

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Statement of Issues Against:

**NICHOLAS PEELMAN,
Respondent,**

And

**CITY OF UPLAND,
Respondent.**

Agency Case No. 2024-0950

OAH No. 2025100218

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 16, 2026, by videoconference.

Bryan Delgado, Senior Attorney, appeared for Complainant California Public Employees' Retirement System (PERS).

Kelli M. Krupka, Lewis, Marenstein, Wicke, Sherwin & Lee represented Respondent Nicholas Peelman (Respondent).

There was no appearance by Respondent City of Upland (City), despite proper notice.

Oral and documentary evidence was received during the hearing. The record was held open until April 7, 2026, so that the parties could obtain a hearing transcript and then file briefs.

Complainant filed its closing brief in a timely manner, and it was marked for identification as Exhibit 24. (It was thereafter marked as Exhibit 25 in light of Complainant's submission of another document identified as Exhibit 24.) Respondent Peelman filed his closing brief in a timely manner and it was marked for identification as Exhibit R-34. (Both parties used numerals to identify their exhibits; Respondent Peelman's exhibits will be referenced with the letter R appended to differentiate them from Complainant's exhibits.)

The record was closed and the matter was submitted for decision on April 7, 2026.

On May 7, 2026, the ALJ issued an order reopening the record, requesting briefing on several issues. The briefs were to be due on May 20, 2026, but Respondent moved to extend the deadline, which was not opposed. Therefore, it was ordered that the supplemental briefs would be due on June 12, 2026.

The briefs were timely received. Complainant's Supplemental Brief is marked for identification as Exhibit 26, and Respondent's Supplemental Brief is marked for identification as Exhibit R-35.

The record again closed on June 12, 2026. However, the ALJ again reopened the record, so that Respondent might respond to a request for official notice contained in Complainant's supplemental brief.

Respondent submitted his written Response to Request for Official Notice on July 23, 2026, and it will be identified as Exhibit R-36. The record was again closed on July 23, 2026.

The ALJ hereby makes his factual findings, legal conclusions, and order.

STATEMENT OF THE CASE

Respondent Nicholas Peelman was formerly a police officer with the City of Upland Police Department. He seeks disability retirement benefits from PERS; he first applied for such benefits in March 2024. At the time his application for such benefits was received, Respondent was the subject of three internal affairs investigations, one of which was initiated in March 2023, and the other two initiated in early January 2024. Respondent Peelman resigned from the Upland Police Department effective May 1, 2024, while the investigations were pending.

In response to Respondent's application for disability retirement, PERS informed him that his application would not be considered, relying on cases that provide that a person who separates from employment and who cannot be reinstated cannot receive disability retirement benefits, because persons receiving such benefits, if they recover their health sufficiently, might be reinstated to their jobs.

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Many of the facts are not in dispute. What is in dispute is the legal effect of Respondent's resignation from the City, and whether applicable case law makes him ineligible for disability benefits.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. PERS is a defined benefit plan administered under the California Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.) PERS is governed by its Board of Administration (Board).

2. Respondent Peelman was employed by the City as a police officer, in various ranks, between July 30, 2007, and May 1, 2024. He held the rank of detective when his employment ceased.

3. By virtue of his employment with the City, Respondent became a local safety member of PERS pursuant to Government Code section 20425 and is subject to Government Code sections 21154 and 21156.

4. The City is a public agency that contracts with PERS to provide retirement benefits for its employees, including its local safety members.

5. On March 8, 2024, PERS received an application for industrial disability retirement (Application) from Respondent. (Ex. 3.) He claimed disability on the basis of orthopedic conditions, bilateral elbow and right wrist.

6. Respondent Peelman resigned from his employment with the City effective May 1, 2024. (Ex. 11.) As detailed hereafter, at the time of his resignation, the

City was conducting three investigations of Respondent Peelman for various acts of alleged malfeasance.

7. PERS determined that under applicable law, Respondent's employment relationship with the City was completely severed, which would bar eligibility for disability retirement.

8. By a letter dated October 21, 2024, PERS notified Respondent that it had cancelled his Application on the basis that his employment relationship had been completely severed. (Ex. 4.) Thereafter, Respondent Peelman filed an appeal by a letter dated November 5, 2024, which challenged the cancellation of his Application, and he sought an administrative hearing. (Ex. 5.) This proceeding ensued.

9. Notice of the hearing was provided to the City, which did not appear, although one of its employees testified as a witness. (Ex. 2.)

10. All jurisdictional requirements have been met.

Background

11. As noted above, Respondent Peelman was first employed by the City as a police officer on July 30, 2007. (Ex. 12.) After a few months in training, he became a solo patrol officer, and he spent seven or eight years in that assignment. Respondent became a field training officer and was then promoted to detective. In June 2022 he was promoted to sergeant. He did not pass probation as a sergeant, and was reduced in rank to detective effective April 5, 2023. (Ex. 7.)

12. A letter informing Respondent of his failure to meet probationary standards, written by the Chief of Police, stated in part that Respondent was being removed from his sergeant's position and returned to his position as a detective "due

to [Respondent's] promotional probationary status and failure to meet the Department's expectations during that probationary period." (Ex. 7.)

13. According to Respondent's testimony, he did not clear probation as a sergeant because of an off-duty incident; he was told that his reduction in rank was his punishment for the off-duty incident. That may tend to contradict portions of Exhibit 7, where the Chief of Police stated:

Please note that nothing in this action shall be interpreted as a waiver of the Department's ability to take appropriate disciplinary action based on the results of the current personnel investigation, of which you were notified on March 23, 2023. While that investigation may or may not lead to discipline, this action is being taken solely in response to your failure to meet the Department's expectations, as noted above.

14. Respondent last worked for the City on September 12, 2023.

The Investigations

THE MARCH 20, 2023, INCIDENT

15. On March 20, 2023, an investigation was commenced into Respondent's conduct on that day, where it was suspected that he had driven while under the influence of alcohol. Lieutenant Kabayan was tasked with the investigation. After interviewing numerous witnesses, the investigator sustained charges of misconduct by Respondent. Kabayan did not interview Respondent, because the latter was off work

due to a work-related injury and he ultimately resigned from his position. (Ex. 6, p. A88.)

16. On September 26, 2024, Captain Clifford Matthews sent a memo to the Chief of Police regarding the closure of the investigation. Captain Matthews concurred in Kabayan's findings sustaining the investigation. He noted that "prior to the conclusion of this investigation, Nicholas Peelman resigned from his employment with the Upland Police Department. Therefore, he cannot be disciplined, and no discipline is recommended." (Ex. 14, p. A122.)

THE JANUARY 7, 2024, INCIDENT

17. On January 7, 2024, the City Police Department received reports that Respondent had been involved in a fight at the Pechanga Casino; an off-duty Los Angeles County Sheriff's deputy reported further that Respondent was severely intoxicated during that incident.

18. Lieutenant Kabayan was again tasked with investigating Respondent. He issued a report on or about July 22, 2024, wherein he sustained a charge that Respondent violated Department policies by failing to report the incident of fighting and subsequent contact with another law enforcement agency, and conduct unbecoming a member of the Upland Police Department. The claim that Respondent engaged in unlawful fighting was not substantiated, in part because Respondent could not be interviewed. (Ex. 8, p. A100.)

19. On September 11, 2024, Captain Matthews sent a memo to the Police Chief, concurring with Lieutenant Kabayan's findings. He noted that Respondent had resigned prior to the completion of the investigation and could not be disciplined as a result of the resignation.

THE JANUARY 11, 2024, INCIDENT

20. It was alleged that Respondent discharged his firearm late on the evening of January 11, 2024, at or near his home in San Bernardino County. Lieutenant Kabayan was once again assigned to investigate.

21. Lieutenant Kabayan sustained charges that Respondent had displayed a firearm in violation of Department policies, and that he had discharged his weapon in violation of Penal Code section 246.3, subdivision (a), which led to a felony charge against Respondent in the San Bernardino Superior Court.

22. On July 18, 2024, Captain Matthews sent a memo to the Chief of Police, concurring with Kabayan's findings. As with the other two investigations, he noted that Respondent had resigned before the investigation was concluded, and thus could not be disciplined.

23. Respondent testified that during the pendency of the investigations into the 2024 incidents, he was placed on administrative leave. One of the investigation reports indicates that he was placed on administrative leave as of January 11, 2024, as a result of the allegations of misconduct that arose from the January 7, 2024, incident. (Ex. 9, p. A103.)

24. As noted above, no discipline was imposed on Respondent due to his resignation. Therefore, the conclusions made by the Police Department were not tested in a hearing or other proceeding. Further, Respondent testified to the effect that he was not convicted of a felony because the court deferred entry of judgment conditioned on his treatment for Post Traumatic Stress Disorder (PTSD).

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Reinstatement Rights

25. Cecilia Todd is Deputy Director of Human Resources and Risk Management for the City. She testified at hearing.

26. Ms. Todd testified that City employees who leave the City's employment, but who come back within two years, potentially can be reemployed, if they had been in good standing with the City before they left. Good standing meant something along the lines of good performance evaluations and no disciplinary actions against them.

27. Ms. Todd further testified that Respondent did not have reinstatement rights with the City, pointing to a City document pertaining to his separation from City employment which stated he was not eligible for rehire. (Ex. 12.) Further, she testified that he was not in good standing when he left the City. She attributed this in part to his demotion from sergeant to detective, and she testified that a felony would disqualify him from further employment.

28. Official notice is taken of the City's Merit System Rules and Regulations. In Rule 1, "definition of terms," at section 17, "Re-employment" is defined as "the reappointment, without examination, of a regular employee within two years of having resigned in good standing to a position in the same or comparable class." (Ex. 27, p. A284.)

29. Rule XIII of the Merit System Rules refers to separation from service with the City. Section 5 of Rule XIII deals with re-employment, and it states as follows:

With the approval of the City Manager an employee who has resigned with a good record may be re-employed within two years to his former position, if vacant, or to a

vacant position in the same or comparable class, provided the following circumstances have been met: 1) The former employee must meet the medical requirements of the position by taking a medical examination or other required pre-employment testing by a City designated physician as required by the City; 2) Work performance and performance appraisals at the time of separation must have been satisfactory; 3) Nothing occurred during the break in employment that will reflect adversely on the City or will impair the individual's ability to perform his/her duties effectively. A re-employed employee shall begin a new anniversary, begin vacation accruals at the lowest level, sick leave balance, and the employee shall begin a new probationary period.

(Ex. 24, p. A298.)

LEGAL CONCLUSIONS

1. By virtue of his employment by the Upland Police Department, Respondent became a local safety member of PERS subject to Government Code section 20425 and is subject to Government Code sections 21154 and 21156. (Factual Findings 1 -10.)

2. Complainant relies on *Haywood v. Am. River Fire Prot. Dist.* (1998) 67 Cal.App.4th 1292, (*Haywood*) and cases referred to as *Haywood's* progeny, such as

Smith v. City of Napa (2004) 120 Cal.App.4th 194 (*Smith*), and precedential decisions adopted by PERS, to deny Respondent Peelman's application.

3. In *Haywood* the employee had been terminated for cause, and he then applied for disability retirement benefits. The court in *Haywood* held that a complete severance of the employment relationship—which was the result of the termination for cause—renders an employee ineligible for disability retirement under the PERL. This is because a disability retirement is not necessarily a permanent separation, in that disability retirement laws contemplate the reinstatement of the employer-employee relationship if the employee recovers and is no longer disabled. (See Gov. Code, §§ 21192, 21193.) As stated by the *Haywood* court, "a complete severance of the employer-employee relationship eliminates a necessary requisite for disability retirement-the potential reinstatement of [the] employment relationship." (67 Cal.App.4th at 1305.)

4. The court in *Haywood* spoke to potential exceptions to the rule, which could result from a situation where the employee's discharge is the ultimate result of the disabling medical condition, or is preemptive of an otherwise valid claim for disability. This issue was further explored in *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*).

5. In *Smith* a firefighter filed for disability retirement on the effective date of his termination for cause by his employer. Speaking to the exception noted in *Haywood*, the court held that a dismissal for cause unrelated to the employee's disability cannot result in the forfeiture of a matured right to a pension. The right to a disability retirement does not mature, however, until the pension board has concluded the applicant is substantially incapacitated from performing his or her usual duties. The court posited, however, that equity might intervene to deem the right to disability

retirement to have matured. One such situation could arise where an employee had an impending ruling on a claim for disability retirement that was delayed, through no fault of the employee, until after his dismissal, or where there was undisputed evidence of eligibility for disability retirement, such as where the employee had lost a limb.

6. Where an employee resigns and agrees not to seek re-employment, such has been held to be akin to a termination for cause. (See *Martinez v. Public Employees Retirement System* (2019) 33 Cal.App.5th 1156.)

7. Here, Respondent Peelman did not agree that he would waive whatever rights he might have to be reinstated, and his departure from the City's roll of employees did not occur as the result of a settlement of a discipline proceeding. However, it does not appear that he could be reinstated or reemployed if his disabilities were ameliorated.

8. According to the City's records, he is not entitled to be rehired. That should be of no surprise where the employee resigned while on a leave of absence compelled by an internal affairs investigation, which was one of three such investigations pending at the time of resignation. The investigations led to findings of malfeasance by Respondent. That no discipline was meted out should not be a defense for Respondent; he had resigned his position and it does not appear that the City could discipline a former employee.

9. Under the City's policies for re-employment, Respondent would have to show he was in good standing when his employment ended. A peace officer placed on a leave of absence while internal affairs investigates several allegations of misconduct spread over a period of months does not appear to be an employee in good standing.

10. Under Rule XIII, Section 5, an employee may be rehired if nothing occurred during the break in employment that would reflect adversely on the City or would impair the employee's ability to perform his duties effectively. Here, during the break in employment the three investigations were completed and the findings were sustained against Respondent. Those findings would reflect adversely on the City if he were re-employed.

11. The weight of the evidence indicates Respondent's employment relationship with the City has been severed, such that he could not be reinstated. Therefore, his appeal must be denied.

ORDER

The appeal by Respondent Nicholas Peelman from the cancellation of his Application for Disability Retirement is denied.

DATE: 08/10/2026

A handwritten signature in cursive script that reads "Joseph Montoya".

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings