

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Cancellation of the Application for
Industrial Disability Retirement of:**

JOHN S. BALIAN, Respondent,

and

CITY OF GLENDALE, Respondent.

Agency No. 2023-1055

OAH No. 2024040437

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 26, 2025. The record closed and the matter was submitted for decision at the conclusion of the hearing.

Mark Schreiber, Deputy Attorney General, represented complainant California Public Employees' Retirement System (CalPERS).

John S. Balian (respondent) represented himself.

No appearance was made by or on behalf of the City of Glendale (City), and the matter proceeded by default against it.

SUMMARY

Respondent appeals CalPERS' decision to cancel his industrial disability retirement (IDR) application. CalPERS made that decision based on respondent's termination of employment with the City after he was convicted of three felonies in federal court based on crimes he committed while acting as a police officer.

Respondent failed to meet his burden of establishing by a preponderance of the evidence that he is eligible for an IDR. Pursuant to the appellate case of *Haywood v. American River Fire Protection District* and its progeny, respondent's permanent separation from employment with the City without reinstatement rights precludes his disability retirement. Because his separation from employment was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for a disability retirement, respondent is not immune from application of the *Haywood* decision. Therefore, respondent's appeal is denied.

FACTUAL FINDINGS

Parties and Jurisdiction

1. CalPERS is a defined benefit plan administered under the California Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.) CalPERS is governed by its Board of Administration (Board).

2. Respondent was formerly employed by the City as a Police Officer, Vice/Narcotics Detective, effective October 19, 2004, through July 22, 2018. By virtue of his employment, respondent became a local safety member of CalPERS subject to the PERL.

3. The City is a public agency that contracts with CalPERS to provide retirement benefits for its employees, including its local safety members.

4. On July 30, 2022, respondent signed an application for an IDR, which was received by CalPERS on August 1, 2022. (Ex. 3.)

5. On May 18, 2023, CalPERS advised respondent he was not eligible for an IDR and that his application had been canceled. (Ex. 4.)

6. By letter dated June 2, 2023, respondent appealed CalPERS' decision to cancel his IDR application. (Ex. 5.)

7. On March 28, 2024, a Statement of Issues was signed and filed on CalPERS' behalf by Sharon Hobbs, Chief of CalPERS' Disability and Survivor Benefits Division. (Ex. 1.)

Respondent's Criminal Convictions

8. On May 15, 2018, respondent was arrested in connection with a federal criminal complaint filed against him in the case of *United States of America v. John Saro Balian*, Case Number CR-18-345-JFW, in the United States District Court for the Central District of California. (Exs. 1, 2, 6, 7, 9, 10.)

9. On June 5, 2018, an Information was filed in the above-entitled case against respondent charging him with the following three felony counts: bribery of programs receiving federal funds in violation of 18 United States Code section 666(a)(1)(B); obstruction of justice in violation of 18 United States Code section 1512(c)(2); and making false statements in violation of 18 United States Code section 1001(a)(2). (Exs. 1, 2, 6, 7, 9, 10.)

10. The Information alleged that from February 2017 through March 2017, respondent accepted a \$2,000 bribe from D.N. (initials are used in the Information) to use law enforcement resources to locate A.B. and others (count 1); from June 16, 2015, through July 2015, respondent obstructed and attempted to impede an official proceeding by willfully assisting J.G. to avoid arrest in a criminal matter before the United States District Court for the Central District of California (count 2); and, on October 10, 2017, respondent knowingly made a materially false statement to the Federal Bureau of Investigation and the Department of Homeland Security by denying that he accepted a bribe from D.N. or that he recognized J.S., when in truth respondent had received a \$2,000 bribe from D.N. to locate A.B., and respondent had a criminal business relationship with J.S. (count 3). (Ex. 2, pp. A66-68.)

11. On July 12, 2018, respondent entered a plea of guilty to, and was convicted of, all three counts alleged in the Information. (Exs. 2, 7.)

12. On March 8, 2019, respondent was sentenced to serve 21 months in a federal prison, followed by supervised release for three years under various terms, including that he pay the federal government a \$60,000 fine. (Ex. 6.)

Respondent's Employment with the City is Terminated

13. On July 20, 2018, the City served respondent with a Final Notice of Disciplinary Action (Final Notice) resulting in his removal, effective July 21, 2018, from his position of Police Officer in the City's Police Department. (Exs. 1, 9, 10.)

14. The grounds alleged in the Final Notice for respondent's termination were his three felony convictions, and that, as a police officer, respondent held a position of trust, which trust respondent failed to honor by the commission of his crimes. (Ex. 9, p. A136.)

15. Respondent did not appeal the Final Notice to the City's Civil Service Commission, and his termination from employment became final. (Ex. 9, p. A129.)

Respondent's IDR Application

16. By letter dated October 3, 2018, CalPERS advised respondent that a portion of his retirement benefit was subject to forfeiture because he was convicted of three felonies based on conduct that arose out of the performance of his official duties as an employee of the City. Since the earliest date of his felony activity was June 16, 2015, CalPERS determined that 2.386 years of service credit was forfeited, covering the period of June 16, 2015, through October 28, 2017, respondent's last day on payroll with the City. (Ex. 12.)

17. On July 30, 2022, respondent signed an application for service retirement, which was received by CalPERS on August 1, 2022. Respondent retired effective August 16, 2022, and has been receiving his benefits since that date. (Ex. 3, Ex. 13 ¶ V.)

18. On July 30, 2022, respondent also submitted his IDR application, which was received by CalPERS on August 1, 2022. (Ex. 3.) Respondent's claimed disabilities were Meralgia Paresthetica (a condition causing tingling, numbness and burning pain in the outer thigh), high blood pressure, back pain, knee pain, and sleep apnea. (*Ibid.*)

19. Relying on the appellate cases of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, CalPERS determined that respondent's termination from employment with the City rendered him ineligible for a disability retirement and thus barred his IDR application. (Testimony [Test.] of Greg Neil; Ex. 4.)

Respondent's Evidence

20. Respondent graduated from a police academy in 1995. He was employed as a police officer with the City of Montebello in 1996. In October 2004, he was hired as a police officer by the City. Both agencies trained him to immediately notify a supervisor when he was injured on the job. (Test. of respondent.)

21. Respondent testified that his right thigh numbness, back pain, knee pain, and high blood pressure were cumulative injuries he sustained as a police officer well before he committed his first felony in 2015. However, respondent testified he advised a supervisor of the City about these maladies in 2017. Respondent testified he filed a workers' compensation claim around that time and received medical treatment as a result. Thus, respondent testified his injuries were documented by the City at least one year before he was fired.

22. Respondent testified he did not intend to retire in 2017 when he reported his medical maladies to his supervisor. He wanted to continue with his medical treatment and continue working as a police officer. However, he was arrested in May 2018, convicted and fired in 2018, and incarcerated thereafter. His understanding was that he only was required to apply for an IDR when he intended to retire. Respondent testified he intended to retire when he was 50 years old, which explains why he filed his IDR application in 2022, instead of 2017.

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. An applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327.) That standard of proof is met when a party's evidence has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. Here, respondent bears the burden of establishing by a preponderance of the evidence that he is entitled to an IDR.

Governing Law

3. Government Code section 21151, subdivision (a), provides, "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, pursuant to this chapter, regardless of age or amount of service." (Subsequent undesignated statutory references are to this code.)

4. Pursuant to section 21152, an application to CalPERS for retirement of a member for disability may be made by, among others, the member's employer (subd. (c)) or the member or any person on his or her behalf (subd. (d)).

Separation from Employment Without a Right of Return to Service

5. Termination of the employment relationship usually renders an employee ineligible for a disability retirement. (*Haywood v. American River Fire Protection Dist.*

(1998) 67 Cal.App.4th 1292, 1297 [*Haywood*]; *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 206 [*Smith*].)

6. In *Haywood*, the court explained, “[W]hile termination of an unwilling employee for cause completely severs the employer-employee relationship, disability retirement laws contemplate the potential reinstatement of that relationship if the employee recovers and no longer is disabled.” (*Haywood, supra*, 67 Cal.App.4th at p. 1296.)

7. In *Smith*, the court further explained the legislative intent of the disability retirement laws presupposed a continuing, if abated, employment relationship, i.e., the disabled annuitant could petition to return to active service, and/or the employing agency could compel testing to determine if the disability is no longer continuing, at which point it could insist on a return to active service. “Therefore if an applicant is no longer eligible for reinstatement because of a dismissal for cause, this also disqualifies the applicant for a disability retirement.” (*Smith, supra*, 120 Cal.App.4th at p. 203.)

8. In this case, respondent was fired by the City and thus separated from employment without a right of return. In addition, respondent is ineligible to work for the City as a police officer because, as a matter of law, any person who has been convicted of a felony, or of any offense in any other jurisdiction that would have been a felony if committed in California, is disqualified from being employed as a peace officer. (§ 1029, subd. (a)(1) & (2).) Respondent has three felony convictions. By operation of the *Haywood* and *Smith* cases, as well as section 1029, subdivision (a), respondent’s separation from employment with the City without a right of return to service renders him ineligible for an IDR.

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9. To ensure an employer does not unfairly abridge an employee's right to an IDR, the court in *Haywood* established an employee who is fired can still seek a disability retirement if the discharge was either (1) the ultimate result of a disabling medical condition or (2) preemptive of an otherwise valid claim for disability retirement. (*Haywood, supra*, 67 Cal.App.4th at p. 1307.)

10. These two exceptions flow from a public agency's obligation to apply for a disability retirement on behalf of disabled employees rather than seek to dismiss them directly on the basis of the disability or indirectly through cause based on the disability. (*Smith, supra*, 120 Cal.App.4th at p. 205.)

11. In this case, the two exceptions articulated in the *Haywood* and *Smith* cases do not apply to respondent. Those two exceptions were created to prevent an employer from purposely subverting an otherwise valid IDR claim by firing an employee. In this case, respondent was fired by the City for a reason completely unrelated to his medical maladies. No evidence presented indicates respondent was fired due to any medical condition, or that the City decided to fire him in order to preempt a valid claim respondent had for a disability retirement.

Cause for Cancellation of Respondent's IDR Application

12. Based on the above, CalPERS' cancellation of respondent's IDR application was appropriate. Because respondent separated from employment with the City without any right to return to service, *Haywood* and its progeny apply to him. Therefore, respondent is not eligible for an IDR. (Factual Findings 1-19; Legal Conclusions 1-11.)

13. Respondent presents no factual or legal basis to resurrect his IDR application. While respondent testified his medical disabilities were sustained by him,

and reported to his supervisor, well before he was terminated, the timing of those events alone does not suggest, let alone establish, that respondent's termination had anything to do with his medical maladies. The same is true of respondent's explanation of the timing of his IDR filing. Respondent failed to negate the fact that he was separated from employment with the City in a way that precludes his right of returning to service there, and he failed to establish either of the two exceptions articulated in *Haywood* and *Smith* apply to him. (Factual Findings 1-22; Legal Conclusions 1-12.)

Disposition


14. Based on the above, respondent is not eligible for an IDR and therefore his application was appropriately cancelled. (Factual Findings 1-22; Legal Conclusions 1-13.)

ORDER

Respondent John S. Balian's appeal is denied.

CalPERS' decision to cancel respondent's IDR application is affirmed.

DATE: **03/24/2025**


[Eric C. Sawyer \(Mar 24, 2025 14:33 PDT\)](#)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings