

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY HEARING PROCEDURES

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DISABILITY HEARING PROCEDURES

Section 1 - Purpose

These procedures are intended to provide an equitable, fair and impartial method for acting upon applications for rights, benefits and privileges under the County Employees' Retirement Law of 1937, as amended, to the end that applications for disability retirement may be expeditiously processed with a minimum lapse of time, and that when a hearing is required, all parties will have notice of the hearing and an opportunity to appear before the Board or duly appointed hearing officer to present their cases.

Section 2 - Definitions

As used in these hearing procedures, unless the context or subject matter otherwise requires:

- a. "Applicant" means (1) a member of the Ventura County Employees' Retirement Association claiming benefits, rights, or privileges under the County Employees' Retirement Law of 1937, as amended, or (2) any person claiming such benefits, rights or privileges on behalf of or through a member.
- b. "Party" means any person and his/her representative, if one, disclosed by the records of the retirement system or by the application to have an interest in the subject matter of an application for benefits. The term "Party" shall also include the County of Ventura and districts which are included within the Retirement Association.
- c. "Association" means the Ventura County Employees' Retirement Association.
- d. "Board" means the Board of Retirement of the Association.
- e. "Administrator" means the Board appointed Administrator of the Association.
- f. "Hearing Officer" or "Referee" means the designee of the Board to conduct a hearing pursuant to the provisions of Government Code Sections 31533 and 31534.
- g. "Medical Advisor" means the County Health Officer or his/her designee.

- h. "Legal Advisor" means the office of the County Counsel or other counsel as appointed by the Board.
- i. "Employer" means the County of Ventura or any district which is a member of the Association.
- j. "Day" means calendar day.

Section 3 - Filing an Application for Disability Retirement

- a. An application for disability retirement benefits shall be filed with the Association on a form provided by the Board. The application must be filed while the member is in service, within four months after discontinuance of service, or at any time after discontinuance of service if the member can demonstrate to the Board that he/she has been continuously incapacitated for the performance of his/her duties since the date of discontinuance of service. In order to be considered a valid application, the applicant shall be required to submit at the time of filing the following:
 - (1) Completed Application for Disability Retirement.
 - (2) Signed Authorization to Obtain and Release Records and Information.
- b. Upon the filing of a valid application, the applicant will have one hundred and twenty (120) days in which to file additional medical or other documentation in support of the application. For good cause shown, the Administrator may grant the applicant a reasonable extension(s) of time within which to file documentation. Notice of the granting of an extension of time shall be provided to all parties. The applicant may waive any or all of his/her time for filing documentation by providing written notification to the Association.
- c. The applicant will be permitted to amend the application for disability retirement at any time up to the date the evidentiary hearing begins by giving notice of the exact manner in which the application is being amended to the Administrator and all other parties. Any such amendment that is so noticed within sixty (60) days of the evidentiary hearing date shall entitle any other party to a continuance as a matter of right. Once the evidentiary hearing begins, the application can only be amended with the consent of the Board upon such terms as the Board shall set.
- d. Upon the filing of the application, the Administrator shall send a copy of the application and supporting documentation

submitted by the applicant to the employer of the applicant, either the County of Ventura, Risk Management, or the contracting district. The Administrator shall provide timely notification to all parties of all actions taken by the Association relating to the processing of the application.

- e. The employer shall have sixty (60) days from the date of notification by the Administrator of the expiration of the applicant's time for the filing of documentation to respond as to whether or not the employer will contest the application. For good cause shown, the Administrator may grant a reasonable extension(s) of time within which to state a position in regard to the application. Notice of the granting of an extension of time shall be provided to all parties.
- f. If a determination is made by the employer to not contest the application, the following shall apply:
 - 1. The application for disability retirement, employer's statement of position and analysis of medical documentation, and all supporting documentation will be forwarded directly to the Board for its consideration. Notice of the date on which the Board will hear the application shall be provided to all parties by the Association.
 - 2. If the Board does not adopt the position taken by the employer, the Board may direct that the member submit to one or more medical, psychological or psychiatric examinations, as provided for in section 18 herein. The reports of any such examinations, together with any additional relevant evidence provided by the parties, shall be presented to the Board for a determination on the application at a duly noticed meeting as soon as practical. Alternatively, the matter may be continued to the next disability meeting for an evidentiary hearing to be conducted before the Board on the merits of the application.

Section 4 - Setting of Hearings

- a. If a determination is made by the employer to contest the disability retirement application, written notice of such position shall be provided by the employer to the Association. The employer shall advise the Association of the name, address and telephone number of the attorney that will represent the employer in the matter.

- b. Upon receipt of notice that the employer will contest the application for disability retirement, the Administrator shall, if the applicant has not advised that he/she is represented by legal counsel, provide the applicant with notice that he/she has thirty (30) days to retain legal representation for his/her hearing before the matter will be assigned to a hearing officer.
- c. If the applicant is represented by legal counsel, or at the expiration of the thirty (30) days provided to the applicant to retain legal representation, the Administrator shall appoint a hearing officer from the Board approved panel to preside in this matter. Notice of the appointment of a hearing officer shall be provided in writing to all parties.
- d. Each party to a disability retirement hearing shall be entitled to request reassignment of the hearing to another referee in accordance with the provisions of this section. Each party shall be entitled to make only one (1) such request. A Petition for Reassignment must be received by the Association not more than fifteen (15) days after the mailing by the Association of the notification of the assignment of the referee. Requests for such reassignment shall be instituted by the making of a petition supported by a declaration under the penalty of perjury in substantially the following form:

Ventura County Employees' Retirement Association
 Petition for Reassignment of Referee
 Disability Case No. _____

State of California)
) ss.
 County of)

_____ declares under penalty of perjury:

That he/she is the attorney for _____. That affiant believes that he/she cannot have a fair and impartial hearing before _____ the referee to whom the case has been assigned by the Association.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____, California.

 (Signature)

Section 5 - Notice of Hearing

Unless otherwise directed by the Board, hearings held before the Board, or hearing officer, shall be set on a date to be determined by the Administrator or his/her designee, in consultation with the parties or their designated representatives, but not sooner than sixty (60) days following service of notice, unless an earlier date is otherwise agreed to by all parties.

Section 6 - Continuances

Once the matter is set for hearing, a request for continuance of the hearing date may only be made by a written request for continuance, which may only be approved by the Board or hearing officer upon a showing of good cause.

- a. Each party who requests and obtains a continuance or cancellation of a hearing less than fourteen (14) days prior to the hearing date shall fully compensate each other party and the Board of Retirement for all actual losses directly incurred as a result of the continuance or cancellation. Such losses shall include, but not be limited to, the actual fees charged by the hearing officer, court reporter and expert witnesses, if any. Such losses shall not include any retirement or disability benefit claimed by or through the member or the member's surviving spouse or children.
- b. The Board shall make the final determination of what losses, beyond hearing officer, court reporter and expert witness fees, were incurred as a result of the continuance or cancellation unless all affected parties have separately agreed upon the total amount to be so paid and the Board may, upon a showing of good cause, find that any or all such costs shall not be reimbursed.

Section 7 - Determination by the Board

Where the evidentiary hearing on the application for disability has been held before the Board, the Board shall determine separately each of the following:

- a. All factual issues raised by the application.
- b. Whether or not the applicant is permanently physically or mentally incapacitated to perform his/her duties as provided in Government Code Section 31720.

- c. Whether or not such incapacity, if any, is a result of injury or disease arising out of and in the course of his/ her employment; and if so, whether such employment contributed substantially to such incapacity.
- d. Whether or not the applicant has completed five (5) years of service.
- e. The effective date of the disability retirement.

Where the evidentiary hearing on the application for disability retirement has been held before a Board appointed hearing officer, the proposed findings of fact and recommendations of the referee shall be served on the parties by the referee within ninety (90) days of the closing of the record. The parties shall have ten (10) days to submit to the Association written objections thereto which shall be incorporated into the record to be considered by the Board. Upon receiving the proposed findings of fact and the recommendations of the referee, the Board may:

- a. Approve and adopt the proposed findings and the recommendations of the referee, or
- b. Require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon receipt thereof the Board shall take such action as in its opinion is indicated by such evidence, or
- c. Refer the matter back with or without instructions to the referee for further proceedings, or
- d. Set the matter for hearing before itself. At such hearing the Board shall hear and decide the matter as if it had not been referred to the referee.

Section 8 - Conduct of Hearings

Unless the Chair of the Board or referee rules that it is not necessary to so proceed in a particular hearing, all hearings shall proceed in the following manner:

- a. Presiding Officer: The Chair of the Board, or hearing officer shall preside over hearings under these rules.

He/she shall exercise such control over the proceedings, including the time allotted to each party, as may be reasonable and necessary. In addition to other duties he/she shall rule on the admissibility of evidence and shall order a party to yield the floor when his/her allotted time has been used.

b. Applications Filed on Behalf of the Member: In cases where the application has been filed by a person or agency other than the member, the member shall be considered to be a party and, in particular, shall be entitled to participate fully at all hearings.

c. Order of Presentation:

- (1) The Chair or hearing officer will read the title of the case and ask for appearances for all parties. This information shall be recorded in the minutes of the Board and in the official file of the hearing.
- (2) If all parties are ready to proceed, the Chair or hearing officer will mark for identification only, and not as evidence, all papers in the official record of the hearing, which should include, but may not be limited to:
 - (a) The application for disability retirement.
 - (b) The hearing notice with proof of service.
 - (c) Other documents in the official file.
- (3) The party filing the application shall present his/her evidence in support of such application. The party filing the application shall have the burden of proof.
- (4) Each other party shall then present his/her evidence, in the order determined by the Chair or hearing officer.
- (5) Each party will be allowed to cross-examine witnesses.
- (6) Upon application to the Board or hearing officer, each party may present rebuttal evidence.
- (7) Upon the conclusion of all testimony, the Chair or hearing officer will inquire if all parties are ready to submit the matter for decision.
- (8) The hearing will then be closed and the matter submitted to the Board or hearing officer for

decision. If further documentary evidence is to be filed, the Board or hearing officer may allow time for filing and serving such documentary evidence, and order that the matter will be deemed submitted after such period unless any party objects to such documentary evidence within ten (10) days after it is filed. Copies of such documentary evidence shall be served on all parties who appeared at the hearing.

- d. Quorum and Voting: No hearing before the Board shall take place unless at least a majority of the entire Board is present. No member of the Board who did not hear all of the evidence may vote on the decision. By agreement of all parties, a Board member who was not present during a portion of the hearing may vote on the decision if he/she has reviewed all portions of the administrative record relating to the absent period, including examining all documentary evidence introduced and reviewing the audio tapes and/or transcripts, as applicable, of all testimony and argument presented.
- e. Representation: Any applicant or party shall be entitled to be represented by legal counsel or a representative of his/her choice at any hearing before the Board or hearing officer. After an attorney or representative appears at a hearing on behalf of a party, or after the filing of written notice that the attorney or representative is appearing on behalf of a party, all notices shall thereafter be served upon such counsel or authorized representative. The selection, substitution, or dismissal by the applicant of an attorney or representative shall be made in writing and filed with the Board and served on all parties at the earliest possible date and in compliance with section 284, 285 and 286 of the Code of Civil Procedure. Until this notice is given, the Board and all parties shall continue to recognize the former attorney or representative.
- f. Rules of Evidence:
- (1) The hearing need not be conducted according to the technical rules of evidence relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence,

but shall not be sufficient, in of itself, to support a finding unless it would be admissible over objection in civil actions. Admissibility of physicians reports is governed by subsection h.

- (2) The applicant shall have the burden of proof by a preponderance of the evidence as to all facts necessary to establish the member's right to the benefits sought by the application.
- (3) Each party shall serve all documentary evidence that is intended to be introduced at the evidentiary hearing upon the Board and all parties at least twenty (20) days prior to the date of the hearing before the Board or the hearing officer.
- (4) Oral evidence shall be taken only upon oath or affirmation.
- (5) Each party shall have the right to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses on any matter relevant to the issues. If the applicant or any other party does not testify on his own behalf, he/she may be called and examined by any other party to the matter as if under cross-examination.
- (6) Refusal of any applicant or party to submit to examination or to answer relevant questions, when such refusal is not protected by a recognized legal privilege, shall be grounds for considering such questions, for the purposes of that hearing, to be answered in a way unfavorable to the refusing party, and such refusal may result in an unfavorable decision on the application of the applicant or the party seeking affirmative relief.

g. Government Records: Certified copies of the reports or records of any governmental agency, division or bureau will be accepted as evidence in lieu of the original thereof.

h. Physicians' Reports and Testimony as Evidence:

- (1) The Board favors the production of medical evidence in the form of written reports. These reports should include:
 - (a) History of the injury or illness;
 - (b) The patients complaints;

- (c) Source of all facts set forth in the history and complaints;
 - (d) Findings on examinations;
 - (e) Opinion as to the extent of disability and working ability;
 - (f) Cause of the disability;
 - (g) Medical treatment indicated;
 - (h) Likelihood of permanent disability;
 - (i) Opinion as to whether or not the patient is permanently incapacitated physically or mentally for the performance of his/her duties;
 - (j) Opinion as to whether or not the patient's incapacity is the result of injury or disease arising out of and in the course of his/her employment;
 - (k) Opinion as to whether or not the patient's disability is due to the intemperate use of alcoholic liquor or drugs, or so far as the medical examination discloses, willful misconduct, and
 - (l) The reasons for the opinions.
- (2) No written medical report shall be considered at the hearing unless:
- (a) The report has been served on all parties more than twenty (20) days before the hearing, and, if requested pursuant to subsection (3), the physician is produced at the hearing; or
 - (b) The physician is voluntarily produced at the hearing for cross-examination purposes where the medical report is served within twenty (20) days of the hearing; or
 - (c) The Board or hearing officer may permit the introduction of medical reports which were served within twenty (20) days of the hearing on the condition that the opposing party be permitted an opportunity to present rebuttal evidence or cross-examine the physician. A continuance of the hearing should be granted if necessary to satisfy these conditions.
- (3) The party submitting the written report of a physician shall, if requested by the opposing party, join in a request that the physician appear at the hearing; however, the party instituting the request that the physician be produced for cross-examination shall pay the physician's fee for such appearance. The Board may require that this fee be deposited in advance of the appearance.

- (4) Nothing herein shall preclude the Board, if it so desires, from requiring such proof, including medical, psychological and psychiatric examinations at the expense of the applicant.
 - (5) Chiropractic evidence is acceptable for consideration along with any other medical records or testimony.
- i. Objections: During the course of a hearing, a party may object to the admission of evidence (either oral or documentary) being offered by another party. The party objecting shall express the reason(s) for his/her objection(s), and thereafter, the offering party may respond to the objection(s). The Chair or hearing officer shall sustain or overrule the objection(s).
 - j. Continuances by the Board or Hearing Officer:
 - (1) The Board or hearing officer may continue any hearing to another time and place, order additional evidence be presented, order additional medical, psychological or psychiatric examinations, or allow other evidence to be gathered and presented, as in its or his/her determination is required for a proper presentation of the case.
 - (2) Notwithstanding the authority of a hearing officer to grant continuances, no hearing officer may extend the time for submission of briefs, arguments or additional evidence beyond thirty (30) days after the close of any hearing before such hearing officer. In addition, no hearing officer may accept or consider additional briefs, arguments or additional evidence after the time set for filing such materials unless the hearing officer has the written approval of counsel for the Association.

Section 9 - Decision of the Board

- a. The Board shall render its decision by the second regularly scheduled disability meeting following the meeting at which the matter is submitted for decision. Any finding or decision of the Board must be made by a majority of the members of the Board voting. A tie vote results in the failure to find in favor of the applicant and constitutes a denial of the application, or that portion of the application on which the vote is taken.

b. Every decision of the Board, or hearing officer, shall include findings of fact which shall specifically include findings with respect to:

- (1) Incapacity;
- (2) Service-connected sources of incapacity;
- (3) Term of service to qualify applicant for disability retirement, and
- (4) Effective date of retirement.

All such findings by the Board shall specifically describe the evidence which supports each such finding of fact.

c. In the event that the Board finds that an applicant is permanently mentally or physically incapacitated to perform his/her duties, the relevant finding shall describe the duties of applicant's job and the specific incapacity which prevents the performance of those duties.

d. Upon service of the hearing officer's proposed findings of fact and recommendations, the parties shall have ten (10) days to submit written objections thereto which shall be incorporated into the record to be considered by the Board.

e. When the evidentiary hearing has been conducted before the Board, the prevailing party shall submit a proposed Statement of Decision containing the findings of fact to the Board within fifteen (15) days of the Board's announcement of its intended decision, unless waived by all parties. Written objections to the proposed Statement of Decision may be submitted within ten (10) days from the date the proposed Statement of Decision is delivered. The Board shall make its final decision by the second regularly scheduled disability meeting after the proposed Statement of Decision has been submitted for the Board's consideration. In the event that the prevailing party fails to timely submit the proposed Statement of Decision, the Board may direct its counsel to prepare the Statement of Decision and may charge all or part of such expense to the prevailing party.

Section 10 - Effective Date of Decision

a. The decision shall become effective thirty-five (35) days after the adoption by the Board of its Statement of Decision

or of the proposed findings of fact and the recommendations of the hearing officer, unless:

- (1) A petition for reconsideration is filed within that time, or
- (2) The Board orders that the decision shall become effective sooner, or
- (3) All parties provide a signed written waiver of the right to file a petition for reconsideration and for judicial review of the proceedings before the Board, in which case the decision shall become effective on the date set forth in the waiver, but not earlier than the date on which the Board adopted the Statement of Decision or the findings of fact and recommendations of the hearing officer.

- b. When a petition for reconsideration is filed before the effective date of the decision, the filing of such petition shall stay the effective date of the decision until the Board takes action to reaffirm its earlier decision. If the petition for reconsideration is not granted, the decision shall become effective on the date the petition is denied or deemed denied. If the final date for filing a petition for reconsideration falls on a regular meeting date and a petition for reconsideration is filed on that day, the following regular meeting shall for purposes of this section be deemed to be the first regular meeting following the date the decision would otherwise become effective.

Section 11 - Notice of Decision

The Administrator shall give written notice of the decision to the applicant and each other party within five (5) days following the date the decision is rendered. The notice shall be delivered pursuant to section 16. The notice shall contain the decision, the date it was rendered and a statement substantially as follows: "This decision shall become effective thirty-five (35) days after its adoption by Board action unless a petition for reconsideration is filed within that time." If the Board orders that the decision shall become effective sooner, or if all parties have waived the right to file a petition for consideration and judicial review of the proceedings before the Board, the notice shall so state.

Section 12 - Petition for Reconsideration

- a. The Board, on its own motion or on petition of any party, may order reconsideration of all or a part of the matter on which the decision was rendered. The power to request reconsideration shall expire when the decision becomes effective. When a petition for reconsideration is filed, it shall be placed on the Board agenda for the first regularly scheduled disability meeting at which all parties are available to attend. If the Board takes no action upon the petition before the final adjournment of that regular meeting, the petition shall be deemed denied on that date. However, the Board may at that time continue the hearing on the petition to another disability meeting date not to exceed ninety (90) days from the date the Board orders the matter continued.
- b. A petition for reconsideration shall be in writing and shall set forth all reasons and grounds for requesting reconsideration. The petition for reconsideration must be based upon one or more of the following:
 - (1) That the Board or hearing officer acted without or in excess of its or his/her powers;
 - (2) That the findings of fact were procured by fraud;
 - (3) That the evidence does not justify the findings of fact;
 - (4) That the applicant has discovered new evidence material to him/her, which he/she could not, with reasonable diligence, have discovered and produced at the hearing, and which is not merely cumulative.
- c. The Board will determine the petition on the basis of the information and documentation set forth in, and attached to, the petition. Petitioner may appear, and, with the consent of the Board, be heard on the petition. Petitioner should state in the petition if he/she desires to discuss the merits of the petition at the hearing.
- d. The Administrator shall give written notice to all parties of the disposition of the petition within ten (10) days after the Board acts on the petition. If the Board fails to act within the time prescribed in these rules, such notice shall be given within ten (10) days after the final date upon which the petition was granted, denied or deemed denied. In the event that the petition for reconsideration is granted and

further hearing on the case is required, a date for such hearing shall be set, not to exceed ninety (90) days from the date the Board orders the petition granted.

Section 13 - Judicial Review

The Board adopted California Code of Civil Procedure section 1094.6 on September 9, 1985. In those cases where a party is entitled to judicial review of the proceedings before the Board, the petition to the court shall be filed within ninety (90) days from the date on which the decision of the Board becomes final.

Section 14 - Service of Notice

Whenever the rules of the Board require that notice be given, it shall be sufficient that such notice be provided to a party or the party's personal representative either by personal delivery or by mail, deposited in the United States mail, postage prepaid, in a sealed envelope addressed to the person to whom it is to be delivered, at his/her last known address as disclosed by the records of the Association. The delivery is complete at the time of such deposit or personal delivery.

Section 15 - Proceedings Recorded

All proceedings before the Board, or hearing officer, shall be reported by a court reporter at a cost to be paid for by the Association. Any party may request a transcript of the proceedings through the Association upon payment of a reasonable fee, which shall not be less than the estimated cost to the Association of such transcript.

Section 16 - Legal and Investigatory Services

The Board may secure such legal, investigatory, and other such services and advice as is necessary to make a responsible determination on an application for disability retirement. The Board may contract with an attorney in private practice for the legal services and advice it deems necessary.

Section 17 - Medical Examination

In its sole discretion, the Board may, on its own motion or upon

request of one of the parties, and based upon good cause, require an applicant for disability retirement to submit to one or more medical, psychological or psychiatric examinations to determine the existence of the disability and causes therefor. Such examination(s) shall be at the expense of the Association, if ordered upon the Board's own motion. If the additional examination(s) is (are) requested by one of the parties, the Board may require that the requesting party pay all reasonable expenses of such examination(s) as a condition of ordering the applicant to submit to such testing.

Section 18 - Role of the Medical Advisor

The Medical Advisor may advise the Board on general matters regarding applications for disability retirement, including providing the Board with explanations of medical terms, interpretations of medical reports before the Board, and the analysis of other medical evidence before the Board.

The Medical Advisor shall only be required to attend disability meetings when specifically requested to do so by the Board to provide recommendations or advice as discussed below.

To ensure that the rights of the applicant and employer are protected the Board should act at all times to ensure that:

- a. All advice and recommendations provided to the Board by the Medical Advisor are based upon evidence that is before the Board. The Medical Advisor should not conduct any independent research on an applicant's claims unless specifically directed by the Board.
- b. If the Board determines at the time of any hearing that a recommendation or other advice from the Medical Advisor on any aspect of an individual case is warranted, the Board shall immediately continue the matter to a subsequent hearing date. The Administrator shall request the presence of the Medical Advisor for that hearing, and, if the Medical Advisor prepares a written report for the Board, the Administrator shall serve all parties such report at least ten (10) days prior to the new hearing date.
- c. The applicant, or his/her representative, and the employer shall have the right to cross-examine the Medical Advisor under oath before the Board at the time of the hearing, limited to the content of the recommendation or other advice provided to the Board by the Medical Advisor.

Section 19- Inquiries Into Applicant's Conduct

To assist in making a recommendation or determination, and to assure that a disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on the part of the applicant, the Board may review the conduct of the applicant, either by inquiry of the applicant, a medical examiner to whom the applicant is referred or any other source of information that Board believes to be reliable.

Section 20 - Issuance of Subpoenas

The Board may issue subpoenas and subpoenas duces tecum. Subpoenas may be signed by the Chair, Vice Chair, Treasurer or the Administrator.

Section 21 - Procedures Furnished to the Parties

A copy of these procedures shall be furnished to the applicant along with the application for disability retirement. All other parties shall receive a copy at the time notice of hearing is given.

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