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FELONY CONVICTIONS CAN RESULT IN LOSS OF CALPERS BENEFITS

Estrada v. Public Employees' Retirement System

California Court of Appeal, Second Appellate
District Sept. 21, 2023 (No. B317848)

By: Michael Silander & Muna Busailah

Question:

If a public employee under CalPERS is convicted of a felony that is later reduced to a misdemeanor, must they still forfeit a portion of their retirement benefits?

Answer:

Yes. Under Government Code section 7522.72, if a public employee is convicted of a felony that arises out of the performance of their official duties, the employee forfeits a portion of accrued retirement benefits even if the conviction is later reduced or expunged.

Facts

Estrada worked as an Accountant and Payroll Administrator for the city of La Habra Heights and received CalPERS retirement benefits. In April 2016, the LA County District Attorney's Office filed a felony complaint against Estrada charging her with misappropriation of public funds, and embezzlement by a public officer – both of which were felonies.

In June 2017, during Estrada's preliminary hearing her attorney and the DA reached a plea agreement that Estrada would plead "no contest" to one felony count of unauthorized access to a computer system. Sentencing was set for six months later and as part of the plea agreement, as long as Estrada reimbursed the city \$5,780.20, the felony would be vacated and replaced with a misdemeanor charge of unauthorized access.

Estrada paid the City, the felony was dropped to a misdemeanor, and Estrada was sentenced to 1-year summary probation. Additionally, once Estrada completed probation, the misdemeanor was vacated and expunged.

In April 2018, while Estrada was still serving probation, the City submitted a forfeiture of benefits form to CalPERS regarding Estrada's criminal conviction. The following month, Estrada was notified that due to her felony conviction, a portion of her accrued retirement was subject to forfeiture, and she was no longer eligible for CalPERS benefits.

Estrada disputed the forfeiture and argued she was not convicted of a felony because she withdrew her no contest plea when the felony was vacated and replaced with the



misdemeanor charge. However, an Administrative Law Judge ruled that her benefits were still subject to forfeiture under Government Code section 7522.72.

In September 2019, Estrada filed a petition with the LA County Superior Court for writ of mandate seeking to reinstate her retirement benefits. The Superior Court denied Estrada's petition to which she appealed.

Discussion

When interpreting statutes such as Government Code section 7522.72, courts use the context of the statute as a whole to determine the overall purpose. If the language is clear, courts will usually follow the statutes plain meaning to avoid a ruling that results in consequences the Legislature did not intend.

In this case, section 7522.72 is part of the California Public Employees Pension Reform Act of 2013. It states, in relevant part, “[i]f a public employee is convicted . . . of a felony under state or federal law for conduct arising out of or in the performance of his or her official duties, . . . he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member . . . and shall not accrue further benefits in that public retirement system, effective on the date of conviction.

Additionally, Subsection (c) mandates that, “[t]he rights and benefits **shall remain forfeited** notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction.”

First, the court in this case held that a no contest plea to a felony was a “conclusive admission of

guilt and constitutes a conviction within the ordinary [and] technical meaning of the word.” By pleading no contest to a felony, a defendant still acquires the status of a “felon” under the Penal Code section 502. Because Estrada pled no contest to the felony, and confirmed during the preliminary hearing that she understood the terms and conditions of the plea to include a plea of no contest would be treated as finding guilt, the court found that Estrada was essentially “convicted” of a felony at the preliminary hearing.

Lastly, the court interpreted the plain language of section 7522.72 (c) to mean exactly what it says: benefits shall remain forfeited regardless of whether the felony conviction is later reduced or expunged – which is exactly what happened to Estrada.

Although the felony charge was later reduced to a misdemeanor and later expunged altogether, Estrada nonetheless pled to a felony and accepted the plea deal as a part of her conviction, even if the felony was later reduced.

As such, the court held that Estrada forfeited her retirement upon conviction and despite the charge being reduced and later expunged, Estrada was not entitled to receive the CalPERS benefits that were previously forfeited.

Conclusion

Although this case involved a civilian, the same provisions apply to law enforcement or fire personnel who work as public employees under CalPERS. If charged with a felony, you risk losing your CalPERS pension from the date of conviction forward.

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