

ATTACHMENT A

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:**

**HARRY S. FRANKLIN and SANTA CLARA COUNTY CENTRAL
FIRE PROTECTION DISTRICT, Respondents.**

Agency Case No. 2024-0224

OAH No. 2025080925

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on May 21, 2026, by videoconference.

Attorney Bryan Delgado appeared on behalf of the California Public Employees' Retirement System (CalPERS).

Attorney Ian Leslie appeared on behalf of respondent Harry S. Franklin, who was present.

Respondent Santa Clara County Central Fire Protection District did not appear, and a default was taken pursuant to Government Code section 11520.

The record closed and the matter submitted for decision on May 21, 2026.

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; *In re Vandergoot* (2013) CalPERS Precedential Decision No. 13-01; and *In re MacFarland* (2016) CalPERS Precedential Decision 16-01.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent Harry S. Franklin (respondent) was employed by the Santa Clara County Central Fire Protection District (District) as a Firefighter/Paramedic. By virtue of this employment, respondent became a local safety member of CalPERS subject to Government Code sections 21154 and 21156.

2. On June 26, 2023, CalPERS received respondent's application for service pending disability retirement, dated June 20, 2023. Respondent claimed that he was unable to perform his duties due to a disabling lower back condition. Respondent retired for service effective June 23, 2023, and has been receiving a service retirement allowance.

3. On February 29, 2024, CalPERS sent respondent a Determination Letter, notifying him that his application for disability retirement had been cancelled because he left his employment with the District due to reasons other than a disabling medical

condition. The letter cited *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*) and other decisions.

4. Respondent filed a timely appeal of CalPERS's cancellation of his application on March 6, 2024. This hearing followed.

CalPERS's Evidence

5. On February 6, 2023, the District notified respondent that he was placed on administrative leave while an investigation into alleged misconduct would take place. An outside investigator was hired to perform the investigation. The investigation involved respondent's conduct during an off-duty incident on October 27, 2022, and his conduct with police officers when arrested that same day. The investigator provided a report to the District on March 15, 2023, in which he concluded that respondent committed conduct in violation of the Santa Clara County Fire Department Policy during the October 2022 incident and arrest, and was dishonest with the investigator when interviewed.

6. Based on the investigation report, the District's Deputy Chief of Operations issued a Notice of Intended Disciplinary Action – Termination (Notice) to respondent on May 16, 2023, notifying him of the findings in the investigative report and of his recommendation that respondent's employment with the District be terminated. Respondent was provided the opportunity to respond orally at a *Skelly* pre-disciplinary hearing and/or in writing, by May 30, 2023.

7. Instead of challenging the termination, respondent entered into a settlement agreement with the District, which he signed on June 22, 2023. Pursuant to this agreement, the Notice would be rescinded and respondent would tender an irrevocable letter of resignation from his employment effective June 23, 2023.

8. Paragraph 7 of the settlement agreement states, in part, that the agreement “does not release any of [respondent’s] claims or rights to utilize workers’ compensation or to seek an industrial disability retirement.” The settlement agreement also provided that respondent could have up to 12 mental health counseling sessions within six months of his resignation.

9. In accordance with the settlement agreement, respondent submitted a resignation letter, stating “I hereby voluntarily and irrevocably resign my employment as a Firefighter/Engineer for the Santa Clara County Fire Department.” Respondent’s employment with the District ended on June 23, 2023.

10. As part of the disability retirement application process, the District filled out a CalPERS “Employer Information” form regarding respondent. The form was returned by Doug Baker, the District’s Director of Personnel Services, on July 12, 2023. Baker checked a box on the form stating, “The member resigned in lieu of termination.”

11. Baker testified that the Notice was rescinded when respondent tendered his resignation letter and is no longer in his personnel file. However, the settlement agreement prohibits respondent from seeking reinstatement with the District, and respondent has no reinstatement rights. Baker confirmed his view that respondent resigned in lieu of termination. Baker consulted with the District’s counsel and was told that he must fill out the Employer Information form for CalPERS honestly and accurately, and that the settlement agreement does not require the District to lie to CalPERS about the circumstances of respondent’s resignation from his employment.

12. Baker acknowledged that respondent was on disability leave for an accepted workers’ compensation claim at the time of the October 2022 incident which

resulted in the investigation and Notice, and that he was never released back to full duty prior to his resignation in June 2023.

Respondent's Evidence

13. Respondent related that he had several serious injuries and surgeries during his career with the District, most notably to his lower back. He has also been treated for PTSD. Respondent was off work at the time of the investigation into the October 2022 incident, and was uncertain whether he would ever be able to return to full duty work.

14. Respondent explained that he had already been told by his physicians that he would not be able to return to work as a firefighter at the time he received the Notice. He disagreed with the investigation findings, but decided not to challenge them because he knew he could not return to work, and thought it did not make sense to fight to keep a job he could not do. Respondent testified that had he known that his resignation would prevent him from seeking a disability retirement, he would have instead chosen to defend himself against the District's Notice and would not have agreed to resign. He contends he was "blindsided" by the District's decision to report to CalPERS that he resigned in lieu of termination.

15. In a report dated May 1, 2023, David Padgett, D.O., respondent's primary treating physician for his lower back workers' compensation matter, wrote, "I think that he will not be able to return to work as a fireman. I will make that call on our next visit." After the next visit on May 16, 2023, Dr. Padgett wrote, "I believe it would be unwise and frankly, unsafe, for [respondent] to return to work as a fireman. He should file for medical retirement," and added "[respondent] is unable to work due to multiple injuries. This preclusion from return to usual work is permanent."

16. No criminal charges were filed against respondent relating to the October 2022 incident and arrest.

17. In addition to working as a firefighter, respondent has volunteered regularly for many years for an organization for burn survivors, including at an annual summer camp and other events.

LEGAL CONCLUSIONS

1. CalPERS has the burden of proving respondent's disability retirement application is barred by *Haywood*. (Evid. Code, § 500.) The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.) If CalPERS meets its burden, the burden shifts to respondent to show he meets either of the exceptions to preclusion under *Haywood*. (Evid. Code, § 500.)

2. CalPERS determined respondent was precluded from applying for disability retirement pursuant to the holdings in *Haywood*, *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*); *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156; *In re Vandergoot* (2013) CalPERS Precedential Decision No. 13-01; and *In re MacFarland* (2016) CalPERS Precedential Decision 16-01.

3. In *Haywood*, the employer terminated Haywood for cause following a series of disciplinary actions. (*Haywood, supra*, 67 Cal.App.4th at p. 1295.) The *Haywood* court found that Haywood was ineligible for disability retirement. (*Id.* at pp. 1308-1309.) The *Haywood* court noted Haywood had been terminated for cause, and 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." (*Id.* at pp. 1305-1306.)

4. The *Haywood* court highlighted the significance of Haywood's complete severance from the District within the context of a disability retirement application. (*Haywood, supra*, 67 Cal.App.4th at p. 1305.) The *Haywood* court noted disability retirement laws "contemplate the potential reinstatement of that relationship if the employee recovers and no longer is disabled." (*Ibid.*) The court continued:

Until an employee on disability retirement reaches the age of voluntary retirement, an employer may require the employee to undergo a medical examination to determine whether the disability continues. And an employee on disability retirement may apply for reinstatement on the ground of recovery. If an employee on disability retirement is found not to be disabled any longer, the employer may reinstate the employee, and his disability allowance terminates.

(*Id.* at p. 1305, internal citations omitted.) Accordingly, the complete severance of Haywood's employment relationship "eliminat[ed] a necessary requisite for disability retirement – the potential reinstatement of his employment relationship with the District if it ultimately is determined that he no longer is disabled." (*Id.* at p. 1306.)

5. *Vandergoot* expanded *Haywood's* preclusion to cases where the employee resolves a pending disciplinary action by voluntarily resigning and waiving any ability to return to his or her former employment. *Vandergoot* reasoned, "[t]his is because *Haywood* makes it clear that a necessary requisite for disability retirement is the potential reinstatement of the employment relationship." (*Vandergoot, supra*, CalPERS Precedential Dec. No. 13-01 at p. 7.) *Vandergoot* held that resignation in lieu of termination pursuant to a settlement agreement is "tantamount to a dismissal for

purposes of applying the *Haywood* criteria." (*Id.* at p. 8; see also *Martinez v. Public Employees' Retirement System, supra*, 33 Cal.App.5th at p. 1176 [approving *Vandergoot's* expansion of *Haywood*].)

6. The *Haywood* court recognized two exceptions to the general rule of preclusion from seeking disability retirement when there has been a complete severance of the employment relationship. (*Haywood, supra*, 67 Cal.App.4th at p. 1307.) An employee who has completely severed his or her employment relationship is not precluded from applying for disability retirement if he or she can establish the severance was the ultimate result of a disabling condition or preempted an otherwise valid claim for disability retirement. (*Ibid.*)

7. The second exception was clarified in *Smith*. The *Smith* court reasoned 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. (*Smith, supra*, 120 Cal.App.4th at p. 206.) "The key issue is thus whether [the employee's] right to a disability retirement matured before [the employee's] separation from service." (*Ibid.*)

8. The *Smith* court provided two examples supporting the application of this exception: (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)." (*Smith, supra*, 120 Cal.App.4th at p. 207.)

9. Respondent resigned from the District effective June 23, 2023. Respondent's resignation resulted in the complete severance of his employment relationship with the District and thus "eliminat[ed] a necessary requisite for disability retirement." (*Haywood, supra*, 67 Cal.App.4th at p. 1306.) Respondent cannot be reinstated to his former position and is subject to *Haywood*.

10. Respondent contends that because the District withdrew the Notice per the terms of the settlement agreement, he is no longer under threat of termination and did not resign in lieu of termination. This contention was refuted by the credible testimony of Baker, who established that the Notice was only rescinded as a condition of respondent's irrevocable resignation and that respondent has no right to return to employment with the District. Respondent also contended that the District's agreement to continue to provide mental health services for six months after respondent's resignation establishes that his employment relationship with the District had not been completely severed. This contention is not persuasive.

11. Respondent's medical evidence established that by mid-May 2023, prior to respondent's resignation, his workers' compensation treating physician determined that he was permanently precluded from returning to his usual duties as a firefighter because of his lower back condition. The evidence did not establish that any medical provider concluded that respondent was incapacitated from duty prior to the incident in October 2022 that gave rise to the District's Notice, or prior to the District's notification of respondent in February 2023 that an investigation would be undertaken. Respondent did not establish that he had a right to a disability retirement that "matured" prior to the proposed disciplinary action that resulted in the severance of respondent's employment. Furthermore, "a workers' compensation ruling is not binding on the issue of eligibility for disability retirement because the focus of the

issues . . . is different." (*Smith, supra*, 120 Cal.App.4th at p. 207, citing *Bianchi v. City of San Diego* (1989) 214 Cal.App.3d 563, 567; *Summerford v. Bd. of Retirement* (1977) 72 Cal.App.3d 128, 132.)

12. The District's decision to terminate respondent related entirely to his off-duty conduct on October 27, 2022, and subsequent dishonesty during the investigation. It was unrelated to the lower back condition which is the basis for his industrial disability retirement application. It was not established that respondent's separation from employment preempted a valid claim for disability retirement.

13. CalPERS met its burden of establishing that respondent completely severed his employment relationship with the District when he irrevocably resigned pursuant to the settlement agreement. Respondent did not establish that either exception to *Haywood* applies. CalPERS properly precluded respondent from applying for disability retirement based on *Haywood*. Accordingly, respondent's appeal must be denied.

ORDER

The appeal of respondent Harry S. Franklin is denied.

DATE: **06/08/2026**

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings