

ATTACHMENT E

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:**

VALERIU IOSIF, a.k.a. VALERIO JOSIF

and

CITY AND COUNTY OF SAN FRANCISCO,

Respondents.

Agency Case No. 2024-0353

OAH No. 2025020216

PROPOSED DECISION

Administrative Law Judge Stephanie E. Haffner, State of California, Office of Administrative Hearings, heard this matter on July 30, 2025, by videoconference.

Senior Attorney Austa Wakily represented California Public Employees' Retirement System.

Respondent Valerio Josif, also known as Valeriu Iosif,¹ represented himself.

There was no appearance by or on behalf of respondent City and County of San Francisco. In the absence of a representative for respondent City, the hearing proceeded as a default pursuant to Government Code section 11520.

The matter was submitted for decision on July 30, 2025.

ISSUE

Is respondent Valerio Josif ineligible to apply for industrial disability retirement due to the severance of his employment with the City and County of San Francisco?

FACTUAL FINDINGS

Background and Procedural History

1. Valerio Josif, also known as Valeriu Iosif (respondent), was employed by the City and County of San Francisco (City) as a deputy sheriff. By virtue of this employment, respondent is a local safety member of the California Public Employees' Retirement System (CalPERS).

2. Respondent was placed on unpaid leave with the City, effective December 6, 2021, because he did not receive a Covid-19 vaccine as required by the

¹ The Statement of Issues appears to misidentify respondent's legal name as Valeriu Iosif.

City's Covid-19 Vaccination Policy in effect at that time, Order of the Health Officer No. C19-07y (vaccination policy).

3. The City separated respondent from employment effective April 1, 2022, because respondent still had not received a Covid-19 vaccine as required by the vaccination policy.

4. On March 24, 2023, respondent filed an application for industrial disability retirement with CalPERS. Respondent stated he was disabled based on cumulative trauma as of December 6, 2021, due to "lumbar and cervical injuries (pain), bilateral hand/wrist pain, traumatic," and plantar fasciitis.

5. By letter dated March 13, 2024, CalPERS notified respondent of its determination that he was ineligible to apply for disability retirement and that his application had been cancelled, because CalPERS determined that his separation from the City was not the result of a disabling medical condition nor was it preemptive of an otherwise valid claim for industrial disability retirement.

6. On April 1, 2024, respondent timely appealed and requested an administrative hearing.

7. On January 16, 2025, a statement of issues was signed by Sharon Hobbs, Chief of CalPERS's Disability and Survivor Benefits Division. This hearing followed.

8. There was no appearance by or on behalf of the City despite proper notice, and the hearing proceeded as a default against the City under Government Code section 11520.

Separation from Employment with the City and Application for Disability Retirement

9. By letter dated September 8, 2021, the City informed respondent that he was required to register a “fully vaccinated” status by September 30, 2021, as a condition of his employment pursuant to the City’s vaccination policy.

10. By letter dated October 1, 2021, the City informed respondent that he would be placed on administrative leave by October 14, 2021, if he was not fully vaccinated or approved for an exemption as a reasonable accommodation for a medical condition or sincerely held religious belief. The City’s letter states that respondent could be disciplined or subject to non-disciplinary separation for failure to meet minimum qualifications for employment.

11. Respondent reported to the City that he was unvaccinated for Covid-19 and requested an exemption from the City’s vaccination policy based on sincerely held religious belief. On or about October 19, 2021, the City denied respondent’s exemption request. As of November 6, 2021, the City placed respondent on a 30-day period of paid administrative leave.

12. On November 23, 2021, the City issued to respondent a “Notice of Employment Action Regarding Non-Disciplinary Separation and Due Process Hearing (*‘Skelly Meeting’*)” concerning its intent to dismiss him from his position for not having complied with its Covid-19 vaccination policy. The notice states that respondent’s non-vaccinated status prohibits him from entering high-risk settings including the jail and hospitals, and therefore, “[Y]ou no longer meet minimum requirements for employment.”

13. For his December 3, 2021, *Skelly* hearing, respondent, among other contentions, objected that the City's actions violated his right to be free from discrimination against a sincerely held religious belief because the Covid-19 vaccines were developed using methods that conflict with his religious beliefs. Respondent requested accommodations including to test at his own expense and wear a mask.

14. The City did not agree to respondent's accommodation request. On December 5, 2021, the City issued its conclusion after *Skelly* hearing, sustaining its action to place him on unpaid administrative leave and dismiss him from his position.

15. By letter dated December 30, 2021, the City informed respondent that his separation would be held in abeyance, and he could return to his position if he were to come into compliance with the vaccine mandate prior to April 1, 2022.

16. By letter dated March 30, 2022, the City informed respondent that he would be separated from his permanent civil service appointment for failure to comply with the City's vaccination policy, effective April 1, 2022. The letter states, "This separation is non-punitive, and you are free to seek re-employment with the San Francisco Sheriff's Office or other City positions if in the future you meet the minimum qualifications."

17. A separation report from the City dated April 1, 2022, characterizes respondent's separation as "complete" and the termination as a "dismissal."

18. On November 23, 2022, a lawsuit was filed against the City in the United States District Court, Northern District of California, in which respondent is one of 135 plaintiffs. The lawsuit, *Debrunner, et al. v. City and County of San Francisco, et al.*, 4:22-cv-07455-JSW, alleges religious and disability discrimination claims, among others, for denying current and former City employees reasonable accommodations

from the mandate to receive the Covid-19 vaccine. On or about March 7, 2025, the complaint was amended to add a request for reinstatement of employment. As of the date of the instant hearing, the lawsuit remained pending.

19. Effective August 23, 2023, the City's vaccination policy was modified such that Covid-19 vaccination would only be required for personnel working in certain healthcare facilities.

20. A City memorandum dated July 3, 2024, states that employees, including respondent, who experienced non-disciplinary separations without future employment restrictions may apply to any open City position subject to the regular civil service examination process. If selected for employment, such individuals: would enter service as a new appointee with a new seniority date and, for sworn employees, a new star number; would serve a new one-year probationary period; and would not have prior accrual time balances reinstated.

21. Greg Neill, associate governmental program analyst with CalPERS, testified at hearing that he was assigned to analyze respondent's appeal. Neill stated that if respondent's federal lawsuit succeeds in securing reinstatement for him, CalPERS would accept respondent's application for industrial disability retirement.

Respondent's Additional Evidence

SEPARATION STATUS

22. Respondent asserted that CalPERS's denial of his application was due to a misunderstanding that has since been corrected. In support, he pointed to a CalPERS "Employer Information for Disability Retirement" form which seeks certain information relating to reasons to refuse a disability retirement application, as follows:

Employer Certification

Pursuant to Government Code section 21156, a disability retirement must not be used as a substitute for the disciplinary process. I hereby certify (check all that apply):

- The member has an adverse action pending against them.
- The member was terminated for cause.
- The member resigned/service retired in lieu of termination.
- The member signed an agreement to waive their reinstatement rights . . .
- The member is being investigated for or has been convicted of a work-related felony.
- None of the above applies to this member.

23. On April 3, 2023, a City personnel officer completed the CalPERS form and certified, "The member was terminated for cause." On April 5, 2024, the personnel officer provided an amended form certifying instead, "None of the above applies to this member." Respondent contends that the revised form establishes that he is not excluded from applying for CalPERS disability retirement.

24. CalPERS Circular Letter 200-018-17, issued March 30, 2017, similarly provides under the heading, "Determination of Members' Eligibility to Apply for Disability Retirement," that an employer must obtain CalPERS's determination that a

member is eligible for disability retirement before starting the disability determination process if (1) there was a disciplinary process underway prior to separation from employment; (2) the member was terminated for cause; (3) the member resigned in lieu of termination; (4) the member signed an agreement to waive reinstatement rights as part of a legal settlement; or (5) the member was convicted of or under investigation for a work-related felony. On the revised CalPERS form dated April 5, 2024, the City personnel officer certified that none of these eligibility conditions apply to respondent.

25. Respondent stated that he considered the City's July 3, 2024, offer of reemployment but rejected it because he learned that he "would have had to lose seniority" as a new employee and that his retirement "would not be CalPERS." Respondent stated that, if reemployed as a sheriff's deputy, he would also need light duties and no duty belt.

26. By letter dated October 8, 2024, the sheriff's office requested of the City's Human Resources Director that individuals who were separated from employment solely based on failure to comply with the prior vaccine mandate be offered reinstatement. Respondent stated he is informed that the sheriff's office is continuing to work toward securing this remedy.

27. Respondent stated that he is informed that the *Debrunner* lawsuit is likely to secure reinstatement for plaintiffs, including him.

28. As of the hearing date, respondent was not reinstated to employment with the City.

DISABILITY

29. Respondent stated that as of his *Skelly* hearing, he wanted to continue working as a deputy sheriff performing his regular duties. He stated that he "did not have medical evidence" with which to show industrial disability at that time, until he eventually received such evidence through his workers' compensation claim.

30. Respondent stated that he designated December 6, 2021, as his disability date on his disability retirement application because he "had to pick a date," his disabilities are due to cumulative trauma, and that is the date his workers' compensation providers recommended.

31. Respondent filed his workers' compensation claim sometime after the *Skelly* hearing on a date not in the record. He stated that the City initially denied the workers' compensation claim using his vaccination status as a pretext. He stated that the City changed its position and accepted the claim after he retained an attorney.

32. On December 8, 2022, Agreed Medical Examiner Richard F. Gravina, M.D., opined that respondent was totally temporarily disabled for workers' compensation purposes due to the "sum total" effects of complex and cumulative trauma. On November 6, 2023, Dr. Gravina concluded that respondent's "complex history of traumatic symptomology" involving pain and range of motion limitations in his lumbar spine and cervical spine, bilateral carpal tunnel syndrome, and left heel plantar fasciitis were permanent and stationary, and rendered him unable to return to his previous employment as a deputy sheriff.

33. Labor Code section 3213.2 establishes a presumption of workers' compensation coverage for peace officers with lower back impairments whose duties

include wearing a duty belt, and extends the time limit to make a claim on this basis up to five years from termination of service.

Ultimate Findings

34. Respondent left employment with the City for reasons that were not the result of a disabling medical condition.

35. Although respondent was not barred from returning to employment with the City, he does not have reinstatement rights, and he has not been reinstated. Respondent's employment relationship with the City was completely severed on April 1, 2022, when his prior civil service appointment was 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, 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 for cause 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. 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." (*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.)

The *Smith* court stated that the outcomes of workers' compensation claims "are not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties is different." (*Ibid.*) Further, medical opinions of disability pursuant to workers' compensation claims do not provide "unequivocal" evidence of eligibility for disability retirement. (*Ibid.*)

Discussion

5. Respondent contends that, because his termination from City employment was non-disciplinary and he was eligible to return to the City as an employee, the *Haywood* rule does not bar his application for disability retirement. However, *Haywood* stands for the proposition that a public employee whose employment relationship severed for reasons unrelated to disability is not eligible for

disability retirement. (*Haywood*, 67 Cal.App.4th at 1307 (PERL “reflects a legislative intent that a claimed disability bear a causal relationship to the discontinuance of service”).)

Here, respondent’s employment terminated because his vaccination status precluded him from meeting the minimum qualifications of his position. (Findings 10, 16.) His separation from employment was not the result of a disabling medical condition. (Finding 34.) Even though the separation was characterized as non-disciplinary, and respondent was not barred from applying to work for the City, his employment relationship through his civil service appointment was completely severed on April 1, 2022. (Finding 35.)

Because respondent’s employment relationship with the City was completely severed as of April 1, 2022, he is ineligible to apply for disability retirement unless he establishes that an exception applies.

6. Respondent’s employment termination was not preemptive of an otherwise valid claim for disability retirement. Respondent did not apply for disability retirement until one year after his employment terminated. (Findings 3, 4.) The CalPERS Board could not have determined that respondent was eligible for disability retirement when the City terminated his employment because respondent had not applied. Respondent therefore did not have a matured right to disability retirement when his employment ended.

7. Equitable principles also do not establish any matured right to disability retirement as of April 1, 2022.

Respondent cannot establish that he had an impending ruling on a claim for disability retirement that was delayed until after dismissal through no fault of his own, given that he had not yet applied for disability retirement.

Respondent's lack of evidence to support a disability retirement claim until after he received workers' compensation also does not establish a matured right to disability retirement as of April 1, 2022. No undisputed evidence shows that a favorable decision on his disability retirement claim was a foregone conclusion. Respondent's medical opinions of temporary and permanent workers' compensation disability do not provide undisputed evidence of eligibility for CalPERS disability retirement. (See *Smith*, 120 Cal.App.4th at 207.) For similar reasons, the statutory presumption of workers' compensation eligibility that may apply to respondent does not provide undisputed evidence of eligibility for CalPERS disability retirement.

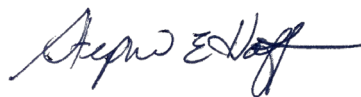
Respondent has not met his burden to show that a right to disability retirement had matured as of April 1, 2022.

8. Respondent is not eligible for disability retirement because his separation from employment was not the result of a disabling medical condition nor was it preemptive of an otherwise valid claim for disability retirement. Should respondent's prior civil service appointment be reinstated through his civil rights litigation, he would be eligible to apply for industrial disability retirement.

ORDER

The appeal of Valerio Josif, also known as Valeriu Iosif, of the determination that he is ineligible to receive industrial disability retirement benefits is denied.

DATE: 08/26/2025

A handwritten signature in dark ink, appearing to read 'Stephanie E. Haffner', with a stylized, flowing script.

STEPHANIE E. HAFFNER

Administrative Law Judge

Office of Administrative Hearings