

ATTACHMENT A

THE PROPOSED DECISION

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Accepting the Application for
Industrial Disability Retirement for:**

**STACEY A. WOIENSKI and CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, DEUEL VOCATIONAL
INSTITUTION, Respondents.**

Case No. 2019-0400

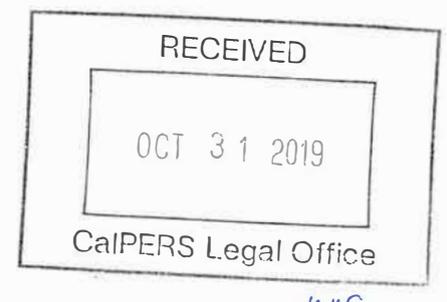
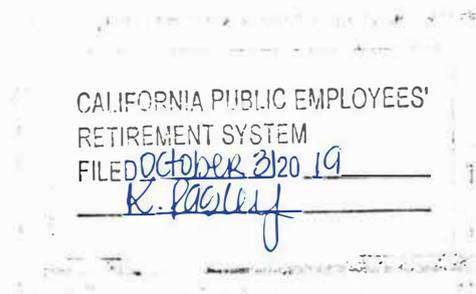
OAH No. 2019070318

PROPOSED DECISION

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 2, 2019, in Sacramento, California.

Preet Kaur, Senior Attorney, appeared on behalf of the California Public Employees' Retirement System (CalPERS).

Respondent Stacey A. Woienski appeared at the hearing and represented herself.



There was no appearance by or on behalf of respondent California Department of Corrections and Rehabilitation, Deuel Vocational Institution (Department or Deuel). The Department was duly served with a Notice of Hearing. The matter proceeded as a default against the Department pursuant to California Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted for decision on October 2, 2019.

ISSUE

The issue on appeal is whether respondent may file an application for industrial disability retirement (application) based on a psychiatric condition, or whether her application and eligibility for industrial disability retirement (IDR) are precluded by operation of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*).

FACTUAL FINDINGS

Respondent's Applications for Industrial Disability Retirement

1. On August 16, 2018, respondent signed and CalPERS received her application. At the time of filing, respondent was on medical leave from her position as a Correctional Officer at Deuel. She identified her specific disability as "psychiatric-mental and behavioral." She further wrote that her psychiatric condition was a result of cumulative trauma from 2000 until 2018. Respondent also noted that she filed a workers' compensation claim with the State Compensation Insurance Fund (SCIF) on

May 22, 2012. On the application, respondent listed a post office box (P.O. Box) number for her address.

2. Respondent hand-delivered her application to a CalPERS regional office and notified staff of the change of her address from a location on Danube Court, to a P.O. Box. Respondent was informed that her address was updated in the system. The CalPERS "Customer Touch Point Report" (Touch Point) entry prepared by CalPERS employee Antone Paul, documented the interaction with respondent. He noted that respondent signed and provided copies of birth certificates for children, the physical requirements of her position, authorization to disclose protected health information, physicians report on disability and her duty statement. Mr. Paul also noted that "employer information on disability and advance payroll information already in file, work [*sic*] compensation pending." Respondent also provided a "USB" with her medical records. She requested the records be printed, but Mr. Paul declined for security reasons. He offered to forward the USB to have the documents reviewed, but respondent declined.

3. Mari Cobbler, Retirement Specialist II in Disability Retirement Section for CalPERS, testified at hearing. She explained that once an application is received, CalPERS Calculation Unit takes approximately one week to input the information on the application into the CalPERS system. She further explained that if all the necessary information is not received, CalPERS will contact the member to obtain more information. Ms. Cobbler also estimated that it takes approximately four months from the time an application is received until a determination is made to grant or deny the application.

4. On August 27, 2018, Hung Ta, a CalPERS employee entered a note into Touch Point, stating "IDR application processed," and "unable to update PO BOX as

mailing address." The same day, the CalPERS Disability Retirement Section sent respondent a letter to her Danube Court address, rather than the P.O. Box, informing her that she needed to complete a Workers' Compensation Carrier Request form, an Authorization to Disclose Protected Health Information form, and medical records "related to [her] disabling condition." Respondent was also informed that if she did not submit the information within 21 days from the date of the letter her application would be cancelled. Respondent never received the letter as it was not mailed to her P.O. Box.

5. On September 5, 2018, Ramon Adame, an employee with CalPERS entered a note into Touch Point stating "[r]eceived mail for [respondent]. Forwarded to Updated Address provided by USPS." Mr. Adame noted the P.O. Box as the updated address.

6. Between September 7 and 24, 2018, CalPERS staff documented several conversations with personnel staff at Deuel. Specifically, a note from September 7, 2018, indicated that Deuel wanted a status of respondent's application and wanted "further clarification" regarding the documents she needed to submit, "in order to help" respondent "facilitate" the application. Again, on September 24, 2018, Paula Huling, Return to Work Coordinator for Deuel, contacted CalPERS to inquire about the status of the application and asked if there was anything Deuel could do to assist in the process.

7. On October 8, 2018, CalPERS sent a second letter to respondent at her Danube address, rather than her P.O. Box. Respondent was informed that her application was "cancelled because the requested application information was not received." The letter further informed respondent that if she wished to "re-apply" for

retirement, she was required to complete a new application. Again, respondent did not receive the letter.

8. On October 24, 2018, respondent contacted CalPERS to check the status of her application and ensure that her address was updated. CalPERS employee Mary Haines noted in Touch Point that an attempt was made to update respondent's mailing address, "but system error will not allow me to update her address correctly to PO Box [. . .]." Ms. Haines noted that she sent a "MET defect report to support team." Ms. Haines also noted that "[f]ollow up letters and request for workman's comp letter were sent to old address, so she was not aware IDR was cancelled." Ms. Haines informed respondent that she was required to re-submit a new application and supporting documents. Respondent informed Ms. Haines that she was concerned about resubmitting an application because the Department was terminating her employment on November 5, 2018.

9. On November 2, 2018, respondent submitted a new application to CalPERS. Like the first application, respondent hand-delivered the application and supporting documents. Respondent again listed her P.O. Box as her mailing address.

10. On November 8, 2018, CalPERS updated respondent's address. CalPERS employee Lori Price noted in Touch Point that "mailing address could not be updated due to the health zip code override. Removed override and updated mailing address to PO Box [. . .]."

11. On November 13, 2018, CalPERS informed respondent that all application documents were received. On November 18, 2018, respondent was informed that it would take four to six months to process her application. CalPERS did not refer

respondent for a medical evaluation and no determination was made regarding her claimed disability.

12. In January 2019, the Department contacted CalPERS and notified staff that respondent had been terminated from her position as a Correctional Officer. The Department also sent CalPERS a copy of the Notice. By letter dated February 4, 2019, CalPERS informed respondent that she was not eligible for disability retirement because her "employment ended for reasons which were not related to a disabling medical condition." As a result, CalPERS cancelled respondent's latest disability application, citing several decisions including *Haywood, Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*), and precedential decisions issued by CalPERS's Board of Administration (Board), including *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (October 16, 2013) and *In the Matter of Accepting the Application Industrial Disability Retirement of Phillip D. MacFarland* (June 22, 2016). Finally, CalPERS informed respondent of her right to appeal the determination to cancel her application.

13. On April 2, 2019, respondent appealed CalPERS' determination that she is not eligible for disability retirement. On June 27, 2019, Keith Riddle, Chief of the Disability and Survivor Benefits Division for CalPERS signed the Statement of Issues. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Employment History

14. On or about April 9, 2000, respondent began her employment as a Correctional Officer for the Department at Deuel. Respondent was a state safety member of CalPERS by virtue of her employment.

15. On October 5, 2018, the Department issued a Notice of Adverse Personnel Action (Notice) to respondent. The Notice explained that respondent would be dismissed from her position as a Correctional Officer with the Department, effective 5:00 p.m. on November 5, 2018. The legal bases for dismissal cited in the Notice were an inexcusable neglect of duty, intemperance, discourteous treatment of the public or other employees, willful disobedience and other failure of good behavior either during or outside working hours which is of such a nature that it causes discredit to the appointing authority or respondent's employment. The Notice advised respondent of her right to file an appeal with the State Personnel Board (SPB).

16. Shauna DenDulk, Staff Services Manager I at Deuel, testified about the investigation into the underlying cause for the Notice. The off-duty incidents which were the basis for the Notice occurred on September 17, 2017, December 28, 2017, and January 27, 2018. Generally, respondent was consuming excessive amounts of alcohol, was arrested and transported to jail on two occasions. During the exchanges with law enforcement respondent was aggressive and belligerent, and used foul language towards law enforcement and members of the public. She also failed to appear at a court proceeding related to one of her criminal cases. As a result, a warrant was issued for her arrest.

17. Respondent appealed the termination with the SPB. On March 11 through 13, 2019, a hearing was conducted before Gregory Brown, Administrative Law

Judge (ALJ). During the hearing, respondent testified that she had "experienced several traumatic events at [Deuel], that she could not 'turn off' her adrenalin when she came home from work, and that she suffers from generalized anxiety, post-traumatic stress disorder and depression due to her work." She also testified that she "drank alcohol to self-medicate, but she had stopped drinking" after January 2018.

18. On April 2, 2019, ALJ Brown issued a Proposed Decision upholding respondent's dismissal. On May 10, 2019, the SPB adopted the decision. Respondent filed a Petition for Rehearing, which the SPB denied on August 16, 2019.

Respondent's Evidence

19. Respondent contended that she was terminated from her position with the Department because her conduct was a result of her disability. Respondent suffers from psychiatric issues including depression, anxiety and post-traumatic stress disorder, which she attributes to her position with the Department. She had not been getting medical treatment for her conditions during the time of her conduct that led to her termination and used alcohol to self-medicate.

20. In approximately May 2011, respondent began suffering from anxiety and depression. Respondent explained that she was exposed to various traumatic incidents which caused her mental health conditions, including seeing a Correctional Officer stabbed, and watching an inmate jump from a third-floor balcony, hit the concrete and seeing the inmate's "blood and brains." Respondent also saw inmate violence such as stabbings. Respondent began to experience hypervigilance, an inability to sleep, anxiety and depression, and sought treatment. In November 2012, respondent filed a worker's compensation claim related to mental health issues, which was accepted and she began receiving treatment. Respondent was off from work from

2012 until July 2014, when she returned to work with no restrictions. Between July 2014 and November 2017, respondent transferred to four different positions at Deuel.

21. On February 16, 2017, respondent was evaluated by Alberto Lopez, M.D., a psychiatrist, relating to her open worker's compensation claims. Dr. Lopez issued a report concerning his evaluation, in which he noted he had previously evaluated respondent on November 6, 2012, June 6, 2014, and September 5, 2015.

Respondent reported to Dr. Lopez that her functioning at work had been "good." She had been receiving psychological treatment with Sherif Zaher, Ph.D., until four months prior, but no further sessions were allowed. She was receiving psychiatric medication from Fair Oaks Psychiatric. She was no longer taking anti-depressants. Respondent explained that she had improved and "is no longer feeling significantly depressed." She slept well, but still had weekly episodes of anxiety that lasted "several minutes to hours." She took medication to treat her anxiety, but used it "sparingly." She also continued to have "unpleasant dreams on the job, although she [was] no longer having nightmares." She remained "very vigilant, especially on the job," but was also "easily startled and jump[ed] when she hear[d] noises."

Finally, respondent reported that her "drinking [alcohol] was heavier for a time, but there was no particular reason [respondent could] ascribe to." Dr. Lopez noted that respondent's "drinking had been a problem and of issue." Respondent disclosed that she had previously attended Alcoholics Anonymous (AA).

Dr. Lopez diagnosed respondent with "Anxiety Disorder, Not Otherwise Specified, Depression, Not Otherwise Specified, in remission, [and] Alcohol Abuse, in partial remission." He further opined that respondent was "no longer in need of therapy." However, he also stated that she "should be allowed a provision for therapy

(some six sessions) in the future should her condition worsen." Finally, he recommended that she wean off her medications.

22. Respondent explained that in September 2017, her psychological conditions worsen. Her depression and anxiety returned. Although she had been approved to receive six additional therapy sessions, SCIF denied her request to pay for them. She also began to wean off her medications as recommended. Respondent started drinking alcohol heavily to self-medicate. In September 2017, she was arrested for being drunk in public. In November 2017, respondent unsuccessfully applied for enrollment in an outpatient rehabilitation program. She stopped working in December 2017. In December 2017, she was arrested for DUI. In February 2018, the former partner of the person she was dating confronted her by knife point. Respondent was unable to see a psychologist until April 2018.

23. On April 13, 2018, Dr. Lopez conducted another reevaluation of respondent and prepared a report. He noted that respondent's "life and work have been turbulent" since he last examined her in February 2017. Specifically, she was arrested in September and December 2017. He also noted there had been "a resurgence of her symptoms as of November 2017." Respondent reported that she "could not sleep and had increased disturbing dreams," and she felt "jumpy and jittery, and vigilant." She also reported feeling "as if people were talking at her" and that she "began to sense shadows in her home." She "could hear noises that others could not hear." The physician's assistant who had been treating her placed her off work in November 2017. She returned to work for one week in December 2017, before being placed off work again.

Respondent further reported to Dr. Lopez that, in September 2017, she was working overtime during which several incidents increased her anxiety and stress. She

began drinking and was arrested for disorderly conduct while intoxicated. She was experiencing "daily depression, daily anxiety, poor sleep six hours per night, diminished appetite with 10 to 15 pound weight loss, intrusive recollections of prior trauma, hypervigilance, hypersensitivity to sound several times per month and at times elevated blood pressure." Finally, SCIF denied her request for therapy with Dr. Zaher.

Dr. Lopez administered respondent the Minnesota Multiphasic Inventory-2 (MMPI-2), the Millon Clinical Multiaxial Inventory-III (MCMI-III), and the Symptom Checklist-90-R (SCL-90-R). Based on the results, he diagnosed respondent with "Anxiety Disorder, Not Otherwise Specified, Depression, Not Otherwise Specified, [and] Alcohol Abuse." Dr. Lopez opined that:

Given her lack of treatment, lack of progress with treatment, and multiple nonindustrial and industrial stressors, and the continuing relapse with alcohol, in my opinion, [respondent], at this point in time, should not go back to work as a correctional officer and is not safe to do so.

She is permanently precluded from going back to her usual work.

Dr. Lopez recommended respondent have an "opportunity to see her psychologist" and further recommended she stop drinking and follow a medication regimen.

24. Following Dr. Lopez's findings that she was permanently precluded from returning to her position as a Correctional Officer, she contacted Deuel and was

instructed to complete an application.¹ Respondent filled out the application in person at Deuel and, on May 21, 2018, Ms. Huling signed the "Physical Requirements of Position/Occupation Title." Respondent also provided Deuel with a "Physician's Report on Disability" signed by her physician attesting that respondent was "currently substantially incapacitated from the performance of the usual duties" of her position, due to her anxiety and depression as set forth in Dr. Lopez's April 2018 report, and that the incapacity was permanent. Finally, respondent signed a "Workers Compensation Carrier Request" authorizing the release of her worker's compensation records to CalPERS.

25. After completing the application paperwork and submitting it to Deuel, respondent contacted CalPERS directly to get information and assistance with her application. Respondent was referred to the CalPERS publications for the required documents. During a May 25, 2018 visit at a CalPERS regional office, a CalPERS employee reviewed the disability retirement application with respondent and directed her to follow the checklist for completing the application and submitting the required documents.

¹ Pursuant to Government Code section 21153 "an employer may not separate because of disability a member otherwise eligible to retire for disability but shall apply for disability retirement of any member believed to be disabled, unless the member waives the right to retire for disability and elects to withdraw contributions or to permit contributions to remain in the fund with rights to service retirement as provided in Section 20731." There is no evidence that the Department complied with this section.

26. On August 16, 2018, respondent hand-delivered her application to the CalPERS Sacramento Regional Office. She listed her P.O. Box address on the application because she had lost her house to foreclosure and no longer received mail there. She informed CalPERS of the new address and was informed the new address was entered into the CalPERS system. Respondent did not learn that her application had been cancelled until she called CalPERS in November 2018. Respondent never received the August 27, 2018 letter requesting more information nor the October 8, 2018 letter canceling her application. At CalPERS' direction, respondent filled out a new application in November 2018.

27. Respondent has not worked in any capacity since December 2017. In December 2018, respondent was admitted to a mental health facility due to her deteriorating mental health. Without an income, respondent was rendered homeless. She currently lives out of her truck.

Discussion

28. The sole issue in this hearing is whether respondent may file an application for disability retirement, or whether her application and eligibility for disability retirement is precluded by operation of *Haywood*. In *Haywood*, the employee "was terminated for cause following a series of increasingly serious disciplinary actions against him. After his discharge, the employee applied for disability retirement, claiming that stress from the disciplinary actions caused him to suffer a major depression, which rendered him incapable of performing his usual duties with the [employer]." (*Haywood*, supra, 67 Cal.App.4th at p. 1295.) The court held that civil service employees may not apply for disability retirement if they have been dismissed from their civil service employment. The court recognized two exceptions to this preclusion: (1) when the employee establishes that the dismissal was the ultimate

result of a disabling condition; or (2) when the employee establishes that the dismissal preempted the employee's otherwise valid claim for disability retirement. (*Id* at p. 1307.)

29. In *Smith*, the same court reiterated the principles of *Haywood*. (*Smith*, supra, 120 Cal.App.4th at pp. 203-204.) The court further explained that a disability claim must have "matured" in order to find that a disciplinary action preempted the right to receive a disability retirement pension, and this maturation did not occur at the time of the injury, but rather when the pension board determined that the employee was no longer capable of performing his duties. (*Id.* at p. 206.) However, the 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 her employer-employee relationship has been terminated. (*Id.*, at pp. 206-207.)

30. Respondent has had ongoing mental conditions going back to 2012. For a two-year period from 2012 until 2014, she was removed from work because of her conditions. She returned to work and continued treatment. After her re-evaluation by Dr. Lopez in February 2017, she stopped receiving therapy services. Her condition deteriorated and she began consuming alcohol to self-medicate. By September 2017, respondent was arrested and subsequently convicted for being drunk in public and driving under the influence of alcohol. Respondent stopped working in December 2017.

On April 13, 2018, Dr. Lopez opined that respondent was permanently precluded from returning to her position with the Department, due to her mental conditions. As a result, in May 2018, respondent contacted Deuel to begin the process of filing for disability retirement. Deuel failed to assist respondent with the filing of her

application; nor did Deuel file a disability retirement application on respondent's behalf.

On August 16, 2018, respondent hand-delivered her application to CalPERS, including her new P.O. Box, and personally alerting CalPERS' staff to her new address. She was assured her address was updated. Despite these assurances, and through no fault of respondent's, CalPERS failed to update her address. As a result, respondent never received correspondence requesting more information and ultimately canceling her retirement application in October 2018. It was not until October 24, 2018, when she contacted CalPERS, that she learned her application had been cancelled. By then, she had already been served with notice that the Department was terminating her employment effective November 5, 2018.

31. While there is insufficient evidence to support a finding that respondent's dismissal was the ultimate result of a disabling condition, the second exception *Haywood* and the equitable principals in *Smith* are applicable, i.e., respondent established that her dismissal preempted her otherwise valid claim for disability retirement. As of April 13, 2018, respondent was found to be permanently precluded from returning to her position. While "workers' compensation findings are typically not binding on issues of eligibility for disability retirement because the focus of the issues and the parties is different," based on Dr. Lopez's findings, a favorable decision on her claim was a "foregone conclusion." (*Smith, supra*, 120 Cal.App.4th at pp. 206-207.)

Additionally, the equitable principals articulated in *Smith* apply. Respondent's right to file for disability retirement occurred at least eight months prior to her termination. She took all of the required steps to file for disability retirement prior to the termination of her employment with Deuel. The Board had not yet made a decision on the application, when CalPERS cancelled respondent's application in October 2018,

without proper notice to respondent. Accordingly, respondent was denied the opportunity to have her application decided prior to her termination, through no fault of her own.

As directed, respondent filed a second application, which CalPERS deemed complete on November 13, 2018. She was also denied the opportunity to have this application decided when CalPERS cancelled her application for a second time on February 4, 2019, prior to the March 2019, SPB hearing, and the May 10, 2019, SPB decision upholding the termination of her employment. Again, respondent did nothing to delay or prevent the Board from deciding her application during the almost eight months between being served with the Notice and the termination of her employment relationship with the Department became final.

32. When all of the evidence is considered, respondent established that she should be allowed to file an application for industrial disability retirement. Consequently, her application is not precluded by operation of *Haywood*.

LEGAL CONCLUSIONS

Burden of Proof

1. CalPERS has the burden of proving respondent's application for Industrial Disability Retirement 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 or nonexistence of which is essential to the claim for relief or defense that he is asserting".]) Respondent has the burden of proving the applicability of the equitable exception articulated in *Smith*. Each party must meet its burden 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

2. Government Code section 21151, subdivision (a) provides that “[a]ny 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, pursuant to this chapter, regardless of age or amount of service.”

3. Government Code section 21152, subdivision (d), provides that an application to the Board for retirement of a member for disability may be made by the member or any person on her behalf.

4. Government Code section 21154, provides in pertinent part that:

The application shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion. On receipt of an application for

disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

Cause to Grant Appeal

5. As set forth in the Factual Findings as a whole, and particularly Factual Findings 28 through 32, respondent's dismissal from the Department was not the ultimate result of a disabling medical condition. However, respondent's termination preempted an otherwise valid claim for an industrial disability pension. Therefore, the exception in *Haywood* applies.

6. Additionally, applying the principles of equity articulated in *Smith*, respondent's eligibility for an industrial disability retirement is deemed to have survived the termination of her employer-employee relationship with the Department. Therefore, her appeal of CalPERS's decision to cancel her application should be granted, and she should be allowed to apply for an industrial disability pension.

ORDER

Respondent Stacey Woienski's appeal from CalPERS' decision to cancel her application for industrial disability retirement is GRANTED, and she is granted the right to apply for industrial disability retirement.

DATE: October 29, 2019

DocuSigned by:
Marcie Larson
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MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings