold has resigned from his position as a Utilities Operations and Maintenance Lead Worker and from City service effective at the close of business on February 2, 2018 . . .
>
> 3 [Respondent] Kranhold understands that the City shall not consider him for reemployment or as a volunteer for any position within the City . . .
>
> 5 [Respondent] Kranhold and Local 447, waive the right to appeal, challenge, grieve, litigate, or otherwise file any claim regarding any matter concerning his employment with the

City and/or case #7936, or any associated circumstances or issues, to the Civil Service Board, or in any other administrative or judicial forum.

6 [Respondent] Kranhold and Local 447 agree that any and all issues associated with matters in this agreement are hereby resolved and that this agreement is an acknowledgment by the parties that the resolution is mutually satisfactory and constitutes final settlement[.] By this agreement, it is the intent of the parties to effect final and comprehensive settlement . . .

14 [Respondent] Kranhold acknowledges, agrees and understands that this agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any person corporation or entity, and that he has been afforded an opportunity to discuss and review this agreement with his representative . . .

17 This agreement memorializes and constitutes the entire agreement and understanding between the parties as to all matters referred to or included herein, and supersedes and replaces all prior negotiations, proposed agreements and agreements, whether written or oral . . .

Respondent's Testimony

7. Respondent Kranhold did not contest that he provided fictitious receipts to the City for reimbursement of safety boots, but explained that he was not the only

employee involved in the misconduct. He resigned from his employment upon advice of a union labor relations officer who informed him that he would be entitled to unemployment. He explained that he was not aware of the consequences of his resignation. According to respondent, he was awaiting the results of a Qualified Medical Evaluation (QME) report relating to a worker's compensation matter at the time he received notice of the City's intent to terminate his employment. He represented that the results of the QME report, which he received 12 to 13 days after he resigned from the City, indicated that he "could not work."

Discussion

8. As explained in detail in the Legal Conclusions below, the holdings in *Haywood* and its progeny are that the permanent termination of the employer-employee relationship renders the former employee ineligible for disability retirement, so long as termination is neither the ultimate result of a disability nor preemptive of a valid claim for disability retirement. It does not matter whether termination of the relationship was caused by the former employee's dismissal from employment for cause (*Haywood*), his voluntary resignation and permanent waiver of any right to reinstate to his former position (*Vandergoot*)[1], or that there was an impending ruling on a claim for disability pension that was delayed (*Smith*)[2].

9. Respondent Kranhold permanently terminated his employer-employee relationship with the City when he entered into the January 26, 2018 settlement agreement. Termination of the employer-employee relationship was based upon his

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[1] *In re Vandergoot* (2013) CalPERS Precedential Bd. Dec. No. 13-01 (*Vandergoot*).

[2] *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*).

voluntary resignation and waiver of any right to reinstate to his former position. There was no evidence that his voluntary resignation and wavier of right to reinstate his former position was related to any disability from which he may have been suffering at the time or was preemptive of a valid claim for disability retirement. Although respondent represented that a QME report following his resignation, relating to a workers' compensation claim, stated the he "could not work," evidence did not show that he would have had a valid claim for disability retirement at the time he chose to resign from his position. (See, *Smith*, 120 Cal.App.4th at 207 ["But a workers' compensation ruling is not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties is different." (citations)].) Accordingly, respondent is not eligible for disability retirement benefits.

LEGAL CONCLUSIONS

1. CalPERS has the burden of proving respondent Kranhold's Disability Retirement Election Application is barred by *Haywood* and its progeny. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence of nonexistence of which is essential to the claim for relief or defense that he is asserting."].) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Bd. of Retirement* (1984) 152 Cal.App.3d 775, 783.) And 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

2. The appellate court held that an employee's termination for cause rendered him ineligible for disability retirement benefits in *Haywood v. American River*

Fire Protection District (1998) 67 Cal.App.4th 1292. The court explained, "while termination of an unwilling employee for cause results in a complete severance 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.). The appellate court explained:

> [W]e conclude that where, as here, an employee is fired for cause and the discharge is neither the ultimate result of the 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.*, at p. 1307.)

3. 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 *Vandergoot* (2013) CalPERS Precedential Bd. Dec. No. 13-01. Mr. Vandergroot was a heavy fire 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.

4. 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 ... .

(*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.)

5. *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.)

6. 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 the 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.) Similar to the facts of *Vandergoot*, respondent Kranhold did not initiate the process for receiving industrial disability benefits until after he resigned from his position with the City with no reemployment rights and there was no evidence that he was eligible for disability retirement at the time he resigned, "such that a favorable decision on his claim would have been a forgone conclusion (as perhaps with a loss of limb)." (*Vandergoot, supra*, CalPERS Precedential Bd. Dec. No. 13-01, at p. 7; quoting, *Smith*, 120 Cal.App.4th at p. 9; see also *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156 [finding that *Haywood* and *Smith* have not been superseded by legislation, are consistent with subsequent case law and *Vandergoot* remains precedential authority].)

7. Respondent Kranhold permanently terminated his employer-employee relationship with the City with no right of reemployment for reasons unrelated to any disability he may have been suffering at the time. No evidence was submitted to show that he was suffering from a disabling medical condition at the time he resigned from his position or that the termination of the employment relationship was the ultimate result of a disabling medical condition. The evidence did not establish that termination of that relationship preempted an otherwise valid claim for an industrial disability pension. Therefore, respondent Kranhold's appeal of CalPERS's decision finding him that he is not eligible for disability retirement is denied.

ORDER

The appeal of Mark R. Kranhold to be granted the right to file an application for industrial disability retirement is DENIED.

DATE: August 6, 2019

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DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings