

ATTACHMENT E

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 of:**

TIFFANY M. WAGNER, Respondent

and

COUNTY OF PLUMAS, Respondent.

Agency Case No. 2020-1100

OAH Case No. 2021010772

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 21, 2024, by videoconference.

Austa Wakily, Senior Attorney, represented complainant, Keith Riddle, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System (CalPERS).

Calvin Chang, Attorney at Law, represented respondent, Tiffany M. Wagner, aka Tiffany Goodson, who was not present. She will be referred to as Ms. Goodson in this decision.

Josh Brechtel, Interim Deputy County Counsel, represented respondent, County of Plumas (county).

Oral and documentary evidence was received. The record remained open for the parties to submit written closing briefs. Those briefs were received and considered. The record was closed, and the matter was submitted for decision on May 10, 2024.

ISSUE

May Ms. Goodson file an application for industrial disability retirement based on psychological conditions (major depression and post-traumatic stress disorder (PTSD)), or is her application and eligibility for disability retirement precluded by operation of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194?

PROTECTIVE ORDER

To protect privacy and confidential personal information from inappropriate disclosure, a written Protective Order Sealing Confidential Records was issued. The order lists the exhibits that were sealed and governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may

review the documents subject to the order, provided that such documents are protected from disclosure to the public.

FACTUAL FINDINGS

Jurisdictional Matters

1. Ms. Goodson was last employed by the county as a Correctional Officer II in the sheriff's office. Complainant alleged that by virtue of her employment, Ms. Goodson was a local miscellaneous member of CalPERS subject to Government Code section 21151. However, given her employment, it would seem she is a local safety member subject to Government Code section 21151.

2. On December 5, 2019, Ms. Goodson signed a Disability Retirement Election Application seeking an "Industrial Disability Retirement."¹ Ms. Goodson listed her last day on the payroll as October 7, 2019, and her retirement date as "N/A." She identified her disabilities as: major depression; PTSD. She asserted the injuries occurred on April 2018 and were continuous. Ms. Goodson stated the disability was: "Industrial: Subjected to sexual assault and sexual harassment." Ms. Goodson stated her injuries

¹ The statement of issues alleged that on July 11, 2019, CalPERS received Ms. Goodson's application for industrial disability retirement, which CalPERS canceled on August 12, 2019, due to "non-receipt of requested application information." No documentation of this was introduced, but Ms. Goodson's appeal also referenced this initial application filing date. The December 5, 2019, application is the controlling document in this matter.

precluded her from performing her duties “due to psychiatric dysfunction,” including an inability to perform her essential duties, supervise inmates, use weapons, respond to critical incidents, and “hostile environment.” When Ms. Goodson filed her application, she was not working, stated that a third party caused her injuries, and identified her treating psychiatrist.

3. By letter dated August 12, 2020, CalPERS advised Ms. Goodson that she was not eligible to apply for disability retirement benefits because her employment ended for reasons not related to a disabling medical condition. In support of its decision, CalPERS cited *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292; *Smith v. City of Napa* (2004) 120 Cal.App.4th 194; *Martinez v. Public Employees Retirement System* (2019) 33 Cal.App.5th 1156; *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot* (2013) CalPERS Precedential Decision No. 13-01; and *In the Matter of Accepting the Application for Industrial Disability Retirement of Philip McFarland* (2016) CalPERS Precedential Decision No. 16-01.

4. Ms. Goodson appealed CalPERS’s decision and requested an administrative hearing.

5. On January 20, 2021, complainant filed the Statement of Issues in his official capacity, seeking to uphold CalPERS’s determination that Ms. Goodson is not eligible to apply for an industrial disability retirement. The matter was set for hearing, continued several times because of Ms. Goodson’s pending federal litigation against the county, and this hearing then followed.

Ms. Goodson's Termination from Employment

6. On August 3, 2018, a county undersheriff notified Ms. Goodson that she was being placed on administrative leave, which would remain in place pending an investigation.

7. On September 11, 2018, the county district attorney notified the sheriff's office that, after reviewing the matter the sheriff had referred regarding Ms. Goodson, the alleged conduct was not criminal, and no charges would be filed.

8. On September 25, 2018, and again on December 18, 2018, a sheriff's sergeant notified Ms. Goodson that she was the subject of an administrative investigation into possible violations of department policy.

9. On March 1, 2019, the sheriff's sergeant issued a direct order to Ms. Goodson, ordering her to cease and desist all contact with an inmate who was a former California Highway Patrol (CHP) officer.

10. On June 7, 2019, the same sheriff's sergeant issued his Administrative Investigation Report, detailing the findings of his investigation.

11. On July 15, 2019, the undersheriff issued a Notice of Intent to Discipline, recommending Ms. Goodson's termination from employment.

12. On October 9, 2019, following a September 18, 2019, Skelly² pre-disciplinary hearing, the sheriff issued a Notice of Discipline: Termination of

² In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain

Employment, terminating Ms. Goodson's employment, effective immediately. The notice advised Ms. Goodson of her appeal rights.

13. On October 18, 2019, county counsel provided Ms. Goodson with information regarding the appeal process and her appeal rights.

Ms. Goodson's Federal Litigation

Ms. GOODSON'S COMPLAINT

14. Ms. Goodson did not appeal her termination through the county's appeal process. Instead, on February 27, 2020, Ms. Goodson filed a complaint in the United States District Court, Eastern District of California, Case No. 2:18-cv-3105-KJM-DB, alleging 12 causes of action: sexual harassment, discrimination, retaliation, failure to prevent discrimination, civil rights violations, violations of the public safety officer's procedural bill of rights, and conspiracy to interfere with civil rights. In her "Prayer," Ms. Goodson sought compensatory damages for lost wages and future loss of earnings, Title VII damages, monetary damages for emotional distress, general damages, punitive damages, statutory fees and costs, civil penalties, treble damages, interest, costs, an order enjoining the defendants from engaging in further violations,

"preremoval safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

and other relief as the court deemed proper. Ms. Goodson did not seek reinstatement to her former employment.

DISTRICT COURT FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. Following a six day bench trial in August 2022, a Chief United States District Court judge issued a Findings of Fact and Conclusions of Law (decision) on July 20, 2023. The district court judge found that in the summer of 2018, Ms. Goodson reported that a supervising sergeant had sexually harassed her. That sergeant resigned, but within two weeks, the county placed Ms. Goodson on administrative leave, and began an investigation that culminated in her termination. The district court judge found that Ms. Goodson proved that both her former supervisor and the county were liable for creating a hostile work environment in violation of the California Fair Employment and Housing Act (FEHA), that the county was liable for terminating her employment based in part on a retaliatory motive in violation of FEHA, and that she was entitled to compensatory damages of \$752,214 and equitable relief.

In the decision, the district court judge was extremely critical of the sheriff's investigation, noting the sergeant assigned to investigate Ms. Goodson's allegations "treated the matter as a criminal investigation, not as a workplace complaint of sexual harassment." The district court judge noted how the statements of the supervisor, whom Ms. Goodson alleged had sexually harassed and assaulted her, "changed dramatically over time," whereas Ms. Goodson's statements remained consistent. The district court judge found that, as Ms. Goodson feared, she would come under scrutiny when she reported her supervisor's misconduct. The district court judge described the interview of Ms. Goodson as "an interrogation." The district court judge found that the county appeared to pursue renewed criminal charges against Ms. Goodson after she filed her complaint in federal court, even going so far as to recommend charges be

filed in the other county where the prisoner/former CHP officer was incarcerated. Ms. Goodson was arraigned on those criminal charges but the prosecutor assigned to that case dismissed the charges noting it "was doubtful she had engaged in any criminal conduct at all."

The district court judge was extremely disparaging of the sheriff's sergeant who authored the June 7, 2019, Administrative Investigation Report, referenced above. The district court judge found that a number of the sergeant's "findings are questionable or even incorrect," and that his "shakiest conclusions relate to [Ms.] Goodson's complaint against [her supervisor]." The district court judge noted that the sergeant made contrary conclusions, finding that Ms. Goodson sexually assaulted her supervisor, and erroneously reported that she filed a false criminal complaint when she had not filed any criminal complaint. The sergeant also failed to explain why he ignored the supervisor's admission that he had forcefully grabbed Ms. Goodson's breasts after trapping her in a storage closet. The sergeant had also failed to address any of the evidence wherein the investigating detective believed Ms. Goodson's harassment claims, doubted her supervisor's credibility, and the supervisor had resigned soon after Ms. Goodson complained.

The district court judge found that "[t]hese omissions and inconsistencies suggest [the sergeant's] report is not an objective compilation of evidence. A number of other similarly dubious conclusions underscore that assessment," which the district court judge then listed in the decision, as well as listing the sergeant's allegations that were not proven at trial.

The district court judge was also critical of the undersheriff who issued the notice of intent to terminate Ms. Goodson's employment, finding that the undersheriff's "tone was hyperbolic, insulting, and contemptuous." The district court

judge cited several examples from the notice of intent that supported those findings. Further, the district court judge found that the undersheriff did not check the sergeant's "findings before writing his screed, or at any point correct his errors..... He instead raised new unsupported claims of wrongdoing in his notice." The district court judge cited to the numerous incorrect and unsupported claims the undersheriff made, including blaming Ms. Goodson for wrongfully ending her supervisor's career, and inventing the assaults to secure a large damages verdict.

The district court judge then detailed the damages Ms. Goodson suffered, both financially and emotionally. The district court judge found that Ms. Goodson proved that a retaliatory motive was a substantial motivating factor behind her termination, specifically finding "the County relied on [the undersheriff's and sergeant's] dubious, one-sided, and even false accusations against [Ms.] Goodson to justify its decision to terminate her employment." The district court judge found further, the county "turned her sexual harassment report against her. It punished her for sexual harassment, but not [her supervisor], who had admitted to grabbing her breasts in a storage closet." The district court judge detailed how the county faulted Ms. Goodson for numerous things, but not the "many other officers" who engaged in improper behavior, did not prove its claims at trial, made incorrect conclusions, and "relied on speculative inferences from thin circumstantial evidence" to make conclusions.

The district court judge found that Ms. Goodson "offered un rebutted expert opinion" that the county's "investigation fell short of accepted industry standards," because it prematurely terminated its investigation of Ms. Goodson's sexual harassment claim, wrongly failed to refer the matter to a human resources investigation, did not protect her against retaliation, and treated Ms. Goodson as a suspect rather than as a witness. The district court judge specifically found that the

undersheriff's notice to terminate "was retaliatory on its face." The undersheriff "used insulting, caustic and hyperbolic language to describe [Ms.] Goodson's actions. [The undersheriff] did not check [the sergeant's] conclusions or recognize any errors or weak conclusions in his work, but instead exaggerated the evidence and [the sergeant's] findings. [The undersheriff] directly linked his recommendation to [Ms. Goodson's supervisor's] resignation, which [the undersheriff] bemoaned."

The district court judge concluded that Ms. Goodson's supervisor and the county were liable for sexual harassment, and the county was liable for retaliation. The defendants were entitled to judgment on all other remaining claims. The court awarded damages and ordered the parties to meet and confer to reach an agreement regarding the appropriate forms of declaratory relief, injunctive relief, attorneys fees and costs, interest, and joint and several liability.

DISTRICT COURT ORDER

16. On January 9, 2024, the district court judge issued an order, which is now final. The district court judge found that Ms. Goodson's "motion for fees, costs, injunctive relief, and other relief are granted in part." The district court judge granted Ms. Goodson's request for attorneys' fees in part of \$1,509,950; awarded costs of \$99,098.95; approved the parties' proposal to allocate \$350,000 to Ms. Goodson's sexual harassment claim and \$150,000 to her retaliatory termination claim; granted Ms. Goodson's request for prejudgment interest at a rate of 7 percent on damages for past wages lost; denied Ms. Goodson's request for prejudgment interest on her award of damages related to a loss of future pension benefits; and granted Ms. Goodson's request for post judgment interest at a rate of 5.34 percent to be applied to the judgment if not paid by the 15th day after entry of judgment.

The district court judge also granted Ms. Goodson's "request for injunctive relief in part." The district court judge ordered that the county "must remove the record of [Ms. Goodson's] termination from her personnel record within 30 days of the date this order is filed"; ordered the county within 30 days of the date the order was filed to create a Disciplinary Team to include the Sheriff, Human Resource Director, and County Counsel, and set forth how sexual harassment, sexual hostile work environments, similar workplace misconduct complaints, and terminations were to be handled in the future; required the county to "ensure" that Sheriff employees receive, at a minimum, annual sexual harassment training; required the county to "ensure" that Sheriff's internal affairs investigators receive training on conducting sexual harassment investigations; ordered that the deadlines in the order not be modified absent a detailed showing of good cause; and ordered the injunction to be permanent and remain in force unless modified by a court order.

17. At issue in this administrative matter is the effect of the term of injunctive relief wherein the district court judge ordered the county to "remove the record of [Ms. Goodson's] termination from her personnel record within 30 dates of the date this order is filed." Put another way, does removing that record of termination make Ms. Goodson eligible to apply for industrial disability retirement?

Witness Testimony

18. Debra Lucero is the County Administration Officer (CAO) and Acting Human Resources Director for the county. She described her duties in those roles and her involvement in this matter. As a result of the district court order, the word "termination" was removed from Ms. Goodson's personnel file, but her termination was not reversed, nor was she reemployed by the county. According to Ms. Goodson's employment records, her employment relationship with the county ended on October

9, 2019, and she separated from county service. The effect of that separation was that Ms. Goodson is no longer a county employee.

Ms. Lucero explained the distinction between "termination" and "separation," but testified that even though the word "termination" was removed from Ms. Goodson's personnel records, her employment status has not changed. The county did not restore her employment, nor is she entitled to benefits. Ms. Lucero did not know "the particulars" of how the monetary sums awarded by the district court judge were processed, but the decision and order did not change Ms. Goodson's employment status. Also, there is no indication in Ms. Goodson's personnel file that she has made a request to be restored to her prior position.

On cross-examination, Ms. Lucero testified that the court ordered the word "termination" be removed from Ms. Goodson's personnel file. It is Ms. Lucero's understanding that the word "termination" was objectionable, and that word was removed. Ms. Goodson is no longer an employee who was terminated, but she has been separated from the county. Ms. Lucero does not know if Ms. Goodson is barred from future employment with the county or if she has a "non-rehire status" with the county.³

³ No evidence that Ms. Goodson is barred from future employment with the county or that she has a "non-rehire status" was introduced.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.] . . . The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the quality of the evidence. The quantity of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Applicable Code Sections and Regulation

3. Government Code section 20021 defines "Board" as "the Board of Administration of the Public Employees' Retirement System" (CalPERS).

4. Government Code section 20026 provides:

"Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by

the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

5. Government Code section 21151, provides that a local safety or miscellaneous member who is "incapacitated⁴ for the performance of duty as the result of an industrial disability shall be retired for disability....."

6. Government Code section 21152 states in part:

Application to the board for retirement of a member for disability may be made by:

[1] [1]

(d) The member or any person in his or her behalf.

7. Government Code section 21154 states in part:

The application shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member

⁴ "Incapacitated" means the applicant for a disability retirement has a substantial inability to perform his or her usual duties. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876-877.)

is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion. . . .

8. California Code of Regulations, title 2, section 446, states that disability retirement is a temporary separation from service.

Disability Retirement Case Law and Precedential Decisions⁵

HAYWOOD V. AMERICAN RIVER FIRE PROTECTION DISTRICT

9. *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292, involved an employee who filed an application for disability retirement after being terminated for cause. The court found that a terminated employee is ineligible for disability retirement because disability laws “contemplate a potential return to active service” (*Id.* at p. 1307) and termination constitutes “a complete severance of the employer-employee relationship” (*Id.* at p. 1306), thereby eliminating that potential return.

If 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, termination of the employment relationship renders the employee ineligible for disability retirement. (*Id.* at p. 1297.) However, pursuant to

⁵ Government Code section 11425.60 authorizes agencies to designate decisions as precedential that contain “a significant legal or policy determination of general application that is likely to recur.” Precedential decisions may be expressly relied upon by the administrative law judge and the agency.

Government Code 21153, an employer may not terminate an employee because of medical disability if the employee would be otherwise eligible for disability retirement, and, instead, the employer must apply for disability retirement on the employee's behalf. (*Id.* at p. 1305.) In the case before it, the court found that even though the employee had filed a claim for workers' compensation benefits before his termination, and had treated several times with a provider, 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. And there is no claim, or evidence to support a claim, of eligibility for disability retirement that could have been presented before the disciplinary actions were taken." (*Id.* at p. 1306.)

SMITH V. CITY OF NAPA

10. The court in *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, examined the two exceptions set forth in *Haywood, supra*, namely whether the dismissal is the ultimate result of a disabling medical condition or preemptive of an otherwise valid claim for disability retirement. The court held that if the employee can "prove that the 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" but that right "may be lost upon occurrence of a condition subsequent such as lawful termination of employment before it matures." (*Id.* at p. 206, citations omitted.) The key issue was whether an employee's right to a disability retirement matured before the employee's separation from service, which occurs when CalPERS determines the employee is no longer capable of performing his duties, not at the time of injury. (*Ibid.*, citations and footnote omitted.) Since CalPERS's determination of the employee's eligibility did not predate the cause for dismissal, the right to a disability retirement was immature, and the dismissal for cause defeated it. (*Ibid.*)

The court conceded 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 pp. 206-207.) Examples of a matured right to disability included (1) where 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) there was “undisputed evidence” 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).” (*Id.* at p. 207.)

The court found that neither exception applied. First, the employee did not even initiate the disability retirement application process until after giving cause for his dismissal. Second, at best, the record contained medical opinions of a permanent disability for purposes of the workers' compensation claims, but workers' compensation rulings are not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties is different. (*Ibid.*, citations omitted.)

MATTER OF VANDERGOOT

11. *In the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot, Respondent, and California Department of Forestry and Fire Protection, Respondent* (2013) Precedential Decision 13-01 (*Vandergoot*), addressed the question of whether CalPERS may properly apply *Haywood, supra*, in the absence of an actual dismissal for cause. There the employee appealed his dismissal for cause to the State Personnel Board. The employee settled his appeal via a stipulation, wherein he resigned, agreed not to seek employment with his employer in the future, and waived any rights of appeal regarding his dismissal. The employer agreed to withdraw the Notice of Adverse Action and remove it, the stipulation, and all supporting documents from the employee's personnel file.

In deciding the case, the Board made no findings regarding the factual basis underlying the disciplinary action taken against the employee. Instead, it considered those matters for the sole purpose of determining whether the employee's dismissal was the result of a disabling medical condition, concluding it was not. The Board held:

In deciding this case, bright line distinctions need not be made in determining when and under what circumstances a resignation becomes a termination for cause for purposes of applying *Haywood*. This is because *Haywood* makes it clear that a necessary requisite for disability retirement is the potential reinstatement of the employment relationship . . . if it ultimately is determined that [the employee] is no longer disabled. (*Haywood, supra* at pp. 1296-1297.) Such is not possible here. The employment relationship has not only been severed, but the terms of the Stipulation and Settlement Agreement expressly lock respondent out from being reinstated. Such a circumstance must be viewed as wholly inconsistent with the policy behind and rationale for disability retirement: [which contemplate reinstatement to employment].

The Board next addressed the employee's argument that his dismissal was preemptive of an otherwise valid claim for disability retirement, one of the exceptions discussed in *Smith, supra*. In finding it was not, the Board noted that a right to a disability retirement matures when CalPERS determines the employee is no longer capable of performing his duties, something which did not predate the employee's separation from employment. Principles of equity also did not help the employee

because he did not have an impending ruling on a claim for a CalPERS disability pension that was delayed through no fault of his own. In fact, he did not even initiate the process for receiving an industrial disability retirement allowance until after he received the Notice of Adverse Action. Second, there was no “undisputed evidence” that the employee was eligible for a disability retirement such that a disability retirement was a foregone conclusion. The employee’s prior industrial disability leave was not binding on the issue of eligibility for industrial disability retirement and the medical evidence was not unequivocal.

MATTER OF MACFARLAND

12. *In the Matter of Accepting the Application for Industrial Disability Retirement of Phillip D. MacFarland, Respondent, and California State Prison, Sacramento, California Department of Corrections and Rehabilitation, Respondent* (2016) Precedential Decision 16-01 (*McFarland*), the Board found the employee retired to avoid termination, and the employment relationship was severed prior to his retirement, when a Notice of Adverse Action was served. The severance became irrevocable when the employee withdrew any appeal he filed. As such, he was barred from returning to his former employment and the holdings in *Vandergoot* and *Haywood* rendered him ineligible for disability retirement, unless he met an exception identified in *Haywood* and *Smith*. The Board then found:

At the time [the employer] issued the [Notice of Adverse Action] and severed its employment relationship with [the employee, the employee] had no unconditional right to immediate payment of a disability retirement. His workers’ compensation actions were unresolved, and had no bearing on a determination as to whether he was substantially and

permanently incapacitated from his duties under retirement law. CalPERS had had no opportunity to evaluate any disability claims; [the employee] did not even initiate the disability retirement process until after giving cause for his dismissal. [The employee] had no unconditional right to immediate payment of a disability pension at the time he was terminated.

[The employee] is ineligible to apply for disability retirement or for industrial disability retirement under Government Code section 21151. His eligibility is precluded by operation of the holdings in *Haywood*, *Smith* and *Vandergoot*.

MARTINEZ V. PUBLIC EMPLOYEES' RETIREMENT SYSTEM

13. The court in *Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156, evaluated the claim of a former employee who settled the appeal of her termination for cause by agreeing to resign and not reapply for employment. The employee later appealed CalPERS's denial of her application for disability retirement, challenging the soundness and continued validity of *Haywood* and *Smith*, particularly as extended in *Vandergoot*. In upholding the Board's decision, the court agreed with the lower court's rulings that *Haywood* and *Smith* "set out the relevant law" and were binding as stare decisis, and that "*Vandergoot* is a reasonable extension of *Haywood* and *Smith*" entitled to "substantial weight" because of CalPERS's "area of expertise." (*Id.* at pp. 1161-1162.)

RIVERSIDE SHERIFFS' ASSOCIATION V. COUNTY OF RIVERSIDE

14. "Termination for cause and involuntary disability retirement are two distinct, incompatible means of removing an employee from a job The two means of removal cannot coexist because once an employee is terminated for cause, the employment relationship is severed and retirement benefits are no longer possible." (*Riverside Sheriffs' Assn. v. County of Riverside* (2009) 173 Cal.App.4th 1410, 1419.)

Evaluation

15. Although the district court judge ordered the county to remove the record of Ms. Goodson's termination from her personnel file, as well as ordering other terms noted above, nowhere did the district court judge order Ms. Goodson to be reinstated to her prior employment. Moreover, Ms. Goodson did not seek this remedy in her federal complaint. Ms. Lucero's testimony regarding Ms. Goodson's current employment status and failure to request reinstatement to her prior position was unrefuted. While Ms. Goodson's personnel file now shows that she was not terminated, she is still no longer a county employee. Simply having the word "termination" removed from her personnel file did not reinstate her or make her a county employee. Absent that employment relationship, Ms. Goodson is ineligible to apply for industrial disability retirement. As such, her appeal must be denied.

Ms. Goodson's argument that the district court judge's finding that her termination be removed from her personnel records makes her eligible to apply for disability retirement is incorrect. The district court judge ordered backpay and future pay but did not order reinstatement, presumably because her complaint did not seek that remedy. Because Ms. Goodson's employment with the county remains severed, even after the district court judge's order, she is not eligible to apply for disability

retirement.⁶ Ms. Goodson correctly points out that the district court judge's findings are final, but those findings simply awarded monetary damages and ordered the word "termination" be removed from Ms. Goodson's personnel file. At no time did the district court judge order reinstatement. Moreover, disability retirement contemplates a return to work if the disability resolves. Here, Ms. Goodson cannot return to work because her severance from employment never ceased.

The evidence also did not establish that Ms. Goodson's right to a disability retirement matured before she was separated from service, nor did CalPERS determine she was no longer capable of performing her duties before she was separated from service. There was no showing that Ms. Goodson had an impending ruling on a claim for disability retirement that was delayed until after she was separated, nor was there "undisputed evidence" she was eligible for a disability retirement. As such, none of the exceptions set forth in the case law apply.

Ms. Goodson's cite to *Willens v. Commission on Judicial Qualifications* (1973) 10 Cal. 3d 451, is unpersuasive. There, a judge who had been convicted and removed from the bench was determined to still be entitled to his disability retirement because nothing in the law prevented it, and the benefit could only be forfeited if the judge recovered from his disability. (*Id.* at pp. 456–59.) In that case, unlike here, there was a finding that the judge suffered from a disability which arose while he was still an acting judge. (*Id.* at p. 455.) Although Ms. Goodson argues that she is incapacitated from performing her job duties, no such finding was ever made. It has never been

⁶ Given the finding that separation prevents her from applying for a disability retirement, the parties' double recovery arguments need not be addressed.

determined that Ms. Goodson was disabled while a county employee. CalPERS never made any such determination nor did the district court judge.

Lucas v. State of California (1997) 58 Cal. App. 4th 744, cited by Ms. Goodson, is distinguishable. In that case, the employee was involuntarily terminated for cause. While the employee's appeal of his termination to the State Personnel Board was pending, and not wanting to lose his medical benefits, the employee applied for and was granted service retirement. Thereafter, his employer withdrew its disciplinary action and the State Personnel Board declined the employee's request to reinstate him, asserting it lacked jurisdiction to do so given the employer's withdrawal. The employee then filed a civil lawsuit seeking, among other things, reinstatement. (*Id.* at pp. 746-748.) The superior court granted the employer's demurrer, finding that the employee's service retirement constituted resignation from employment, and he had not timely sought reinstatement. (*Id.* at p. 750.)

Overturing that ruling, the court of appeal held that when the employer withdrew its adverse action, the employee was no longer separated from service by involuntary termination. Thus, he had pled facts in his complaint that could establish the withdrawal effectively entitled him to reinstatement. (*Ibid.*) Further, the employee had "sought and obtained service retirement benefits only after he was already separated from service by removal for cause (involuntary termination)." (*Id.* at pp. 750-751.) The court of appeal determined that its position was consistent with Government Code section 21198, which governs "reinstatement from retirement of persons retired for service after involuntary termination and later reinstated to employment." (*Id.* at p. 751.) The court of appeal held: "Although not precisely applicable because there was no administrative or judicial determination reinstating" the employee, Section 21198 was "instructive as expressly contemplating a situation involving reinstatement to civil

service employment of a person retired for service after involuntary employment termination." (*Ibid.*)

The court of appeal noted that the employee continued seeking reinstatement, even after the employer withdrew its disciplinary action, and that the employer's withdrawal of the disciplinary action foreclosed the employee from pursuing an administrative determination reinstating his employment. Thus, the employee had properly sought a judicial order of reinstatement through his civil lawsuit, and had pled facts entitling him to relief, such that the superior court's granting of the demurrer was error. (*Id.* at pp. 751-752.)

Unlike that case, here, Ms. Goodson never sought reinstatement nor did she seek or receive a service retirement either before or after she was separated from service. Instead, she seeks a disability retirement, which is distinct from a service retirement, and which requires her to establish she is eligible to apply for one. For the reasons noted above, she is not.

On this record, Ms. Goodson's appeal must be denied.

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ORDER

Tiffany M. Wagner's, aka Tiffany Goodson's, appeal of CalPERS's determination that she is not eligible to apply for industrial disability retirement is denied. CalPERS's determination is affirmed.

DATE: June 3, 2024


[Mary Agnes Matyszewski \(Jun 3, 2024 12:12 PDT\)](#)
MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings