

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:**

MATTHEW JEFFERY ALLENDORPH

and

CITY OF ANTIOCH,

Respondents.

Agency Case No. 2021-0883

OAH No. 2022030225

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on September 6, 2022, by videoconference.

Senior Staff Attorney Charles H. Glauberman represented complainant Keith Riddle, Chief of the Disability and Survivor Benefits Division, California Public Employees' Retirement System.

Respondent Matthew Jeffery Allendorph represented himself.

There was no appearance by or on behalf of respondent City of Antioch.

The matter was submitted for decision on September 6, 2022.

ISSUE

Is respondent Matthew Jeffery Allendorph ineligible to apply for industrial disability retirement due to the severance of his employment with the City of Antioch?

FACTUAL FINDINGS

Background and Procedural History

1. Matthew Jeffery Allendorph (respondent) was employed by the City of Antioch (City) as a police officer. By virtue of this employment, respondent was a local safety member of the California Public Employees' Retirement System (CalPERS).

2. On October 22, 2020, respondent signed an application for industrial disability retirement, which was received by CalPERS on October 27, 2020. Respondent stated he was disabled based on a "right shoulder labrum tear" due to cumulative trauma as of July 8, 2018.

3. Respondent was terminated for cause by the City on February 16, 2021.

4. On August 16, 2021, CalPERS notified respondent of its determination that he was ineligible to apply for disability retirement and that his application had been cancelled, because his separation from the City was not the result of a disabling medical condition and was not preemptive of an otherwise valid claim for industrial disability retirement.

5. Respondent timely appealed and requested an administrative hearing.

6. On February 13, 2022, a Statement of Issues was signed by Keith Riddle, Chief of CalPERS's Disability and Survivor Benefits Division. This hearing followed.

Employment with the City and Application for Disability Retirement

7. Respondent was employed by the City as a police officer from February 2014 to February 2021. He worked in a variety of assignments as a police officer for the Antioch Police Department (APD), including field training officer, firearms instructor, investigator of violent crimes and crimes against children, and patrol officer.

8. Respondent injured his right shoulder in February 2015. He underwent surgery on his shoulder in July 2015. He returned to full duty in October 2015, working in the patrol division.

9. In 2016, respondent transferred to an investigator assignment, in which he did not have to wear a bulletproof vest or duty belt on a regular basis.

10. In July 2018, respondent returned to the patrol division at his request. Respondent testified that he had problems wearing the required vest, and submitted a cumulative trauma workers' compensation claim regarding his right shoulder.

11. Respondent signed a last chance agreement with the City on September 4, 2019, as a result of an internal affairs investigation and a fitness-for-duty evaluation triggered by issues related to respondent's use of alcohol and a domestic disturbance. Under the last chance agreement, respondent agreed that consuming or being under the influence of alcohol, either on-duty or off-duty, would be cause for termination. The agreement also provided that refusal to take an alcohol or drug test when ordered to do so would be a breach of the agreement.

12. On June 30, 2020, William G. Brose, M.D., performed a qualified medical evaluation of respondent's right shoulder for his workers' compensation claim. Dr. Brose imposed permanent restrictions of not wearing a vest or duty belt, and no repetitive or forceful work at or above shoulder level.

13. On October 20, 2020, respondent was involved in an incident that led to an internal affairs investigation and his ultimate termination. Officers from the Oakley Police Department were dispatched to respondent's residence to perform a welfare check. Respondent's demeanor during his interaction with the responding officers was hostile, profane, and confrontational. Respondent was intoxicated at the time of the incident. The Oakley police officers contacted the APD and asked respondent to take an alcohol screening test at the direction of APD command staff; respondent refused.

14. On October 22, 2020, respondent signed an application for industrial disability retirement based on his right shoulder condition, which was received by CalPERS on October 27, 2020.

15. On October 30, 2020, the superior court issued a three-year domestic violence restraining order in a proceeding initiated by respondent's estranged wife, which prohibits respondent from possessing a firearm. Respondent did not notify APD of the restraining order.

16. CalPERS sent a letter notifying the City that respondent had applied for industrial disability retirement and requesting a determination of disability. CalPERS also requested employment records for respondent.

17. On December 8, 2020, the City's Police Chief sent respondent a notice of intent to terminate his employment due to violations of City policy and the last chance agreement. The stated reasons for termination were: (1) respondent was required by

his employment to carry a firearm but was prohibited from doing so by the restraining order, and he failed to notify APD of the restraining order as required by policy; (2) he was hostile and disrespectful to Oakley police officers, which was conduct unbecoming and a violation of policy; and (3) he was intoxicated and refused to take an alcohol screening test, both in violation of the last chance agreement.

18. On February 2, 2021, respondent submitted a written *Skelly* response.¹

19. The City Manager sent respondent a notice of termination on February 16, 2021, upholding the proposed discipline and terminating respondent's employment effective that day. Respondent's termination has not been overturned.

20. Captain Trevor Schnitzius of the APD testified at hearing. His job duties include overseeing the internal affairs unit. He is familiar with the internal affairs investigation of respondent and the documents regarding respondent's termination. Schnitzius credibly testified that respondent was not terminated due to a disabling medical condition, but was instead terminated due to violations of City policy and the last chance agreement.

21. CalPERS received documents from the City about respondent's employment, including the investigation report, notice of intent to terminate, and the notice of termination.

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¹ *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.

22. On August 16, 2021, CalPERS notified respondent of its determination that he was ineligible to apply for disability retirement based on his termination, and that his industrial disability retirement application was being cancelled.

23. Respondent filed an appeal on September 8, 2021, and requested a hearing regarding the cancellation of his industrial disability retirement application.

24. Respondent also pursued arbitration to appeal his termination. On July 15, 2022, the arbitrator issued a final arbitration decision upholding the termination.

Respondent's Additional Evidence

25. Respondent reports that on August 13, 2020, the City sent him home on leave for the industrial injury to his right shoulder, under Labor Code section 4850.

26. On August 18, 2020, respondent met with the City's human resources director. Respondent was told that the City did not have another position available that would accommodate his medical restrictions, and was told to pursue an application for industrial disability retirement.

27. Respondent does not believe he is capable of performing his job duties as a police officer due to his permanent work restrictions and shoulder condition.

28. Respondent testified that he did not file his application sooner because he was going through a contested divorce and custody battle, was concerned about the financial implications of retiring for disability, and was trying to decide what to do.

29. Respondent testified that at the time he applied for industrial disability retirement on October 22, 2020, he knew he would face disciplinary investigation, but he did not expect to be terminated.

LEGAL CONCLUSIONS

1. The applicant for a benefit has the burden of proof to establish the right to the claimed benefit, by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, §§ 115, 500.)

Eligibility for Disability Retirement

2. Government Code section 21151, subdivision (a), provides that a local safety member of CalPERS who is 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. In determining whether a member is eligible to retire for disability, the CalPERS Board of Administration must make a determination on the basis of competent medical opinion and must not use disability retirement as a substitute for the disciplinary process. (Gov. Code, § 21156, subd. (a)(2).)

3. The Public Employees' Retirement Law (PERL) contemplates the potential reinstatement of a member retired on disability if the member recovers and is no longer disabled. Under Government Code section 21193, when a member receiving a disability retirement allowance is found to no longer be disabled, the employer may reinstate the member and the member's disability allowance terminates.

THE HAYWOOD RULE

4. In *Haywood v. American River Fire Protection Dist.* (1998) 67 Cal.App.4th 1292 (*Haywood*), the court held that when an employee is terminated for cause, the employee is ineligible for disability retirement unless an exception is established. The court explained that an employee's dismissal constitutes a complete severance of the employer-employee relationship, thus eliminating a necessary requisite for disability

retirement: the potential reinstatement of the employment relationship if it ultimately is determined that the employee is no longer disabled. (*Id.* at p. 1297, 1306-1307.)

EXCEPTIONS TO THE *HAYWOOD* RULE

5. The *Haywood* court identified two instances in which a terminated employee may nevertheless apply for disability retirement: (1) where the employee establishes that the separation from service was the ultimate result of a disabling condition; or (2) where the employee establishes that the separation from service preempted an otherwise valid claim for disability retirement. (*Haywood, supra*, 67 Cal.App.4th at p. 1297.)

6. These exceptions were clarified further in *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*). The *Smith* court explained that a disability retirement claim must have “matured” in order to find that a disciplinary action preempts the right to receive a disability retirement pension, and that the right is not mature at the time of the injury, but rather when the pension board determines that the employee was no longer capable of performing his duties. (*Id.* at p. 206.)

In reaching its conclusion, the *Smith* court noted: “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. This case does not present facts on which to explore the outer limits of maturity, however.” (*Id.* at p. 206-207.) The court provided two examples of facts to support an equitable exception to the general rule that a dismissal for cause precludes the granting of a disability retirement allowance: (1) if an employee “had an impending ruling on a claim for a disability pension that was delayed, through no fault of his own, until after his dismissal,” or (2) if there is “undisputed evidence” that the employee “was eligible for a

CalPERS disability retirement, such that a favorable decision on his claim would have been a foregone conclusion (as perhaps with a loss of limb)." (*Id.* at p. 207.)

Discussion

7. Respondent's termination was for cause, and was not due to a disabling medical condition. (Factual Findings 17-20.) Accordingly, he is subject to the *Haywood* rule, which bars his industrial disability retirement application, unless respondent proves he meets an exception to the rule.

8. Respondent contends that he falls within an exception to the *Haywood* rule, claiming that his right to industrial disability retirement matured prior to his termination. Respondent sustained his injury prior to the incident upon which his termination was based. He received permanent work restrictions in June 2020. He applied for disability retirement in October 2020. The City notified respondent of the intent to terminate him in December 2020 and the termination was imposed in February 2021.

However, these facts do not mean that respondent's right to industrial disability retirement was mature prior to his termination. Respondent received work restrictions, but no decision was made by the City or CalPERS as to whether respondent met the standard for industrial disability retirement. The fact that respondent was off work on leave under the workers' compensation system at the time he filed his application does not equate to a maturation of his right to industrial disability retirement under the PERL. The *Smith* decision makes clear that an employee's right to disability retirement is not mature until the pension board determines incapacity to perform the job duties. That did not happen in respondent's case. While *Smith* suggested that an equitable exception might exist in a case where an impending ruling on an employee's

disability claim was delayed through no fault of his own, there is no evidence of such a delay in this case.

9. Respondent is ineligible for industrial disability retirement, and his appeal must be denied.

ORDER

The appeal of respondent Matthew Jeffery Allendorph is denied.

DATE: **09/26/2022**



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings