

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:

BRANDON M. NARANJO,

Respondent,

and

CITY OF COSTA MESA,

Respondent.

Agency Case No. 2022-0404

OAH Case No. 2022100865

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 17, 2023. Austa Wakily, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS). Danny Y. Yoo, Attorney at Law, represented respondent City of Costa Mesa (City). Respondent Brandon M. Naranjo did not appear and was not represented at the hearing.

Naranjo submitted a Disability Retirement Election Application for an industrial disability retirement. CalPERS determined Naranjo left his employment for reasons unrelated to a disabling medical condition, thus rendering him ineligible for disability retirement. CalPERS therefore declined to accept and cancelled Naranjo's application for disability retirement. Naranjo appealed.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order affirming CalPERS's cancellation of Naranjo's application for an industrial disability retirement.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 15, 2021, Naranjo filed a Disability Retirement Election Application with CalPERS.
2. By letter dated February 25, 2022, CalPERS informed Naranjo he was found not eligible for disability retirement benefits and denied his application.
3. By letter dated April 7, 2022, Naranjo formally requested a hearing appealing CalPERS's denial of his application for disability retirement benefits. There were no objections in connection with the untimeliness of the appeal.
4. On October 21, 2022, Keith Riddle, in his official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, filed the Statement of Issues.

5. On November 9, 2022, CalPERS served Naranjo and the attorneys of record for City with a Notice of Hearing containing information about a scheduled January 30, 2023, 9:00 a.m. hearing in this matter.

6. By Order dated January 13, 2023, the hearing noticed for January 30, 2023, 9:00 a.m. was continued to May 17, 2023.

7. All jurisdictional requirements are satisfied.

8. The May 17, 2023 hearing proceeded pursuant to Government Code section 11520, subdivision (a), which, in pertinent part, provides, "If the respondent . . . fails . . . to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent[.]"

Respondent's Background and Documented Occupational Injuries

9. On August 24, 2014, the City hired Naranjo as a full-time Police Officer in its Police Department (CMPD). Naranjo worked in the Traffic Division of CMPD.

10. The policies, procedures, and rules and regulations governing Naranjo's conduct as a CMPD police officer are set forth in the Costa Mesa Police Manual (March 2009-April 2019) and the Costa Mesa Police Manual Lexipol (May 2019), collectively referenced as the Costa Mesa Police Manuals (CMPM), and the Memorandum of Understanding (MOU) between the City and the Costa Mesa Police Association.

11. By virtue of his employment with the City, Naranjo is a "local safety member" of CalPERS subject to Government Code sections 21154 and 21156.

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12. During an October 22, 2019 motorcycle training session, Naranjo attempted a right turn at five miles per hour. His motorcycle fell causing him to collide into the front windshield and lacerating his upper lip. Naranjo was placed "off of work" until October 28, 2019. (City Exh. T.)

13. During an October 30, 2019 motorcycle training session, Naranjo hit a traffic cone when he attempted a left turn. The motorcycle slid from beneath him and he fell to the ground on his knees. Naranjo sprained his left knee and suffered abrasions to his right knee. Naranjo was placed "off of work" until November 4, 2019.

CMPD Investigation of Respondent's Misconduct and Resulting Notice to Terminate Respondent

14. In October 2019, CMPD received a complaint concerning Naranjo's conduct during a September 4, 2019 traffic stop involving a young female motorist suspected of driving under the influence of alcohol or drugs. According to the complaining party, after Naranjo completed a sobriety investigation, he cited the female motorist for a missing vehicle front license plate. Naranjo asked the female motorist for her phone number under the auspices of wanting to check on her to make sure she drove home safely. That evening, Naranjo used the phone number he obtained to text the female motorist, who did not immediately respond. Naranjo followed up by calling the female motorist and accusing her of misleading him to avoid a more serious citation. The complaining party subsequently learned Naranjo had similar encounters with other young female motorists and expressed a concern Naranjo was acting in his official capacity as a police officer to target young women, whom he solicited for dates.

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15. On October 15, 2019, the CMPD Professional Standards Bureau (PSB) initiated an administrative investigation of Naranjo's conduct. Sergeant Jason Chamness, who was assigned to the investigation, reviewed relevant CMPD records and interviewed approximately one dozen individuals and Naranjo. On May 24, 2020, CMPD placed Naranjo on administrative leave. A July 13 2020 Administrative Investigation memorandum Sergeant Chamness prepared details multiple incidents of Naranjo's misconduct occurring between December 2017 and September 2019. In that memorandum, Sergeant Chamness provides the following summary of his investigative findings:

On numerous occasions, Naranjo has shown favoritism towards women and solicited relationships and dates while working in the course and scope of his duties. Naranjo said he stopped and/or contacted approximately 15-20 women and explored the possibility of having personal relationships or connections with them.

This investigation revealed Naranjo misled women about their level of intoxication so that his perceived leniency would be viewed as an act of kindness. In return, Naranjo hoped the women would feel inclined to give him their phone number for his personal use. Naranjo admitted to issuing warnings instead of citations to gain favor and possible dates. He purposefully detained multiple women longer than necessary to have personal conversations that were outside the scope of his police duties.

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By his own admissions, Naranjo had sexual relationships with at least three women he met while on duty and in uniform. Naranjo admitted he knew his actions were wrong and unbecoming of a police officer. He knew he could be disciplined for his behavior.

Naranjo admitted he intentionally turned off his [Digital Audio Recording System] on multiple occasions to be "evasive." He did not want the department, or his supervisor, to hear his personal conversations.

In August 2018, prior to this investigation, [Sergeant Daniel] Miles, [who was Naranjo's supervisor,] counseled Naranjo when a woman called the Department to ask that Naranjo stop calling her. Naranjo agreed to refrain from such conduct. Naranjo inferred [*sic*] that his personal relationship with his wife was the cause of his behavior at work.

(Exh. 9 at p. 48.)

16. On August 18, 2020, CMPD served Naranjo with a Notice of Intent to Terminate, in which the then-Chief of Police for City advises Naranjo of a recommendation to terminate his employment as a police officer with the CMPD.

It is undisputed that you used your position as a police officer to obtain phone numbers from women you stopped for traffic violations. You admitted that you asked attractive women for their phone numbers on 15 to 20 occasions. You admitted that after you were counseled in 2018 for

improperly using your position to solicit relationships with women, you continued to engage in the same type of conduct. You said you were interested in attractive women who were close to your age and that you would engage them in personal conversations while on traffic stops with the "hope" that something would come of it, such as a date, relationship or sex.

You engaged in a disturbing pattern of manipulating the women into believing you were "giving them a break" in an effort to gain their favor and phone numbers. According to you, on occasion you would exaggerate the driver's level of intoxication to convince her that you were doing her a favor by not arresting her for DUI. You also admitted that you would reduce traffic violations with a similar hope that you could develop a relationship with the women. You also lied to at least two of the women when you told them you never asked for a phone number while on a traffic stop. [¶] . . . [¶]

While the Department does not prohibit police officers from establishing personal relationships with members of the community, officers are prohibited from using their position of authority to manipulate women who have been stopped for traffic violations. You are in a position of power when you engage in enforcement contact. When you exaggerated the severity of the traffic stops and then gave the women a "break," hoping that it would gain favor from them, you

abused your authority. You admitted you engaged in this conduct and asked for phone numbers so you could determine whether something would come of it, such as a date or sex.

You admitted you had sexual relationships with at least three women who you met as a result of your position with the Department.

As a police officer, you are expected to exercise good judgment. Moreover, as a traffic enforcement officer, you primarily worked independently, which required you to demonstrate minimal need for direct supervision. You, however, took advantage of the minimal supervision when you engaged in misconduct and took affirmative steps to conceal that misconduct. Based on your willful misconduct and violation of Department policies, you cannot be trusted to continue in your position as a police officer.

After you were counseled for using your position as a police officer to initiate a personal relationship . . . , you said you understood why your conduct was inappropriate and that it would not happen again. It is clear, however, that you chose to continue the same type of misconduct with the knowledge that it was in violation of policy and improper. Your conduct not only establishes poor judgment but also purposeful defiance of orders and directives from your supervisor.

I further have determined to discipline you for intentionally violating the Department's DAR and DVAR policies in an effort to conceal your misconduct. [¶] . . . [¶]

I have considered the fact you admitted your misconduct; however, it does not sufficiently mitigate the severity of your actions, particularly since you had been counseled previously and were fully aware that you were violating Department policies.

(Exh. 10 at pp. 27-29.)

17. The Notice of Intent to Terminate advises Naranjo of his right to a pre-disciplinary due process meeting pursuant to *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, the CMPM, and the MOU between the City and the Costa Mesa Police Association. Accordingly, the Notice of Intent to Terminate informs Naranjo a pre-disciplinary due process or *Skelly* meeting with the Chief of Police is scheduled for August 31, 2020, and in lieu of that meeting he may choose to submit a written response.

18. Naranjo did not appear at the *Skelly* meeting scheduled for August 31, 2020. CMPD noticed Naranjo that the August 31, 2020 *Skelly* meeting was rescheduled for October 12, 2020. The *Skelly* meeting did not occur on that date. Rather, by letter dated October 12, 2020, counsel for Naranjo claimed the PSB administrative investigation of Naranjo's conduct violated Naranjo's rights under the Public Safety Officers Procedural Bill of Rights Act (POBRA). Counsel for Naranjo informed CMPD that Naranjo "has decided to accept the Notice of Intent [to Terminate], bypass the *Skelly* process and acknowledge the disciplinary action. Therefore, there is no longer a

need for an interview as [Naranjo] understands that the termination is now in effect.” (City Exh. H.) Counsel for Naranjo further informed CMPD, “Officer Naranjo hereby invokes his post-disciplinary due process and requests an administrative appeal from wherein the appointing authority has the burden of proving that he engaged in misconduct, that the penalty of termination is warranted, and that his POBRA rights have been afforded.” (*Ibid.*)

19. CMPD sought an additional administrative interview of Naranjo before proceeding to a final disciplinary decision. To that end, CMPD scheduled an interview with Naranjo for October 27, 2020. Prior to October 27, 2020, Naranjo submitted to CMPD a doctor’s note excusing him from work on October 26 through November 8, 2020. The doctor’s note states Naranjo was “experiencing trauma and stress related to mental health symptoms that are temporarily impacting his ability to carry out work related functions. It is therefore in his best interest to attend to his mental health appropriately over the next two weeks before returning to work,” (Exh. 13.) CMPD noticed a rescheduling of the administrative interview for November 12, 2020. Naranjo did not appear at the rescheduled administrative interview.

20. Naranjo filed a November 4, 2020 Request for Family and Medical Leave of Absence (FMLA) due to an unspecified “serious health condition.” (Exh. 15.) Naranjo anticipated being absent from work on November 9, 2020 through January 26, 2021. Naranjo’s FMLA leave was subsequently continued through February 12, 2021. Due to his unavailability, CMPD notified Naranjo of the tolling of the one-year limitation period for completing the investigation and providing notification of proposed discipline in accordance with Government Code section 3304, subdivision (d)(2)(E). Thereafter, Naranjo’s FLMA leave was extended six additional times through April 1,

2022, and with each extension, CMPD informed Naranjo about the tolling of the limitation period during his personal medical leave.

21. By letter dated April 13, 2022, a different Chief of Police for City offered Naranjo an opportunity to attend a *Skelly* meeting scheduled for May 9, 2022, which Naranjo and his counsel accepted. Naranjo and his counsel departed the meeting, however, when the Chief of Police notified them about audio recording the meeting. By letter dated May 16, 2022, the Chief of Police offered Naranjo a second opportunity for a *Skelly* meeting, which occurred on June 13, 2022.

22. In a June 16, 2022 Notice of Termination, the Chief of Police informed Naranjo "repeated misconduct of the type you engaged in effectively disqualifies you from continued employment as a police officer with this Department." (City Ex. O.) The Chief of Police noted Naranjo's admissions at the *Skelly* meeting. Naranjo acknowledged the sustained findings of his misconduct and said, "What I did was wrong. It wasn't OK by any means. It wasn't morally right." (*Ibid.*)

23. On June 17, 2022, counsel filed a Notice of Appeal in the Matter of Notice of Termination of Officer Brandon Naranjo of the City of Costa Mesa Police Department (Notice of Appeal).

24. On September 21, 2022, counsel withdrew the Notice of Appeal.

Respondent's Disability Retirement Application

25. While on personal medical leave, Naranjo filed a Disability Retirement Election Application for an industrial disability retirement (Disability Retirement Application) on September 15, 2021, which is approximately one year after his counsel notified CMPD, by letter dated October 12, 2020, he had "decided to accept the Notice

of Intent [to Terminate], bypass the Skelly process and acknowledge the disciplinary action. Therefore, there is no longer a need for an interview as he understands that the termination is now in effect." (See Factual Finding 18.)

26. In his Disability Retirement Application, Naranjo lists "orthopedic-bi-lateral knees, left shoulder" as his specific disability. Naranjo claims his disability occurred "03/15/2018, 10/30/2019, cumulative over time" and was "due to motorcycle crash, cumulative trauma, repetitive duties over time, fight with suspect." Naranjo states his limitations due to injury as "unable to lift heavy objects, constant pain, stiffness, numbness, limited range of motions." (Exh. 3.)

27. On February 25, 2022, CalPERS informed Naranjo he was not eligible for disability retirement benefits and canceled his Disability Retirement Application. The attorneys representing City and CalPERS maintain Naranjo is precluded from a disability retirement based on his claimed orthopedic injuries. They further maintain in the pleadings and at hearing that Naranjo's Disability Retirement Application "is precluded by operation of *Haywood v. American River Fire Protection* (1998) 67 Cal.App.4th 1292." (See Exh. 1.)

LEGAL CONCLUSIONS

1. The well-established purpose of public employee pension programs is to induce persons to enter and continue in public service and to provide subsistence for disabled or retired employees and their dependents. (See *Wheeler v. Board of Administration* (1979) 25 Cal.3d 600, 605.) The California Public Employees' Retirement System (PERS) Law addresses situations where a public employee requires subsistence because a medical disability incapacitates him or her from performing his or her usual

duties. In those situations, the employee applies for and, if found eligible, is granted a disability retirement.

The *Haywood* Court

2. Notably, a disability retirement does not terminate the employer-employee relationship. The Third Appellate District in *Haywood v. American River Fire Protection (Haywood)*, *supra*, 67 Cal.App.4th at 1305, has made clear disability retirement laws contemplate the potential reinstatement of an employer-employee relationship.

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. ([Gov. Code,] § 21192.) And an employee on disability retirement may apply for reinstatement on the ground of recovery. (*Ibid.*) 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. (§ 21193.)

3. In *Haywood*, after a series of increasingly serious disciplinary actions, the employer terminated the employee for cause. At the time of the for-cause termination, there was no evidence of any physical or mental disability resulting in the employee's dismissal. The employee subsequently filed an application for disability retirement claiming he suffered from a major depression as a result of the disciplinary actions, from which he recovered with residual impairments, but if he were to return to work for the employer, he risked future depression should antagonisms with his supervisors

recur. In other words, the employee's claimed incapacity was specific to his employer; he claimed no inability to perform his duties with other hypothetical or prospective employers.

4. The *Haywood* court first notes an employee unwilling to discharge his or her obligation of faithful performance of duty can find no succor in the disability retirement laws for they offer no "refuge from disgrace." (*Id.*) It is absurd to provide disability retirement benefits to an employee dismissed for misbehavior. The *Haywood* court then concludes where "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." (*Id.* at 1307.)

5. Thus, *Haywood* articulates the general rule that a government employee loses the right to claim disability benefits when terminated for cause. *Haywood* also articulates exceptions to the general rule. First, a terminated employee may qualify for disability retirement when the employee's disability prompted the conduct resulting in the termination. Second, termination for cause cannot preempt a valid claim for disability retirement.

6. On the facts before it, the *Haywood* court held the employee's termination for cause severed the employment relationship, thereby rendering the employee ineligible from receiving disability retirement benefits.

The *Smith* Court

7. In *Smith v. City of Napa (Smith)* (2004) 120 Cal.App.4th 194, the Third Appellate District clarified the second exception to the general rule noting if an

employee “were able to prove that a right to a disability retirement matured before the date of the event giving cause to dismiss, the dismissal cannot preempt the right to receive a disability pension for the duration of the disability.” (*Id.* at 206.) The focus of the second exception to the general rule is whether the employee had a mature right to a disability retirement before his or her separation from service.

8. The *Smith* court additionally articulated a third exception to the general rule. “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 206-207.)

9. In *Smith*, the employer dismissed the employee after he failed certain remedial competency tests. The employee filed an application for a disability retirement on the effective date of his dismissal. While the disability application was pending, the dismissal of his employment was affirmed. Citing *Haywood*, CalPERS eventually denied the employee’s disability claim on grounds the employer-employee relationship no longer existed. CalPERS informed the employee, “You were terminated from employment for reasons that were not the result of a disabling medical condition. Additionally, the termination does not appear to be for the purpose of preventing a claim for disability. Therefore, under the *Haywood* case, you are not eligible for disability retirement.” (*Id.* at 202.) Thereafter, the employee filed a petition for a writ of mandate in Superior Court to direct the employer and CalPERS to consider the merits of his disability retirement application.

10. The *Smith* court noted the employee “did not even initiate the process [for applying for a disability retirement] until after giving cause for his dismissal” and his “medical evidence was not unequivocal” before ultimately holding the employee’s dismissal defeated his right to a disability retirement. (*Id.* at 206-207.)

The *Vandergoot* Decision

11. In the 2013 precedential decision titled *In the Matter of the Application for Disability Retirement of Vandergoot (Vandergoot)*, CalPERS Precedential Dec. No. 12-01, an employee applied for disability retirement after termination for cause. The employee was denied a disability retirement because the termination was neither the result of a disabling medical condition nor preemptive of any otherwise valid claim for disability retirement. While the employee's appeal of the termination to the State Personnel Board was pending, the employee and employer entered a Stipulation and Settlement Agreement, whereby the employee agreed to resign and waive all rights to reemployment.

12. *Vandergoot* affirmed CalPERS's denial of the employee's disability retirement application based on *Haywood* and *Smith*. According to *Vandergoot*, the employee's resignation was "tantamount to a dismissal" because "a necessary requisite for disability retirement is the potential reinstatement of the employment relationship" in the event it is ultimately determined the employee is no longer disabled. (*Id.* at p. 7, ¶ 18.)

Analysis

13. Applying *Haywood*, *Smith*, and *Vandergoot* to the facts and circumstances of this case, Naranjo is ineligible for an industrial disability retirement. On June 16, 2022, City discharged Naranjo from its ranks as a CMPD police officer. Naranjo engaged in and admitted to intentional and repeated misconduct disregarding CMPD policies governing traffic stops and traffic violations to initiate and pursue intimate relationships with female motorists he found attractive. Naranjo's misconduct is unbecoming of an officer, discredits the CMPD, and undermines public

trust and confidence in CMPD. Cause exists for City to terminate Naranjo's employment from CMPD. As recognized in *Haywood*, it would be absurd to award Naranjo's misconduct with disability retirement benefits.

14. Termination of Naranjo is not based on any incapacitating medical condition purportedly suffered by Naranjo. The undisputed evidence proves CMPD decided to discharge Naranjo from its rank of police officers based on his unprofessional conduct as early as August 11, 2020, when it provided Naranjo with a Notice of Intent to Terminate.

15. Naranjo thwarted CMPD's subsequent efforts to afford him an interview opportunity with a series of continuous leaves purportedly for trauma and stress-related mental health symptoms "temporarily impacting his ability to carry out work related functions." (See Factual Finding 19.) Naranjo offered no medical records corroborating his trauma and stress claims. The series of continuous leaves, which lasted approximately 18 months, ended on April 1, 2020, after which Naranjo was obligated to report to duty. On June 16, 2022, the City formally severed its employer-employee relationship with Naranjo with a Notice of Termination. At that time, there was not even a suggestion of a mental condition or disability substantially incapacitating Naranjo from performing his duties and functions as a CMPD police officer.

16. In his Disability Retirement Application, Naranjo lists "orthopedic-bi-lateral knees, left shoulder" as his specific disability. Whatever orthopedic injuries Naranjo may have experienced during his motorcycle training sessions, there is no competent medical evidence of any physical injuries or disability substantially incapacitating him from performing the duties of a police officer. Naranjo offered no evidence of any valid, preexisting right to a disability retirement.

17. The employee-employer relationship between Naranjo and City is completely severed. The continuing existence of an employee-employer relationship is a necessary requisite for any claimed disability retirement. In the absence of a continuing employee-employer relationship between Naranjo and City, Naranjo is precluded from applying for and obtaining a disability retirement.

ORDER

1. The appeal of respondent Brandon Naranjo is denied.
2. CalPERS's determination Brandon M. Naranjo is ineligible to apply for an industrial disability retirement is affirmed.

DATE: **06/16/2023**

Jennifer Russell

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings