

ATTACHMENT A

THE PROPOSED DECISION

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

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

**CASSANDRA G. SANDERS and STATE BAR OF CALIFORNIA,
Respondents**

Agency Case No. 2024-0337

OAH No. 2025030324

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 22, 2025, from Sacramento, California.

Austa Wakily, Staff Attorney, appeared on behalf of the California Public Employees' Retirement System (CalPERS).

Respondent Cassandra G. Sanders appeared without an attorney.

Respondent State Bar of California (State Bar) did not appear, and a default was taken pursuant to Government Code section 11520.

Evidence was received, the record closed, and the parties submitted the matter for decision on July 22, 2025.

ISSUE

Whether respondent is precluded from filing an application for disability retirement by operation of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*); *Martinez v. Public Employees Retirement System* (2019) 33 Cal.App.5th 1156 (*Martinez*); and CalPERS Precedential Decision *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (2013) Precedential Decision No. 13-01 (*Vandergoot*).

FACTUAL FINDINGS

Jurisdictional Matters

1. The State Bar employed respondent as a Program Manager I from June 10, 2013, through March 27, 2023. By virtue of this employment, respondent became a state miscellaneous member of CalPERS subject to Government Code sections 21150 and 21154.

2. On March 24, 2023, the State Bar served respondent with a Notice of Termination, which notified her that effective March 27, 2023, she would be terminated from her position. The Notice of Termination explained, “[t]he general reasons for your termination are that your performance and conduct have not met the expectations of your Program Manager I position.” The notice went on to describe specific deficiencies in respondent’s work, including her lack of managerial judgment,

insubordination following her supervisor's repeated directives, and failure to follow the appropriate chain of command.

3. On March 27, 2023, respondent and the State Bar, through its Chief Administrative Officer, signed a Separation Agreement and General Release of All Claims (Separation Agreement). One of the terms of the Separation Agreement provided, "[Respondent] and the State Bar mutually agree to end their employment relationship at the close of business on Monday, March 27, 2023." Attached to the Separation Agreement was a Notice of Resignation, which respondent signed on March 27, 2023. The Notice of Resignation states, "I hereby irrevocably tender my resignation from the State Bar of California. My last day of employment will be on Monday, March 27, 2023."

4. Shortly after she resigned from the State Bar, respondent submitted to CalPERS both a Service Retirement Election Application and a Disability Retirement Election Application. In the latter, she identified her specific disability as "Post Concussion Syndrome." She indicated her injury occurred on October 19, 2022, after she "sustained a concussion and post-concussion syndrome when [she] tripped on a stack of firewood at home." She explained her injuries caused her to miss work from October 2022 through February 1, 2023. She further explained that when she returned to work, she "couldn't function." On April 25, 2023, CalPERS notified respondent that it had cancelled her Disability Retirement Election Application because she had not submitted the required information.

5. On November 16, 2023, respondent submitted a second Disability Retirement Election Application. In it, she identified her specific disabilities as "Brain Injury, Post Concussion Syndrome, Seizure Disorder." She indicated her injuries occurred on October 19, 2022, when she "fell headfirst into a wall." She attributed her

injuries to problems with “memory, anger, dizziness, [and being] unable to look at screens for long.” She explained her injuries affected her ability to do her job because, “Customer [service] position takes feedback from angry [and] suicidal callers. My job [is] highly stressful and requires concentration.” She also stated, “I’ve lost my filter with people internally (who waste my time).”

6. On March 21, 2024, CalPERS sent respondent a letter stating she is not eligible for disability retirement because her employment ended for reasons not related to a disabling medical condition. On March 22, 2024, respondent appealed CalPERS’s determination that she is not eligible to apply for disability retirement. This hearing followed.

CalPERS’s Evidence

7. Justice Israel is the Director of Human Resources for the State Bar. At hearing, he testified he reviewed respondent’s Notice of Termination and its supporting documents. He also reviewed the Separation Agreement and respondent’s attached Notice of Resignation. He explained the State Bar intended to terminate respondent’s employment because she behaved insubordinately.

8. Specifically, as a result of her fall, respondent was on medical leave from late October 2022 until February 1, 2023. In her absence, her supervisor, Enrique Zuniga, managed one of respondent’s subordinates, Janice Brown. After respondent returned to work in February 2023, Ms. Brown’s regular performance evaluation was due. Respondent completed it and sent it to Mr. Zuniga for review. Mr. Zuniga provided edits and feedback. He asked respondent to revise Ms. Brown’s evaluation to incorporate his input. Instead of doing so, respondent submitted her original

evaluation to human resources and added several paragraphs in the comments section explaining why she disagreed with Mr. Zuniga's observations.

9. Additionally, Mr. Israel explained the State Bar's prior Chief Administrative Officer requested that respondent receive a counseling memo in January 2021. The request was based on emails respondent sent complaining the State Bar was using "disrespectful and unethical (bait and switch) tactics" regarding Ms. Brown's job assignments.

10. Mr. Israel disagreed that the State Bar terminated respondent based on her fall or any injuries resulting from it. First, he pointed out that she resigned in lieu of termination. He also clarified that the State Bar's proposed termination was not the result of her medical condition. He noted that some of her insubordinate behavior predated her injury. He further observed that on January 24, 2023, respondent submitted a letter from her medical provider stating she could "return to work with no restrictions on February 1st 2023." For those reasons, Mr. Israel believes respondent did not stop working as a result of any disabling condition.

11. Linda Ha is an Associate Government Program Analyst for CalPERS. At hearing, she explained how CalPERS processed respondent's second Disability Retirement Election Application. CalPERS contacted respondent and requested additional information to support her application. In January 2024, respondent replied. In response to a question about whether she left her employment for any reason other than a disabling condition, such as termination or resignation, respondent wrote:

Yes I voiced my concerns verbally and by email that my behavior may be related to my injury and that perhaps I returned from my [leave of absence] too soon and might

need more time off to continue treatment, but HR and the CEO never responded to my email.

12. Respondent also attached to her response an email chain from March 27, 2023, in which she wrote to the State Bar:

I need time to see my doctors and neurologist. What if my behavior is being caused by my post concussion syndrome? What if I returned from my leave too soon? Would you be willing to extend my paid administrative leave for a few weeks while I rest and get checked out?

13. Ms. Ha explained that CalPERS received respondent's questions about a link between her disability and behavior, but considered them to be speculative. Because there was no evidence that her disability caused the behavior that led to her separation of employment, CalPERS denied her application.

Respondent's Evidence

14. At hearing, respondent disputed the State Bar's characterization of her employment history. She noted her performance evaluations regularly rated her work as meeting or exceeding expectations. Additionally, not long before her employment ended, the State Bar sponsored her to participate in a leadership coaching program. Respondent believes the State Bar viewed her as an emerging leader. Nevertheless, respondent also believes her supervisor purposefully put her in stressful situations to set her up to fail.

15. Respondent further noted that she had a history of post-traumatic stress disorder following mistreatment at work when she first started at the State Bar. She

believes this history exacerbated her symptoms of agitation and discontent when she returned to work in February 2023 after her fall.

16. Additionally, respondent explained that she did not initially understand the full extent of her injuries when she returned to work. Although she emailed the State Bar on March 27, 2023, and suggested her injuries contributed to her behavior, it was not until a few months later that she became convinced of the connection. Presently, she believes she is entitled to apply for disability retirement because her post-fall injuries contributed to her behavior, which in turn contributed to her separation from employment. She noted that her job with the State Bar required her to maintain empathy and compassion for others, and she wants the State Bar and CalPERS to treat her with those same qualities now.

Analysis

17. CalPERS determined respondent was precluded from applying for disability retirement pursuant to the holdings in *Haywood*, *Martinez*, and *Vandergoot*. In *Haywood*, the court held that civil service employees are precluded from applying for disability retirement if they have been dismissed for cause from their civil service employment. In *Vandergoot*, CalPERS determined this preclusion also applies to employees who settle a pending termination for cause and agree not to seek reemployment. In *Martinez*, the court affirmed CalPERS's reasoning, finding: "*Vandergoot* is eminently logical: resignation in these circumstances does indeed appear to be 'tantamount to a dismissal for purposes of applying the *Haywood* criteria.'" (*Martinez, supra*, 33 Cal.App. 5th at p. 1176 (citing *Vandergoot, supra*, CalPERS Precedential Dec. No. 13-01 at p. 10.))

18. There are two recognized exceptions to this preclusion: (1) when the employee established that the dismissal was the ultimate result of a disabling condition; and (2) when the employee established that the dismissal preempted the employee's otherwise valid claim for disability retirement. (*Haywood, supra*, 67 Cal.App.4th at p. 758.) Respondent argued the first exception applies to her. However, she presented no evidence that her separation from state service was the ultimate result of a disabling condition. Although she questioned whether a link existed between her injuries and her behavior, she did not support that theory with any reliable evidence. Rather, the persuasive evidence established that the State Bar considered respondent's behavior to be insubordinate both before and after her fall in October 2022. Additionally, her medical provider returned her to work with no restrictions as of February 1, 2023.

19. Nor did respondent establish the second exception applied. She had no matured right to disability retirement, and her separation from state service did not preempt an otherwise valid claim for disability retirement. There was no indication in the Notice of Termination or any other evidence that the State Bar instituted dismissal proceedings to preempt respondent from applying for disability retirement based upon a disabling physical condition.

20. When all evidence and arguments are considered, respondent did not establish that she should be allowed to file an application for disability retirement. Consequently, respondent's appeal must be denied.

LEGAL CONCLUSIONS

Burden of Proof

1. CalPERS has the burden to prove that respondent was terminated for cause, or resigned in lieu of such termination, prior to seeking disability retirement. (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"]; *Haywood, supra*, 67 Cal.App.4th 1292; *Martinez, supra*, 33 Cal.App.5th at p. 1176; *Vandergoot, supra*, CalPERS Precedential Dec. No. 13-01 at p. 10.)

2. The standard of proof is 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. Bd. of Retirement* (1984) 152 Cal.App.3d 775, 783.) And 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.) If CalPERS meets its burden, the burden then shifts to respondent to show whether either of the exceptions to *Haywood*, *Martinez*, and *Vandergoot* apply.

Applicable Law

3. An individual may apply to the CalPERS Board for disability retirement on her own behalf. (Gov. Code, § 21152.) By virtue of her employment with the State Bar, respondent became a state miscellaneous member of CalPERS subject to Government Code sections 21150 and 21154. Section 21154 provides, in relevant 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.

4. When 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. (*Haywood, supra*, 67 Cal.App.4th at p. 1297.) The *Haywood* court explained that the dismissal "constituted a complete severance of the employer-employee relationship, thus eliminating a necessary requisite for disability retirement - the potential reinstatement of his employment relationship with the District if it ultimately is determined that he is no longer disabled." (*Ibid.*)

5. As CalPERS determined in *Vandergoot*, "*Haywood* makes it clear that a necessary requisite for disability retirement is the potential reinstatement of the employment relationship. . . [Citation.] Such is not possible here. The employment relationship has not only been severed, but the terms of the Stipulation and Settlement Agreement expressly lock [Vandergoot] out from being reinstated. Such a circumstance must be viewed as wholly inconsistent with the policy behind and

rationale for disability retirement . . ." (*Vandergoot, supra*, CalPERS Precedential Dec. No. 13-01 at p. 7.)

6. In this case, *Vandergoot* is entitled to deference because "the Board's interpretation of the Public Employees' Retirement Law is accorded great weight unless clearly erroneous." (*City of Fremont v. Board of Administration* (1989) 214 Cal.App.3d 1026, 1033.) Consequently, the main holding of *Vandergoot*—namely, a resignation in lieu of termination is tantamount to a dismissal—controls here. (*Martinez, supra*, 33 Cal.App.5th at p. 1176.)

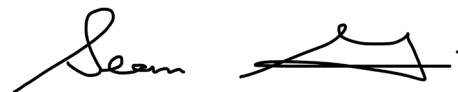
Conclusion

7. For the reasons explained above, CalPERS met its burden of establishing respondent resigned in lieu of being terminated for cause. Respondent did not establish that any of the exceptions to *Haywood, Martinez, and Vandergoot* apply. Thus, under the criteria set forth in *Haywood, Martinez, and Vandergoot*, respondent was properly precluded from applying for disability retirement. Accordingly, respondent's appeal must be denied.

ORDER

The appeal of respondent Cassandra G. Sanders to be granted the right to file an application for disability retirement is DENIED.

DATE: August 12, 2025

A handwritten signature in black ink, appearing to read "Sean", followed by a horizontal line and a small flourish.

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings