

ATTACHMENT A

THE PROPOSED DECISION

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

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

**CHRISTOPHER M. THOMPSON and CALIFORNIA
DEPARTMENT OF FORESTRY AND FIRE PROTECTION,
Respondents**

Agency Case No. 2023-1011

OAH Case No. 2024060969

PROPOSED DECISION

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 24, 2025, by videoconference from Sacramento, California.

Bryan R. Delgado, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of respondent Christopher M. Thompson (Thompson) or respondent California Department of Forestry and Fire Protection (CAL FIRE). Each respondent was duly served with the Notice of Hearing.

Consequently, the matter proceeded as a default hearing against both respondents pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the parties submitted the matter for decision on November 24, 2025.

ISSUE

Is Thompson eligible to apply for industrial disability retirement, in light of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*) and related cases?

FACTUAL FINDINGS

Jurisdiction and Background

1. Thompson was employed by CAL FIRE from May 30, 2005, through June 2, 2022, most recently as a Fire Captain/Paramedic. By virtue of his employment, Thompson is a state safety member of CalPERS.

SEPARATION FROM CAL FIRE

2. On May 27, 2022, Thompson was informed of a Notice of Adverse Action (NOAA) against him pursuant to Government Code section 19574. The NOAA informed him that he was dismissed from his position as Fire Captain/Paramedic effective June 7, 2022. The NOAA advised Thompson of his right to appeal to the State Personnel Board (SPB) by written appeal within 30 calendar days after the date of the NOAA.

3. Thompson decided to resign. On June 1, 2022, Thompson filed his Service Retirement Election Application with CalPERS, indicating a retirement date of June 2, 2022. By email on June 2, 2022, he tendered his resignation, effective immediately. By letter dated January 17, 2025, CAL FIRE confirmed Thompson's resignation, which it designated as a "Resignation After Service of a Notice of Adverse Action (NOAA)."

APPLICATION, CANCELLATION, AND THOMPSON'S APPEAL

4. On March 14, 2023, CalPERS received Thompson's application for service pending industrial disability retirement, dated March 10, 2023. Thompson claimed disability on the basis of "Post Tramatic [sic] Stress Disorder, Back and Knee" since March 2013. His retirement date is noted as June 2, 2022.

5. On March 30, 2023, CAL FIRE completed the certification portion of the Employer Information for Disability Retirement form. CAL FIRE checked the box that states, "The member has an adverse action pending against him/her," and wrote in, "Employee was served termination papers per Gov Code 19572, to be effective June 7, 2022. Employee retired prior to effective date."

6. By letter dated August 16, 2023, CalPERS informed Thompson that it had cancelled his IDR application. CalPERS cited *Haywood* and related cases and explained:

When an employee is separated from employment as a result of disciplinary action or the *employee enters into a settlement agreement* where the employee chooses to voluntarily resign in lieu of termination, and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability

retirement, termination and/or a *mutual understanding of separation from employment due to a pending adverse action* renders the employee ineligible to apply for disability retirement.

(Emphasis added.)

7. Thompson timely appealed CalPERS's cancellation of his IDR application. On June 21, 2024, Sharon Hobbs, in her official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, signed and thereafter filed a Statement of Issues for purposes of Thompson's appeal. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Hearing Testimony

8. Ashley Glisan, Staff Services Manager III at CAL FIRE, testified. Her duties include overseeing personnel discipline. She was involved in the drafting and preparation of Thompson's NOAA. Ms. Glisan also received Thompson's resignation email and prepared the January 2025 confirmatory letter. Ms. Glisan explained CAL FIRE ordinarily sends confirmatory letters closer in time to an employee's separation, but in Thompson's case, for an unspecified reason, CAL FIRE was not able to send the letter until 31 months after resignation.

9. Ms. Glisan testified that Thompson did not request a Skelly hearing. The evidence does not establish whether CAL FIRE filed the NOAA with SPB. Nonetheless, Ms. Glisan testified Thompson did not file an appeal with SPB. She also testified that if Thompson were reinstated at CAL FIRE, the NOAA would be enforced against him and would result in his dismissal.

10. Greg Neill, Associate Governmental Program Analyst at CalPERS, testified. He is assigned to disability retirements and death benefits, and his duties include reviewing disability applications and supporting documentation. Mr. Neill confirmed that Thompson submitted the disability retirement application at issue in March 2023.

Analysis

HAYWOOD AND PROGENY

11. CalPERS determined Thompson was precluded from applying for disability retirement pursuant to the holdings in *Haywood* and related cases. In *Haywood*, a firefighter with the American River Fire Protection District was terminated for misconduct. He subsequently applied for disability retirement. The appellate court explained that an applicant's ability to reinstate his employment relationship is a necessary requirement of disability retirement if he is later determined no longer substantially incapacitated. (*Haywood, supra*, 67 Cal.App.4th at p. 1306.) However, the firefighter's termination for misconduct completely severed his employment relationship with the American River Fire Protection District. (*Ibid.*) Therefore, the appellate court held:

[W]e conclude that where, as here, 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, the termination of the employment relationship renders the employee ineligible for disability retirement regardless of whether a timely application is filed.

(*Haywood, supra*, 67 Cal.App.4th at p. 1307.)

12. CalPERS's precedential decision, *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (2013) Precedential Decision No. 13-01 (*Vandergoot*), expands *Haywood*'s preclusion to apply to cases where the applicant resolves a pending disciplinary action by voluntarily resigning and waiving any ability to return to his former employer in the future in lieu of being terminated. Mr. Vandergoot was served with a NOAA notifying him his employment with CAL FIRE would be terminated at the end of the month.

After the effective date of Mr. Vandergoot's termination but before he filed an appeal of the termination, he applied for disability retirement. The parties settled the appeal prior to hearing. CAL FIRE agreed to withdraw the NOAA and remove it and related documents from Mr. Vandergoot's personnel file, and Mr. Vandergoot voluntarily resigned and agreed not to seek employment with CAL FIRE in the future. If he violated the agreement in the future by accepting employment with CAL FIRE, the parties agreed CAL FIRE could dismiss him at any time, and he waived the right to appeal that dismissal. *Vandergoot* held that "the terms of the Stipulation for Settlement [are] tantamount to a dismissal for purposes of applying the *Haywood* criteria." (*Vandergoot, supra*, Precedential Dec. No. 13-01 at p. 8.)

13. The appellate court in *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156 (*Martinez*) approved *Vandergoot*'s extension of *Haywood*. Ms. Martinez worked for the Department of Social Services (DSS). DSS served her with a NOAA terminating her employment. The parties settled the NOAA. DSS agreed to withdraw the NOAA and remove it from Ms. Martinez's personnel file, and Ms. Martinez agreed to resign and never again apply for or accept a job with DSS. Ms. Martinez subsequently applied for disability retirement. Following *Vandergoot*, the appellate court explained:

With respect to *Vandergoot*, it was designated as a precedential decision because the Board believed it had “a significant legal or policy determination of general application that is likely to recur.” (§ 11425.60, subd. (b); see fn. 2, ante.) The Board presumably did so because employees leaving state service with a settlement of a pending termination for cause were becoming sufficiently common to merit a statement of policy. The Legislature and the Board have decided that resignation effects a “permanent separation” from state service. (Citations omitted.) Which is exactly what Martinez did when she agreed to leave state service and “never again apply for or accept any employment” with DSS. Notwithstanding the theoretical possibility of reinstatement, Martinez was not going to return to her former job. From this perspective, *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.)

APPLICATION TO THOMPSON’S CIRCUMSTANCES

14. It is undisputed Thompson voluntarily resigned from CAL FIRE prior to the effective date of his termination. *Haywood* does not apply because Thompson’s resignation effectively negated his pending termination. (See Gov. Code, § 19996 [permanent employee may be “permanently separated through resignation”]; Cal. Code Regs., tit. 2, § 446 [“Permanent separations from state service shall

include . . . resignation".) Neither *Vandergoot* nor *Martinez* applies because there was no evidence Thompson's resignation was accompanied by an agreement to never accept employment with CAL FIRE in the future. Unlike the applicants in those cases, there was no evidence Thompson is contractually or legally precluded from working for CAL FIRE sometime in the future. Ms. Glisan's opinion that if Thompson is ever reinstated to CAL FIRE, the NOAA will be enforced and he will be dismissed is nothing more than her speculation of what could happen in response to a future hypothetical event. (See *People v. Berryman* (1993) 6 Cal.4th 1048, 1081 "[But speculation is not evidence, less still substantial evidence"], overruled on different grounds by *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

15. In sum, CalPERS did not meet its burden of establishing under *Haywood* and its progeny that if Thompson is granted a disability retirement and subsequently determined to no longer be substantially incapacitated, he could not be reinstated with CAL FIRE. Therefore, Thompson is eligible to apply for disability retirement, and his appeal should be granted.

LEGAL CONCLUSIONS

1. Thompson applied for an industrial disability retirement. It is well settled that he has the burden of proving he qualifies for disability retirement. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) But Thompson's incapacity is not at issue on this appeal. Instead, the issue is CalPERS's contention that *Haywood* and its progeny preclude Thompson from being granted industrial disability retirement as a matter of law.

2. CalPERS's contention is akin to an affirmative defense to Thompson's claim for industrial disability retirement. Therefore, CalPERS has the burden of proving: (1) the complete severance of the employer-employee relationship between Thompson and CAL FIRE for reasons unrelated to a disabling medical condition; and (2) that the severance of that relationship did not preempt an otherwise valid claim for disability retirement. (Evid. Code, § 500; *Haywood, supra*, 67 Cal.App.4th 1292.)

3. CalPERS must meet its burden by 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 and once CalPERS meets its burden, the burden then shifts to Thompson to show he meets either of the exceptions to preclusion under *Haywood* and its progeny.

4. As discussed above, CalPERS did not establish Thompson's voluntary resignation permanently severed his employer-employee relationship with CAL FIRE such that he could never return to his former employment, the circumstances which, under *Haywood* and its progeny, renders one ineligible to apply for disability retirement. Accordingly, when all the evidence is considered, Thompson's appeal must be granted.

ORDER

Respondent Christopher M. Thompson's appeal from CalPERS's decision to cancel his Service Pending Industrial Disability Retirement application is GRANTED, and he is granted the right to apply for industrial disability retirement.

DATE: December 10, 2025



PATRICE DE GUZMAN HUBER

Administrative Law Judge

Office of Administrative Hearings