

ATTACHMENT A

THE PROPOSED DECISION

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

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

**JACOB DiPIERO and CITY OF CAMPBELL,
Respondents.**

Agency Case No. 2024-0649

OAH No. 2025020506

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 14, 2025, by videoconference.

Senior Counsel Austa Wakily represented complainant Sharon Hobbs, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System.

Attorney Kenneth M. Sheppard represented respondent Jacob DiPiero, who was present.

Attorney Richard C. Bolanos represented respondent City of Campbell.

The record closed and the matter was submitted for decision on October 14, 2025.

FACTUAL FINDINGS

1. The California Public Employees' Retirement System (CalPERS) provides retirement services to persons who have worked for California local government agencies that contract with CalPERS to provide such services to the local government agencies' employees and retirees. Sharon Hobbs, Chief of the CalPERS Disability and Survivor Benefits Division, is the complainant in this matter.

2. Respondent City of Campbell is a California city that contracts with CalPERS to provide retirement services for its local safety employees.

3. Respondent Jacob DiPiero worked as a police officer for the City of Campbell. Because of this employment, respondent DiPiero is a CalPERS local safety member.

4. In January 2023, while employed by the City but on leave for both medical and administrative reasons, DiPiero applied for industrial disability retirement. In June 2024, Assistant Chief of the Disability and Survivor Benefits Division Tina Matthews notified DiPiero and the City that CalPERS intended to cancel his application. As the basis for this cancellation, the letter states that "you are not eligible for industrial disability retirement because you do not have an employment relationship with the City of Campbell."

5. Both DiPiero and the City timely appealed. Complainant signed a Statement of Issues for this appeal on January 16, 2025. The Statement of Issues

alleges that the City placed DiPiero "on administrative leave" in December 2022, that his "employment relationship with the City ended," and that this "severance of the employee relationship renders [DiPiero] ineligible for disability retirement."

6. DiPiero and the City contend that DiPiero's employment relationship with the City had not ended when he applied for disability retirement, and still has not ended. They contend further that DiPiero's right to retire for industrial disability matured before any of the events that caused the City to place him on administrative leave, and for that reason that later events cannot make him ineligible to retire for industrial disability.

Chronology

7. DiPiero began working for the City as a police officer in December 2019.

8. In March 2021, DiPiero sought medical treatment for low back pain. The City's workers' compensation provider accepted this injury as industrial in nature.

9. DiPiero has received treatment for his back injury, including medications and chiropractic care, regularly and continuously since March 2021.

10. Between April and October 2021, DiPiero was on leave for temporary total disability. He returned to modified duty in October 2021, answering non-emergency telephone calls to the police department.

11. In June 2022, a workers' compensation Qualified Medical Examiner (QME) (Christian Foglar, M.D.) provided a report to DiPiero and to the City about DiPiero's low back condition, activity limitations, and prospects for improvement. Dr. Foglar opined that DiPiero's low back weakness and mobility limitations as of mid-2022 made him incapable of performing a police officer's usual duties, and that reasonable

medical treatment was unlikely to restore such capability. He recommended DiPiero's "medical discharge from the police force." Dr. Foglar also opined that DiPiero's disabling low back problems are industrial in origin.

12. After receiving Dr. Foglar's report, DiPiero's supervisors informed him that permanent light duty was not available for City police officers. Because Dr. Foglar had opined that DiPiero would never be able to return to full duty, DiPiero's supervisors placed him on temporary total disability leave again. His last day actively working in any way for the City police department was in late June 2022.

13. In early September 2022, the City submitted an application on DiPiero's behalf to CalPERS for DiPiero's industrial disability retirement. The first version of this application, dated September 7, 2022, bore the signature of the City's Human Resources manager, Jenny Le-Christensen. The second version, dated September 17, 2022, bore the signature of the City's then-City Manager, Brian Loventhal. Both versions were otherwise identical, quoting Dr. Foglar's QME report to describe DiPiero's disability. The evidence does not establish that the City Council of the City ever considered or authorized either application, or that any City law delegated authority from the City Council to the City Manager to certify City employees' incapacity for duty.

14. By letter dated September 26, 2022, a CalPERS staff member confirmed to DiPiero and the City that CalPERS had received the application described in Finding 13. The letter instructed the City not to "begin your medical determination process until you receive notification that the member's application has been accepted." It stated further that DiPiero had "the option to waive [his] right to retire on disability," which he would do by failing "to cooperate with the application process."

15. In September 2022, DiPiero did not want to retire for disability. He testified credibly that at that time he still resisted the idea that he was permanently unable to do the professional and leisure physical activities that he previously had enjoyed. He also had scheduled lumbar spine surgery in early November 2022, and despite Dr. Foglar's opinion held out hope that this surgery ultimately would enable him to return to work. For these reasons, DiPiero did not submit any application to CalPERS for industrial disability retirement to correspond with the City application described in Finding 13.

16. On November 4, 2022, DiPiero had the surgery he had planned.

17. On December 12, 2022, officers from the Morgan Hill Police Department responded to a call for service at DiPiero's home. They arrested DiPiero on suspicion of having committed a battery on his estranged wife. DiPiero was not convicted of any crime resulting from this incident or arrest.

18. Because of his arrest on December 12, 2022, the City placed DiPiero on administrative leave, effective December 13, 2022. The memorandum informing DiPiero about this leave states, "Placement on paid administrative leave is not a disciplinary action. You will remain on paid administrative leave until further notice."

19. By letter dated January 12, 2023, a CalPERS staff member notified DiPiero and the City that CalPERS had "canceled" the application described in Finding 13.

20. On January 16, 2023, DiPiero saw his medical provider for a surgical follow-up visit. Despite physical therapy, his recovery had not progressed as he had hoped.

21. On January 18, 2023, DiPiero signed his own application to CalPERS for industrial disability retirement. His application stated that he remained a City police officer, although he was not currently working in any capacity, and that he wished to retire for disability "upon expiration of [workers' compensation] benefits."

22. In February 2023, Le-Christensen signed and returned a document to CalPERS stating that DiPiero "has an adverse [employment] action pending" against him.

23. The City's police department conducted an Internal Affairs investigation regarding DiPiero in late 2022 and early 2023. Upon written request from a CalPERS staff member in September 2023, a City representative provided a copy of the resulting investigation report to CalPERS in November 2023.

24. The investigation report states that the investigation substantiated several types of misconduct by DiPiero. None of this misconduct bears any relationship to DiPiero's back-related incapacity to continue police duties, and all of the misconduct occurred on or after September 18, 2022. The report includes sections for "Captain's Review" and "Chief's Review." The "Captain's Review" section concurs in the investigation findings; the "Chief's Review" section is blank.

25. No CalPERS staff member sent any other written notice to either DiPiero or the City between November 2023 (when the City provided the report described in Finding 23) and June 2024 (when CalPERS provided the ineligibility letter described in Finding 4).

26. On a date the evidence does not establish, but that was in late 2024, DiPiero received written notice that the City intended to terminate his employment.

This notice offered DiPiero the opportunity for a hearing (a "*Skelly*" hearing), which he requested. The hearing occurred, but no final decision has issued.

27. DiPiero has not received salary or wages from the City for many months. For some time while he was on temporary total disability leave, he continued to receive workers' compensation benefits. The evidence does not establish whether those payments continue, or have ceased.

LEGAL CONCLUSIONS

1. DiPiero ultimately bears the burden of demonstrating that he qualifies for industrial disability retirement. Complainant contends that this principle assigns the burden of proof to DiPiero on all issues relating to this determination, at all phases of his application's consideration. This contention is incorrect.

2. The matters summarized in Findings 12, 18, 24, and 26 establish that the City had not terminated DiPiero's employment when he applied for industrial disability retirement in January 2023, and that as of the hearing in October 2025 the City still had not terminated DiPiero's employment. Citing Government Code section 21156, subdivision (a)(2), and judicial interpretations of that subdivision, however, complainant contends that CalPERS may deem the City to have terminated DiPiero's employment for cause unrelated to any disability. Complainant bears the burdens of proof and persuasion on this issue.

3. DiPiero and the City contend in opposition that DiPiero's right to retire for industrial disability had matured on or before September 17, 2022. For this reason, they contend further that even if CalPERS may deem the City to have terminated DiPiero's employment for cause unrelated to any disability, or if the City terminates his

employment in the future, such termination would not make DiPiero ineligible to retire for disability. DiPiero and the City bear the burdens of proof and persuasion on this issue.

Employment Termination for Cause Unrelated to Alleged Disability

4. The matters stated in Finding 17, 18, and 24 establish that the pending employee discipline regarding DiPiero does not arise from or relate in any way to the low back problems that he alleges preclude his return to police work.

5. Complainant argues that despite the matters stated in Finding 26 and in Legal Conclusion 2, DiPiero's employment termination, for misconduct rather than for medical incapacity, is inevitable. This argument is baseless. Nothing in Findings 17, 18, 24, and 26 establishes that the City must terminate DiPiero's employment, rather than demoting him, suspending him, taking some other disciplinary action, or setting aside the findings stated in the Internal Affairs report summarized in Finding 23. The matters stated in Finding 26 confirm that the City has offered DiPiero the opportunity to advocate against his termination, that he has taken this opportunity, and that no final decision yet has occurred.

6. Complainant argues further that CalPERS may infer, from the City's failure to take any disciplinary action regarding DiPiero in the more than two years since completing its Internal Affairs investigation in early 2023, that the City will terminate DiPiero's employment but is delaying this action in an effort to avoid jeopardizing DiPiero's industrial disability retirement application. Complainant insinuates as well that this delay constitutes a bad-faith effort by the City to help DiPiero obtain a benefit that he does not deserve, and that this bad faith justifies inferences adverse to DiPiero's and the City's positions. The evidence does not support this insinuation,

however. Instead, the evidence establishes that the City has taken steps to avoid jeopardizing DiPiero's industrial disability retirement application because, as stated in Finding 13, City staff members had certified DiPiero's incapacity to CalPERS in September 2022, well before the December 2022 events that led police department representatives to investigate DiPiero and to contemplate disciplinary action against him. Even if the CalPERS Board of Administration and a reviewing court ultimately conclude that these September 2022 certifications did not give DiPiero a matured right on or before September 17, 2022, to retire for industrial disability, this conclusion would not imply that the City's course of action has involved any effort to subvert the Public Employees' Retirement Law.

Matured Right to Retire for Disability

7. The California Court of Appeal described the principles governing disability retirement by persons who also may face employment termination in *Smith v. City of Napa* (2004) 120 Cal.App.4th 194. The basic principle, according to the court, is that "a dismissal for good cause unrelated to a medical disability disqualifies an employee for a disability retirement." (*Smith*, 120 Cal.App.4th at p. 204.) Dismissal "solely for a cause unrelated to a disabling medical condition" cannot, however, "result in the forfeiture of a matured right to a pension."

8. In *Smith*, the would-be retiree filed an industrial disability retirement application on the effective date of his dismissal for cause, although he alleged that his disabling injury predated his dismissal. (*Smith*, 120 Cal.App.4th at p. 201.) Neither he nor his employer had applied for his disability retirement at any time before his dismissal. (*Id.*, at p. 203.) The court held that under these facts, Smith's right to retire for disability had not matured before his dismissal, and that his dismissal made him ineligible for disability retirement. (*Id.*, at pp. 207-208.)

9. The *Smith* court noted, however, that "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." (*Smith*, 120 Cal.App.4th at pp. 206-207.) As examples, the court offered a would-be retiree who "had an impending ruling on a claim for a disability pension that was delayed, through no fault of his own, until after his dismissal," and a would-be retiree as to whom "undisputed evidence" established incapacitating disability, "as perhaps with loss of a limb." (*Id.*, at p. 207.)

10. DiPiero and the City contend that DiPiero's circumstances constitute another such example, in which a local safety member's employer already had certified to CalPERS, before any events giving rise to possible employment termination, that the would-be retiree could not continue his duties because of medical incapacity. To show that the City had made this certification, they rely on the application described in Finding 13.

11. The City-initiated application described in Finding 13 satisfied the City's obligation under Government Code section 21153 to apply for disability retirement on DiPiero's behalf rather than simply terminating his employment upon determining that he had an incapacitating disability that the City could not reasonably accommodate. (Gov. Code, § 21153.)

12. The application did not constitute a binding certification by the City that it deemed DiPiero to be permanently incapacitated for duty, however. Rather, if DiPiero had chosen at that time to take advantage of the City's application, CalPERS then would have requested under Government Code section 21154 that the City certify DiPiero's incapacity. That certification would have needed to come not from the City's City Manager, but from its City Council (Gov. Code, § 21156, subd. (b).)

13. Furthermore, although the medical opinion on which the City Manager relied in submitting the application described in Finding 13 is clear, it does not establish beyond dispute that DiPiero was incapacitated in June 2022 and would not recover capacity. As noted in Findings 15 and 16, DiPiero himself believed at that time that he might regain his ability to work, and a surgeon was willing to operate on him in an attempt to help him regain that ability. (See also *Smith*, 120 Cal.App.4th at p. 207 [noting that “a workers’ compensation ruling is not binding on the issue of eligibility for disability retirement” and that Smith’s medical evidence regarding low back pain “is not unequivocal”].)

14. The CalPERS Board of Administration could not have retired DiPiero for disability before receiving the City Council certification described in Legal Conclusion 12. (Gov. Code, §§ 21156, subd. (a), 21158.) CalPERS staff members never requested that certification, however, and the City Council of the City never gave it, because (as summarized in Findings 14, 15, and 19) DiPiero did not wish in fall 2022 to pursue industrial disability retirement. His right to retire for industrial disability did not mature when the City applied to CalPERS on his behalf for industrial disability retirement, and it had not matured when he applied on his own behalf in January 2023.

Summary

15. DiPiero’s employment relationship with the City had not ended when he applied for industrial disability retirement in January 2023, and still has not ended. CalPERS currently may not deem DiPiero ineligible for disability retirement on the ground that his employment has terminated or inevitably will terminate for cause that does not relate to his alleged disability.

16. When DiPiero applied for industrial disability retirement in January 2023, his right to such retirement had not yet matured. Instead, and before DiPiero applied to retire, the City had initiated an Internal Affairs investigation that might have resulted and that might yet result in termination of his employment without right to reinstatement. After the City has determined whether it will terminate DiPiero's employment, and if so for what cause, CalPERS may reevaluate DiPiero's eligibility to retire for industrial disability.

ORDER

The appeal by Jacob DiPiero and the City of Campbell from cancellation of DiPiero's application for industrial disability retirement is granted in part and denied in part. At this time, DiPiero is neither conclusively eligible nor conclusively ineligible for such retirement.

DATE: 10/31/2025



JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings