

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 of:**

**JULIA AMANDA RICHTER; OAKLAND POLICE DEPARTMENT;
and CITY OF OAKLAND, Respondents**

Agency Case No. 2020-0682

OAH No. 2020110166

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 30, 2021, from Sacramento, California.

Charles H. Glauberman, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Julia Amanda Richter represented herself.

Teresa A. McGinity of the law firm Hannah, Brophy, MacLean, McAleer & Jensen, LLP, represented respondents Oakland Police Department and City of Oakland.

Evidence was received, the record closed, and the matter submitted for written decision on August 30, 2021.¹

SUMMARY

The sole issue on appeal is whether Ms. Richter is eligible to apply for an industrial disability retirement. CalPERS received her application August 30, 2018. The City of Oakland terminated her employment, effective March 27, 2020. CalPERS canceled her application May 13, 2020. Under the specific circumstances of this matter and applying principles of equity, the complete severance of Ms. Richter's employer-employee relationship with the City did not affect her eligibility for industrial disability retirement. Therefore, her appeal from CalPERS's decision to cancel her application should be granted, and she should be granted the right to apply for industrial disability retirement.

FACTUAL FINDINGS

Jurisdictional Matters

1. The City of Oakland employed Ms. Richter as a police officer with the Oakland Police Department. She is a local safety member of CalPERS by virtue of that employment.

¹ Exhibits 7 through 10, C (pages 3 through 12 only), and D (pages 3 through 12 only) are subject to the Amended Protective Order Sealing Confidential Records issued August 30, 2021.

2. On August 27, 2018, Ms. Richter signed a Disability Retirement Election Application seeking an industrial disability retirement, which CalPERS received three days later. She alleged she was disabled due to orthopedic (neck, bilateral legs, left shoulder, and arms), neurologic (headaches and dizziness), vision (pain in eyes), and audiology (ringing in ears) conditions.

3. On January 3, 2019, the City of Oakland sent correspondence to Ms. Richter explaining that it was required to decide her Application "within six months of the request of CalPERS." The City further explained it was "still awaiting medical information that is essential to the determination process." It requested that she "authorize additional time in the event we are unable to complete the determination process by February 28, 2019." (Underlining original.) Ms. Richter agreed to giving the City additional time.

4. On March 23, 2020, Steven Falk, the City of Oakland's Interim City Administrator terminated Ms. Richter's employment as a police officer with the Oakland Police Department "effective upon service of this letter." Mr. Falk explained, "the termination results from the findings of the above [sic] referenced IAD investigation case number." The notice was served four days later.

5. On May 13, 2020, CalPERS sent Ms. Richter correspondence notifying her that it was unable to accept her Application and it "has been canceled." CalPERS explained:

We have determined that you left employment for reasons which were not the result of a disabling medical condition. Therefore, you are not eligible for disability retirement. For

that reason, CalPERS cannot accept your application for disability retirement.

6. Ms. Richter appealed CalPERS's cancellation of her Application. On November 9, 2020, Keith Riddle, Chief of CalPERS's Disability and Survivor Benefits Division, signed the Statement of Issues solely in his official capacity. The sole issue on appeal is "whether respondent Richter is eligible to apply for industrial disability retirement under Government Code section 21151, or whether her eligibility is precluded by operation of *Haywood* and *Smith*." (Italics original.)

Evidence at Hearing

7. Darren Allison is the Assistant Chief of the Oakland Police Department. He has been employed by the Department since 1994. He initially started as a cadet, and attended the police academy two years later. He became a sworn officer upon graduation. In 2018, he was promoted to Acting Assistant Chief. He became the permanent Assistant Chief two years later. He is the second in command of the Department.

8. Assistant Chief Allison explained that Ms. Richter's termination was the result of the Oakland Police Department's investigation into an Assistant United States Attorney's complaint that Ms. Richter may have committed misconduct during a criminal trial. The Department's Internal Affairs Division investigated the complaint and concluded Ms. Richter violated several provisions of the Department's Memorandum of Rules (MOR).

9. The Oakland Police Department sought to terminate Ms. Richter's employment based on the Internal Affairs Division's investigation. A *Skelly* hearing² was held, and Ms. Richter was given the opportunity to rebut the Department's allegations of misconduct. The *Skelly* officer upheld all the Internal Affairs Division's findings of misconduct, except for one, and agreed that termination was the appropriate discipline.

10. Assistant Chief Allison was the Department's Acting Chief when the *Skelly* officer issued his decision. Assistant Chief Allison agreed with the decision, except he upheld the grounds for misconduct the *Skelly* officer dismissed. He also upheld Ms. Richter's termination. He did not consider her medical condition when deciding termination was the appropriate discipline.

11. At hearing, Ms. Richter did not produce any admissible evidence that the City of Oakland terminated her for reasons other than the allegations of misconduct sustained by the Oakland Police Department's Internal Affairs Division and Assistant Chief Allison. Instead, she argued she was injured while working on May 15, 2018. Seven months later, a physician treating her through the workers' compensation process concluded Ms. Richter was substantially incapacitated from performing her duties. Therefore, she contended her Application should be granted.

12. Ms. Richter also claimed that she signed the waiver of the six-month deadline for the City of Oakland to decide her Application "under duress" because the

² *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 [a permanent civil service employee has a due process right to a hearing prior to termination of her employment].

City threatened to cancel her Application if she did not. When questioned on cross-examination, however, she agreed she signed the waiver.

Analysis

13. CalPERS received Ms. Richter's Application on August 30, 2018, and asked the City of Oakland to decide whether she qualified for an industrial disability retirement shortly thereafter.³ While the Application was still pending, the City terminated Ms. Richter's employment for cause, effective March 27, 2020. Her termination completely severed her employer-employee relationship with the City for reasons unrelated to any disabling medical condition she may have had at the time.

14. The City of Oakland never decided whether Ms. Richter qualified for an industrial disability retirement, and CalPERS canceled the Application May 13, 2020. Ms. Richter did nothing to delay the City's decision on her Application. The City offered no explanation for the delay. The evidence established that Ms. Richter was awaiting a decision on her Application that was delayed for reasons not within her control until after she was terminated.

³ There was no direct evidence of the date on which CalPERS asked the City to decide Ms. Richter's eligibility. However, Government Code section 21157 required the City to decide her Application "within six months of the date" of CalPERS's request. The City's January 3, 2019 correspondence asking Ms. Richter to waive the six-month period indicated its decision was due February 28, 2019. This created a reasonable inference that CalPERS requested the City's decision shortly after CalPERS received the Application.

Motion for Terminating Sanctions and Motion to Strike

15. Ms. Richter filed a Motion for Terminating Sanctions against CalPERS "due to fraud on this court" prior to hearing. She also filed a "Motion to Strike Sections II, VII, VIII, IX of CalPERS [*sic*] Statement of Issues as false, defamatory and irrelevant." Both motions are denied because she did not provide any legal authority for granting either motion in proceedings brought pursuant to the Administrative Procedures Act.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Ms. Richter applied for an industrial disability retirement. It is well settled that she has the burden of proving she qualifies for disability retirement. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) But Ms. Richter's alleged incapacity is not at issue on this appeal, and CalPERS concedes as much in the Statement of Issues. Instead, the issue on appeal is CalPERS's contention that *Haywood* and its progeny preclude Ms. Richter from being granted an industrial disability retirement as a matter of law.

2. CalPERS's contention is akin to an affirmative defense to Ms. Richter's claim for industrial disability retirement. Therefore, CalPERS has the burden of proving: 1) the complete severance of the employer-employee relationship between Ms. Richter and the City of Oakland for reasons unrelated to a disabling medical condition; and 2) the severance of that relationship did not preempt an otherwise valid claim for disability retirement. (Evid. Code, § 500). CalPERS must meet its burden by a preponderance of the evidence. (Evid. Code, § 115.) This evidentiary standard requires CalPERS to produce evidence that is more persuasive than Ms. Richter's evidence to

the contrary. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, CalPERS must prove it is more likely than not that *Haywood* and its progeny preclude Ms. Richter from being granted an industrial disability retirement. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

3. Once CalPERS meets its burden, the burden shifts to Ms. Richter to prove the existence of one of the equitable exceptions articulated in *Smith*. She must meet her burden by a preponderance of the evidence, which requires her to prove it is more likely than not that: 1) she had an impending ruling on her Application that was delayed until after severance of her relationship with the City of Oakland through no fault of her own; or 2) there was undisputed evidence that she was eligible for an industrial disability retirement such that a favorable decision on her Application was a foregone conclusion.

Applicable Law

4. A local safety member of CalPERS is eligible for an industrial disability retirement if she is "incapacitated for the performance of duty as a result of an industrial disability." (Gov. Code, § 21151, subd. (a).) When CalPERS receives a local safety member's application for an industrial disability retirement, it "shall request the governing body of the contracting agency employing the member to make the determination." (Gov. Code, § 21154.) "The governing body . . . shall make its determination within six months of the date of the receipt . . . of the request." (Gov. Code, § 21157.)

5. In *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, the appellate court held that an employee's termination for cause renders her ineligible for disability retirement as long as "the discharge is neither the

ultimate result of the disabling medical condition or preemptive of an otherwise valid claim for disability retirement." (*Id.* at p. 1307.) The timely filing of an application alone does not establish eligibility for disability retirement. (*Ibid.*)

6. In *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, the appellate court analyzed when a claim for disability retirement becomes valid such that it survives the applicant's subsequent termination. The court said:

The key issue is thus whether his right to a disability retirement matured before plaintiff's separation from service. A vested right matures when there is an unconditional right to immediate payment. [Citations.] In the course of deciding when the limitations period commenced in a mandate action against a pension board, the Supreme Court noted that a duty to grant the disability pension (i.e., the reciprocal obligation to a right to immediate payment) did not arise at the time of the injury itself but when the pension board determined that the employee was no longer capable of performing his duties.

(*Smith v. City of Napa, supra*, 120 Cal.App.4th at p. 206.)

7. But the appellate court also recognized that "conceivably, there may be facts under which a court, applying principles of equity, will deem an employee's right to a disability retirement to be matured and thus survive a dismissal for cause." (*Smith v. City of Napa, supra*, 120 Cal.App.4th at pp. 206-207.) For example, "if the [applicant] had an impending ruling on a claim for disability pension that was delayed, through no fault of his own, until after his dismissal." (*Id.* at p. 207.)

Conclusion

8. Ms. Richter's employer-employee relationship with the City of Oakland was permanently severed for reasons unrelated to any medical condition she may have had at the time. Therefore, termination of that relationship was not "the ultimate result of [a] disabling medical condition." Nor did the termination of that relationship preempt an otherwise valid claim for an industrial disability pension. The City of Oakland had not yet decided her Application when she was terminated.

9. But Ms. Richter's Application had been pending for *nearly one year and seven months* when she was terminated. And her Application was still pending when CalPERS canceled it *almost one year and nine months* after receiving it. The City articulated no reason for this delay at hearing.

10. Applying principles of equity, Ms. Richter's eligibility for an industrial disability retirement is deemed to have survived the complete severance of her employer-employee relationship with the City of Oakland. 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.

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ORDER

Respondent Julia Amanda Richter's appeal from CalPERS's decision to cancel her Disability Retirement Election Application seeking an industrial disability retirement is GRANTED, and she is granted the right to apply for an industrial disability retirement.

DATE: September 2, 2021



Coren D. Wong (Sep 2, 2021 09:04 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings