ATTACHMENT D

DECISION

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal of Accepting the Application for Industrial Disability Retirement of JOHN M. KILPATRICK, Respondent, and CITY OF CHULA VISTA, Respondent.	)	CASE NO. 2023-0914 OAH NO. 2024091063 DECISION

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System, pursuant to Government Code section 11517, subdivision (c)(2)(C), which authorizes the Board to "make technical or other minor changes in the proposed decision," hereby modifies the Proposed Decision, by revising the "Issue" paragraph on page 2 to include the word "industrial" before disability retirement and replacing "a" with the word "industrial" before the words "disability retirement" in sentences two, three, and five in paragraph 20, on page 23, and hereby adopts as its own Decision the Proposed Decision dated , as modified, concerning the appeal of JOHN M. KILPATRICK; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

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I hereby certify that on June 18, 2025, the Board of Administration, California Public Employees' Retirement System, made and adopted the foregoing Resolution, and I certify further that the attached copy of the Administrative Law Judge's Proposed Decision is a true copy of the Decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
MARCIE FROST
CHIEF EXECUTIVE OFFICER

Dated: June 18, 2025 BY _____
KIMBERLY A. MALM
Deputy Executive Officer
Customer Services and Support

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:

JOHN M. KILPATRICK, Respondent

and

CITY OF CHULA VISTA, Respondent.

Agency Case No. 2023-0914

OAH Case No. 2024091063

PROPOSED DECISION

Kimberly J. Belvedere, Senior Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 24, 2025, by videoconference.

Mehron Assadi, Staff Attorney, represented complainant, Sharon Hobbs, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System (CalPERS).

John M. Kilpatrick, respondent, represented himself.

David J. Thomas, Hanna Brophy, L.L.P., represented respondent, City of Chula Vista (City).

Oral and documentary evidence was received. The record remained open for the parties to submit written closing briefs. Those briefs were received and considered. The record was closed, and the matter was submitted for decision on March 17, 2025.

ISSUE

May Mr. Kilpatrick file an application for industrial disability retirement based on psychological conditions (major depression and post-traumatic stress disorder (PTSD)), or is his application and eligibility for disability retirement precluded by operation of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, and its progeny?[1]

PROTECTIVE ORDER

To protect privacy and confidential personal information from inappropriate disclosure, a written Protective Order Sealing Confidential Records was issued. The

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[1] *Smith v. City of Napa* (2004) 120 Cal.App.4th 194; *Martinez v. Public Employees Retirement System* (2019) 33 Cal.App.5th 1156; *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (2013) CalPERS Precedential Decision No. 13-01; and *In the Matter of Accepting the Application for Industrial Disability Retirement of Philip McFarland* (2016) CalPERS Precedential Decision No. 16-01.

order lists the exhibits that were sealed and governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to the order, provided that such documents are protected from disclosure to the public.

FACTUAL FINDINGS

Background and Jurisdiction

1. Mr. Kilpatrick was last employed by the City as a police officer for the City. By virtue of his employment, Mr. Kilpatrick was a local safety member of CalPERS subject to Government Code sections 21151, 21154, 21156, and 21157.

2. On August 5, 2004, Assistant Chief of Police Jim Zoll issued a Notice of Intended Termination[2] to Mr. Kilpatrick for violations of multiple civil service rules applicable to his employment as a police officer. Generally, the misconduct involved two excessive force incidents while on duty as a police officer with the Chula Vista Police Department (CVPD), one on June 4, 2004, (CVPD Internal Affairs Case Number 04-22-D), and the second on June 18, 2004, (CVPD Internal Affairs Case Number 04-

[2] The factual findings concerning Mr. Kilpatrick's disciplinary history and employment were derived from documentary evidence, and the testimony of Henry Martin, a Captain with the Chula Vista Police Department, who is familiar with the internal affairs process, disciplinary process, and Mr. Kilpatrick's case.

21-D). The Notice of Intended Termination informed Mr. Kilpatrick that he had the right to respond in a *Skelly*[3] conference, which was scheduled for August 17, 2004.

3. On July 2, 2004, Mr. Kilpatrick attended a fitness for duty examination, which was administered by Ira Grossman, Ph.D. Dr. Grossman concluded Mr. Kilpatrick met the minimum psychological requirements to be considered fit for duty. Dr. Grossman wrote a letter to the City dated July 3, 2004, regarding his findings.

4. On September 2, 2004, in lieu of terminating Mr. Kilpatrick, the chief of police provided Mr. Kilpatrick with a Last Chance Agreement to retain his employment. Under the Last Chance Agreement, the chief of police agreed to suspend the pending termination action against Mr. Kilpatrick in exchange for Mr. Kilpatrick's agreement to certain terms and conditions. Those terms and conditions included:

- Scheduling an appointment with a specified doctor to discuss alcohol-related issues and attend/participate in any recommended course of treatment and counseling;

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[3] In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "pre-removal safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

- Abstain from the use of alcoholic beverages;
- Not engage in any on or off-duty conduct that would bring the agency into disrepute or otherwise cause discredit to his position;
- Not use unreasonable, inappropriate, or excessive force during any contact or arrest, on or off-duty;
- Be removed from the Field Training Officer Program and Mobile Field Force, and be ineligible to reapply for either position for a period of one year from the date of the Last Chance Agreement;
- Be suspended for a period of 160 hours effective August 20, 2004, through September 26, 2004;
- Be reduced in pay by one step (Step E to Step D) for a period of six months effective September 17, 2004, through March 17, 2005, and have that pay increased back to Step E effective March 18, 2005, provided performance is satisfactory.

5. Mr. Kilpatrick, who was represented by counsel, signed the Last Chance Agreement and continued his employment as a police officer subject to the applicable terms and conditions.

6. Thereafter, Mr. Kilpatrick violated the terms of the Last Chance Agreement in three separate incidents. The first incident on December 7, 2004, involved falsification/altering of an official police report (CVPD Internal Affairs Case Number 05-01-D). The second incident on December 15, 2004, involved failure to complete a report by the end of his shift as required by policy (CVPD Internal Affairs Case Number 04-42-D). The third incident also occurred on December 15, 2004,

involved losing a small amount of methamphetamine that had been obtained from a suspect during an investigation (CVPD Internal Affairs Case Number 04-40-D).

7. On January 19, 2005, Don Hunter, the Operations Captain for the CVPD, issued a Notice of Intended Termination to Mr. Kilpatrick informing Mr. Kilpatrick that Captain Hunter would be recommending to the chief of police that Mr. Kilpatrick be terminated for violating the terms of the Last Chance Agreement based on the three incidents noted above.

8. On January 24, 2005, before the *Skelly* conference could be held on the January 19, 2005, Notice of Intended Termination, Mr. Kilpatrick filed a Disability Retirement Election Application seeking an industrial disability retirement (2005 IDR application). In the application, he wrote his date of retirement was "expiration of benefits" and did not list what his claimed disability was.

9. On January 31, 2005, Mr. Kilpatrick and his counsel, Chief of Police Richard Emerson, and Sergeant Phil Collum, attended a *Skelly* conference. The purpose of the conference was to give Mr. Kilpatrick the opportunity to explain his position regarding the incidents described in the January 19, 2005, Notice of Intended Termination.

10. On February 1, 2005, the chief of police issued to Mr. Kilpatrick a Notice of Discipline – Termination (Termination Notice), informing him that, after review of the reports and in consideration of the recommendation of Captain Hunter, the allegations included in the January 19, 2005, Notice of Intended Termination were sustained, and Mr. Kilpatrick was terminated from his employment as a police officer with the City, effective February 2, 2005. The Termination Notice also informed Mr. Kilpatrick that he had the right to appeal his termination to the Civil Service

Commission within 10 calendar days in a closed public hearing. Also on February 1, 2005, Mr. Kilpatrick wrote a letter to the chief of police resigning from his employment. In his resignation letter, Mr. Kilpatrick wrote:

> On the advice of my personal physician and for medical reasons, I hereby vacate my position and employment as a Police Officer for the City of Chula Vista. This action should be deemed effective as of the close of business on February 1, 2005.

11. Neither the Termination Notice nor Mr. Kilpatrick's letter of resignation were time stamped, so it is unknown with any certainty which came first. For the reasons discussed in the Legal Conclusions portion of this decision, the timing of when Mr. Kilpatrick's resignation letter was received by the chief of police or the City is not relevant, because the legal effect is the same whether he resigned before or after he received the Termination Notice. Mr. Kilpatrick never appealed his termination. However, a City of Chula Vista Official Report of Separation (Separation Report), dated February 1, 2005, indicated Mr. Kilpatrick's separation from the City was due to resignation, suggesting that he resigned in lieu of termination (i.e., he resigned one day before his termination became effective). In the portion of the Separation Report that the employee is required to fill out, Mr. Kilpatrick wrote that he was resigning due to a "medical disability." Sergeant Collum and the chief of police (signature illegible) signed the document as received on that same date. A Member Action Report dated February 1, 2005, also documents that Mr. Kilpatrick's separation was permanent. Courtney Chase, the Deputy City Manager for Chula Vista, also testified at hearing as to the above documents, and verified that Mr. Kilpatrick resigned before the

termination due to discipline could take effect, and that the separation was permanent.

12. Thereafter, the City considered, and denied, Mr. Kilpatrick's 2005 IDR application. As Ms. Chase explained, the City considered his separation from the City a resignation in lieu of termination, and his resignation does not make that termination go away. When Mr. Kilpatrick resigned in lieu of termination, it was a total severance from the City, and he had no right to return to employment. Even though the 2005 IDR application could have been denied under the *Haywood* line of cases, the City considered the 2005 IDR application on its merits and denied it because at the time he filed the application, he was able to perform the duties of a police officer, as earlier determined by Dr. Grossman. Mr. Kilpatrick never appealed the City's denial of his 2005 IDR application.

13. On April 8, 2013, eight years after his 2005 IDR application was denied, Mr. Kilpatrick filed a second Disability Retirement Election Application seeking an industrial disability retirement (2013 IDR application). In this application, Mr. Kilpatrick requested a retirement date of February 1, 2005. He did not list anything regarding his claimed disability, did not list anything regarding the date his claimed disability occurred, did not list anything regarding how the claimed disability affected his ability to do his job, and did not list anything regarding what limitations or preclusions he had. In other words, virtually all pertinent information was left blank. Thereafter, CalPERS sent the City letters requesting further information to ascertain Mr. Kilpatrick's eligibility for an industrial disability retirement.

14. On July 24, 2013, the City sent CalPERS a letter informing it that the City did not consider Mr. Kilpatrick to have been substantially incapacitated from performing the usual and customary duties of a police officer at the time he filed the

2013 IDR application. In other words, the City considered the application on the merits, as it had done in 2005, and did not consider denying the application pursuant to *Haywood* and its progeny because of Mr. Kilpatrick's resignation in lieu of termination.

15. On August 8, 2013, Mr. Kilpatrick appealed the determination denying his 2013 IDR application. On September 3, 2013, the City informed Mr. Kilpatrick that the City's position remained unchanged.

16. On August 1, 2017, Mr. Kilpatrick filed an application for service retirement with an effective date of November 8, 2017, and has been service retired since that date.

17. Between 2013 and 2017, Ms. Chase indicated there were "many" legal issues being litigated, which is why it may have taken so long for this matter to reach hearing. She indicated that a previous hearing had been scheduled but was taken off calendar. It is unknown what occurred between 2013 and 2017 that created such a long delay in this hearing coming before OAH, but based on exhibits provided, it appears that Mr. Kilpatrick has had a long history of litigation with the City, including multiple cases related to workers' compensation. Between 2013 and 2017, settlement discussions took place to resolve multiple legal matters, a tentative agreement was reached, and both the City and Mr. Kilpatrick jointly requested to take the pending OAH matter off calendar. The matters did not settle, resulting in a hearing being reset before OAH in this matter.

18. On September 8, 2023, CalPERS informed Mr. Kilpatrick that it determined he had left his employment with the City for reasons that were not the result of a disabling medical condition, and therefore, he was not eligible to apply for an industrial disability retirement. Specifically, CalPERS advised Mr. Kilpatrick:

> [O]ur decision to cancel your application is based on the case of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, which holds that where "an employee is terminated for cause and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement, termination of the employment relationship renders the employee ineligible for disability retirement." The case of *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, *Martinez v. Public Employees Retirement System* (2019) 33 Cal.App.5th 1156, and the CalPERS Precedential Decisions *In the Matter of Application for Industrial Disability Retirement of Robert Vandergoot* (2013) CalPERS Precedential Dec. No. 13-01 and *In the Matter of Accepting the Application for Industrial Disability Retirement of Phillip MacFarland* (2016) CalPERS Precedential Dec. No. 16-01 provide further clarification for the purposes of applying *Haywood*. . . .

19. Greg Neill, an associate governmental program analyst in the Disability and Survivor Benefits Division with CalPERS, testified at the hearing, and confirmed the above position of CalPERS.

20. On September 26, 2023, Mr. Kilpatrick appealed the denial of his 2013 IDR application. In the appeal letter, Mr. Kilpatrick challenges the denial of both his 2005 and 2013 IDR applications claiming he is entitled to an industrial disability retirement because he had disabling medical conditions and resigned "on the advise

[*sic*] of [his] treating physician/for medical reasons" and that his medical condition is "supported by numerous treating, OME, and AME physicians reports." Mr. Kilpatrick also contends CalPERS does not have jurisdiction to hear this case, and the matter should be decided by the City of Chula Vista.

21. On June 18, 2024, complainant filed the Statement of Issues in her official capacity seeking to uphold CalPERS's determination that Mr. Kilpatrick is not eligible to apply for an industrial disability retirement. Mr. Kilpatrick timely filed a notice of appeal; this hearing followed.

Testimony of Mr. Kilpatrick

22. Pertinent testimony from Mr. Kilpatrick is summarized as follows: At the time he resigned from his employment in 2005, he did not know he was going to be terminated. He has a long history of medical conditions that pre-date his separation from employment, and he is entitled to an industrial disability retirement. He was "sick and ill" before he resigned, so in his opinion "*Haywood* doesn't count." Mr. Kilpatrick said at the time he filed the 2005 IDR application, he had hypertension and PTSD. He did not know, however, that he had PTSD in 2005; he did not find out that is what he had until years later. In 2013, when he filed his 2013 IDR application, he learned he had anxiety, depression, and all the things that "go" with PTSD. Mr. Kilpatrick feels that the City was already trying to terminate him at the time they gave him the Last Chance Agreement, and they were trying to find any reason to come after him. The Last Chance Agreement gave the City a way to do that. He was very surprised when he passed the psychological evaluation in July 2004 because he had been having problems for about two years prior to that time. He did not file for an industrial disability retirement before 2005 because in a police department there is a "stigma" attached to you if you do. Mr. Kilpatrick feels he was "screwing up" because of the

PTSD he did not know he had. He disagrees that this is a "*Haywood*" case because he resigned for medical reasons, and his industrial disability retirement request should be granted.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.] . . . The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the quality of the evidence. The quantity of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Applicable Code Sections and Regulation

3. Government Code section 20000 et seq. is known as the Public Employees' Retirement Law (PERL). The management and administration of CalPERS is vested in the Board of Administration (board). (Gov. Code, § 20120.)

4. Article XVI, section 17, subdivision (a), of the California Constitution provides in part (emphasis added):

> The retirement board shall also have **sole and exclusive responsibility to administer the system** in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

5. The board has full management and control of the system, may make such rules as it deems necessary for the administration of the system, and subject to applicable law and regulations, shall determine and may modify benefits for service and disability retirement benefits. (Gov. Code, §§ 20120, 20121, 20122, 20123.)

6. Government Code section 20026 provides:

> "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

7. Government Code section 21151, provides that a local safety or miscellaneous member who is "incapacitated[4] for the performance of duty as the result of an industrial disability shall be retired for disability ....."

8. Government Code section 21152 states in part:

> Application to the board for retirement of a member for disability may be made by:
>
> [¶] ..... [¶]
>
> (d) The member or any person in his or her behalf.

9. Government Code section 21154 states in part:

> 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. . . .

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[4] "Incapacitated" means the applicant for a disability retirement has a substantial inability to perform his or her usual duties. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876-877.)

10. Government Code section 21156 provides:

(a) (1) If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability, unless the member is qualified to be retired for service and applies therefor prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.

(2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

(b) (1) The governing body of a contracting agency upon receipt of the request of the board pursuant to Section 21154 shall certify to the board its determination under this section that the member is or is not incapacitated.

(2) The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

11. Government Code section 21157 provides:

The governing body of a contracting agency shall make its determination within six months of the date of the receipt by the contracting agency of the request by the board pursuant to Section 21154 for a determination with respect to a local safety member.

A local safety member may waive the requirements of this section.

Disability Retirement Case Law and Precedential Decisions

12. Government Code section 11425.60 authorizes agencies to designate decisions as precedential that contain "a significant legal or policy determination of general application that is likely to recur." Precedential decisions may be expressly relied upon by the administrative law judge and the agency.

HAYWOOD V. AMERICAN RIVER FIRE PROTECTION DISTRICT

13. *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, involved an employee who filed an application for disability retirement after being terminated for cause. The court found that a terminated employee is ineligible

for disability retirement because disability laws "contemplate a potential return to active service" (*id.* at p. 1307) and termination constitutes "a complete severance of the employer-employee relationship" (*id.* at p. 1306), thereby eliminating that potential return.

If an employee is fired for cause, and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement, termination of the employment relationship renders the employee ineligible for disability retirement. (*Id.* at p. 1297.) However, pursuant to Government Code 21153, an employer may not terminate an employee because of medical disability if the employee would be otherwise eligible for disability retirement, and, instead, the employer must apply for disability retirement on the employee's behalf. (*Id.* at p. 1305.) In the case before it, the court found that even though the employee had filed a claim for workers' compensation benefits before his termination, and had treated several times with a provider, there was "no claim, or evidence which would support a claim, that the termination for cause was due to behavior caused by a physical or mental condition. And there is no claim, or evidence to support a claim, of eligibility for disability retirement that could have been presented before the disciplinary actions were taken." (*Id.* at p. 1306.)

SMITH V. CITY OF NAPA

14. The court in *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, examined the two exceptions set forth in *Haywood*, *supra*, namely whether the dismissal is the ultimate result of a disabling medical condition or preemptive of an otherwise valid claim for disability retirement. The court held that if the employee can "prove that the right to a disability retirement matured before the date of the event giving cause to dismiss, the dismissal cannot preempt the right to receive a disability pension" but that

right "may be lost upon occurrence of a condition subsequent such as lawful termination of employment before it matures." (*Id.* at p. 206, citations omitted.) The key issue was whether an employee's right to a disability retirement matured before the employee's separation from service, which occurs when CalPERS determines the employee is no longer capable of performing his duties, not at the time of injury. (*Ibid.*, citations and footnote omitted.) Since CalPERS's determination of the employee's eligibility did not predate the cause for dismissal, the right to a disability retirement was immature, and the dismissal for cause defeated it. (*Ibid.*)

The court conceded 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." (*Id.* at pp. 206-207.) Examples of a matured right to disability included (1) where 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) there was "undisputed evidence" 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.)

The court found that neither exception applied. First, the employee did not even initiate the disability retirement application process until after giving cause for his dismissal. Second, at best, the record contained medical opinions of a permanent disability for purposes of the workers' compensation claims, but workers' compensation rulings are not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties is different. (*Ibid.*, citations omitted.)

MATTER OF VANDERGOOT

15. *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot, Respondent, and California Department of Forestry and Fire Protection, Respondent* (2013) Precedential Decision 13-01 (*Vandergoot*), addressed the question of whether CalPERS may properly apply *Haywood, supra*, in the absence of an actual dismissal for cause. There the employee appealed his dismissal for cause to the State Personnel Board. The employee settled his appeal via a stipulation, wherein he resigned, agreed not to seek employment with his employer in the future, and waived any rights of appeal regarding his dismissal. The employer agreed to withdraw the Notice of Adverse Action and remove it, the stipulation, and all supporting documents from the employee's personnel file.

In deciding the case, the board made no findings regarding the factual basis underlying the disciplinary action taken against the employee. Instead, it considered those matters for the sole purpose of determining whether the employee's dismissal was the result of a disabling medical condition, concluding it was not. The board held:

> 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 . . . if it ultimately is determined that [the employee] is no longer disabled. (*Haywood, supra* 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: [which contemplate reinstatement to employment].

The board next addressed the employee's argument that his dismissal was preemptive of an otherwise valid claim for disability retirement, one of the exceptions discussed in *Smith*, *supra*. In finding it was not, the board noted that a right to a disability retirement matures when CalPERS determines the employee is no longer capable of performing his duties, something which did not predate the employee's separation from employment. Principles of equity also did not help the employee because he did not have an impending ruling on a claim for a CalPERS disability pension that was delayed through no fault of his own. In fact, he did not even initiate the process for receiving an industrial disability retirement allowance until after he received the Notice of Adverse Action. Second, there was no "undisputed evidence" that the employee was eligible for a disability retirement such that a disability retirement was a foregone conclusion. The employee's prior industrial disability leave was not binding on the issue of eligibility for industrial disability retirement and the medical evidence was not unequivocal.

MATTER OF MACFARLAND

16. *In the Matter of Accepting the Application for Industrial Disability Retirement of Phillip D. MacFarland, Respondent, and California State Prison, Sacramento, California Department of Corrections and Rehabilitation, Respondent* (2016) Precedential Decision 16-01 (*MacFarland*), the board found the employee retired to avoid termination, and the employment relationship was severed prior to his

retirement, when a Notice of Adverse Action was served. The severance became irrevocable when the employee withdrew any appeal he filed. As such, he was barred from returning to his former employment, and the holdings in *Vandergoot* and *Haywood* rendered him ineligible for disability retirement, unless he met an exception identified in *Haywood* and *Smith*. The board then found:

> At the time [the employer] issued the [Notice of Adverse Action] and severed its employment relationship with [the employee, the employee] had no unconditional right to immediate payment of a disability retirement. His workers' compensation actions were unresolved, and had no bearing on a determination as to whether he was substantially and permanently incapacitated from his duties under retirement law. CalPERS had had no opportunity to evaluate any disability claims; [the employee] did not even initiate the disability retirement process until after giving cause for his dismissal. [The employee] had no unconditional right to immediate payment of a disability pension at the time he was terminated.
>
> [The employee] is ineligible to apply for disability retirement or for industrial disability retirement under Government Code section 21151. His eligibility is precluded by operation of the holdings in *Haywood, Smith* and *Vandergoot*.

MARTINEZ V. PUBLIC EMPLOYEES' RETIREMENT SYSTEM

17. The court in *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156, evaluated the claim of a former employee who settled the appeal of her termination for cause by agreeing to resign and not reapply for employment. The employee later appealed CalPERS's denial of her application for disability retirement, challenging the soundness and continued validity of *Haywood* and *Smith*, particularly as extended in *Vandergoot*. In upholding the board's decision, the court agreed with the lower court's rulings that *Haywood* and *Smith* "set out the relevant law" and were binding as stare decisis, and that "*Vandergoot* is a reasonable extension of *Haywood* and *Smith*" entitled to "substantial weight" because of CalPERS's "area of expertise." (*Id.* at pp. 1161-1162.)

RIVERSIDE SHERIFFS' ASSOCIATION V. COUNTY OF RIVERSIDE

18. "Termination for cause and involuntary disability retirement are two distinct, incompatible means of removing an employee from a job ..... The two means of removal cannot coexist because once an employee is terminated for cause, the employment relationship is severed and retirement benefits are no longer possible." (*Riverside Sheriffs' Assn. v. County of Riverside* (2009) 173 Cal.App.4th 1410, 1419.)

Evaluation

19. A preponderance of the evidence does not support a finding that Mr. Kilpatrick is entitled to file an application for an industrial disability retirement. Mr. Kilpatrick's termination was already in progress when he resigned on February 1, 2005. It does not matter whether he knew he was being terminated or received the Termination Notice. His discipline was pending in the weeks prior to the filing of the 2005 application, and resigning before it could take effect did not stop that process.

Nor does the fact that he wrote that he resigned for "medical reasons" on the Separation Report dated February 1, 2005, make it so. The Member Action Report also reflects that the separation was deemed permanent. The City could have refused to consider the 2005 IDR application on its merits, and could have denied it under the *Haywood* line of cases, but still chose to consider that application on its merits. The City denied the application, and Mr. Kilpatrick never appealed that determination. Thus, the 2005 application is not at issue here. But, if it were, CalPERS would be correct in canceling it.

20. Regarding the 2013 IDR application, the result is the same. Nothing has changed between 2005 and 2013. Because Mr. Kilpatrick's employment with the City remains severed as of February 1, 2005, he is not eligible to apply for a disability retirement. Disability retirement is considered a temporary condition and contemplates a return to work if the disability resolves. Here, Mr. Kilpatrick does not have the ability to return to work since his severance was permanent, and occurred while disciplinary action was pending. The evidence also did not establish that Mr. Kilpatrick's right to a disability retirement matured before he separated from service, nor did CalPERS determine he was no longer capable of performing his duties before he separated from service. The evidence did not show his separation was the ultimate result of a disabling medical condition or preemptive of an otherwise valid claim for disability retirement. As such, none of the exceptions set forth in the case law applies.

21. Finally, Mr. Kilpatrick's argument that CalPERS does not have jurisdiction to consider his eligibility to apply for an industrial disability retirement is rejected. CalPERS, according to the PERL and California Constitution, has sole and exclusive responsibility to administer the retirement system. Although in the case of a local safety member, the local governing authority is charged with making a determination

regarding whether a disability retirement is industrial, that does not change the fact that the board ultimately decides under the PERL whether the application may be accepted. Where, as here, CalPERS correctly determined that Mr. Kilpatrick's 2005 and 2013 applications are precluded from being accepted by *Haywood* and its progeny, there is nothing for the local governing body to decide.

22. Mr. Kilpatrick had the burden to establish that he is eligible to apply for an industrial disability retirement; he did not meet it. On this record, Mr. Kilpatrick's appeal must be denied.

ORDER

John M. Kilpatrick's appeal of CalPERS's determination that he is not eligible to apply for industrial disability retirement is denied. CalPERS's determination is affirmed.

DATE: April 16, 2025

Kimberly J. Belvedere

KIMBERLY J. BELVEDERE
Senior Administrative Law Judge
Office of Administrative Hearings

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On June 18, 2025, I served the foregoing document described as:

DECISION - In the Matter of the Appeal of Accepting the Application for Industrial Disability Retirement of JOHN M. KILPATRICK, Respondent, and CITY OF CHULA VISTA, Respondent. Case No. 2023-0914;
OAH No. 2024091063.

on interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed and/or e-filed as follows:

John M. Kilpatrick
[redacted]

MEMBER

(Via overnight mail and e-mail)

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Executed on June 18, 2025, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Deb Jo Wooten
NAME


SIGNATURE