

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

JUNE 8, 2020

MINUTES

TRUSTEES

PRESENT:

William W. Wilson, Chair, Public Member
Arthur E. Goulet, Vice-Chair, Retiree Member
Steven Hintz, Treasurer-Tax Collector
Steve Bennett, Public Member
Mike Sedell, Public Member
Robert Ashby, Safety Employee Member
Jordan Roberts, General Employee Member
Will Hoag, Alternate Retiree Member

TRUSTEES

ABSENT:

STAFF

PRESENT:

Linda Webb, Retirement Administrator
Henry Solis, Chief Financial Officer
Julie Stallings, Chief Operations Officer
Dan Gallagher, Chief Investment Officer
Lori Nemiroff, General Counsel
Leah Oliver, Chief Technology Officer
Shalini Nunna, Retirement Benefits Manager
Josiah Vencel, Retirement Benefits Manager
Rebekah Villalobos, Retirement Benefits Manager
Nancy Jensen, Retirement Benefits Specialist
Chris Ayala, Program Assistant

PLACE:

In Accordance with the Governor's Executive Order N-29-20 (3), the Members of the Board will be participating via teleconference. Pursuant to Government Code §54954.3, members of the public, to the extent required by law, will have the opportunity to directly address the Board concerning the below mentioned business.

TIME:

9:00 a.m.

ITEM:

I. CALL TO ORDER

Chair Wilson called the Disability Meeting of June 8, 2020, to order at 9:02 a.m.

II. APPROVAL OF AGENDA

MOTION: Approve.

Moved by Goulet seconded by Ashby

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell, Wilson

No: -

Absent: Bennett,

Abstain: -

Trustee Bennett arrived at 9:04 a.m., after the vote in this item.

III. APPROVAL OF MINUTES

A. Business Meeting of May 18, 2020.

MOTION: Approve.

Moved by Sedell seconded by Goulet

Vote: Motion carried

Yes: Ashby, Bennett, Goulet, Hintz, Roberts, Sedell, Wilson

No: -

Absent: -

Abstain: -

IV. RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT

After discussion by the Board, the following motion was made:

MOTION: Receive and File.

Moved by Sedell seconded by Roberts

Vote: Motion carried

Yes: Ashby, Bennett, Goulet, Hintz, Roberts, Sedell, Wilson

No: -

Absent: -

Abstain: -

V. APPLICATIONS FOR DISABILITY RETIREMENT

A. Application for Service-connected Disability Retirement—Perez, Adrian; Case No. 19-016.

1. Employer's Statement of Position, submitted by County of Ventura-Risk Management, in support of the Application for Service-connected Disability Retirement, dated May 5, 2020.
2. Job Analysis – Deputy Sheriff.
3. Supporting Documentation for Employer's Statement of Position.
4. Application for Service-connected Disability Retirement, filed by Applicant, dated April 11, 2019.
5. Hearing Notice, dated June 1, 2020.

Catherine Laveau was present on behalf of County of Ventura Risk Management. Josiah Vencel and Nancy Jensen were present on behalf of VCERA. The applicant, Adrian Perez was not present.

After discussion by the Board, the following motion was made:

MOTION: Approve the Service-connected Disability Retirement Application.

Moved by Sedell, seconded by Ashby.

Vote: Motion carried

Yes: Ashby, Bennett, Hintz, Roberts, Sedell, Wilson

No: Goulet

Absent: -

Abstain: -

Trustee Goulet referenced Master Page 53, where Dr. Nagelberg opined that the elevation in applicant's Body Mass Index (BMI) was not significant. Trustee Goulet remarked that the applicant's BMI was 32.1 and a BMI of 30 was considered to be morbidly obese and he believed that a 7% increase of over the threshold was indeed significant and that there was typically a relationship between the weight of an individual and their back problems.

Catherine Laveau said that County Risk Management had specifically raised this question with the Independent Medical Evaluator (IME) in relation to the disability retirement application and asked the doctor to address the issue. The doctor responded that it was not significant with regards to the applicant's current incapacity.

- B. Application for Nonservice-connected Disability Retirement—Hockstedler, Kevin R.; Case No. 20-007.
1. Employer's Statement of Position, submitted by County of Ventura-Risk Management, in support of the Application for Nonservice-connected Disability Retirement, dated May 15, 2020.
 2. Job Classification – Public Works Inspector III.
 3. Supporting Documentation for Employer's Statement of Position.

4. Application for Nonservice-connected Disability Retirement, filed by Applicant, dated February 24, 2020.
5. Hearing Notice, dated June 1, 2020.

Catherine Laveau was present on behalf of County of Ventura-Risk Management. Josiah Vencel and Nancy Jensen were present on behalf of VCERA. The applicant, Kevin R. Hockstedler, was not present.

After discussion by the Board, the following motion was made:

MOTION: Approve the Nonservice-connected Disability Retirement Application.

Moved by Goulet, seconded by Sedell.

Vote: Motion carried

Yes: Ashby, Bennett, Goulet, Hintz, Roberts, Sedell, Wilson

No: -

Absent: -

Abstain: -

Trustee Bennett left at 9:16 a.m., after voting on this item.

- C. Application for Service-connected Disability Retirement—Ornelas, Eduardo G.; Case No. 18-012.
 1. Claimant's Petition for Reconsideration, filed by David G. Schumaker, Attorney for Applicant, dated May 19, 2020.
 2. Opposition to Petition for Reconsideration, filed by Carol A. Kempner, Attorney for Respondent, County of Ventura-Risk Management, dated June 1, 2020.
 3. Summary of Evidence and Suggested Findings of Fact and Conclusions of Law to Deny the Application for Service-connected Disability, filed by Hearing Officer Deborah Wissley, dated April 17, 2020.
 4. Hearing Notice, dated June 1, 2020.

Catherine Laveau and Carol A. Kempner, Attorney at Law were present on behalf of County of Ventura-Risk Management. Josiah Vencel and Nancy Jensen were present on behalf of VCERA. David G. Schumaker, Attorney at Law, was present on behalf of applicant, Eduardo G. Ornelas, who was not present.

Mr. Schumaker asked the Board to reconsider its initial decision to deny Mr. Ornelas's application for a Service-connected Disability Retirement. He said he did not believe the decision was based on the legally required preponderance of the credible substantial evidence. His client requested that the Board reconsider its decision and thoroughly review all of the submitted evidence, and that pursuant to Govt. Code 31720 and sections 7. (a, b, c & e) on pages 5 & 7 and (d) on page 6, the

Board set the matter for a full evidentiary hearing and decide the matter as if it had not been referred to a Hearing Officer.

Mr. Schumaker said that reliance on inadequate Findings of Fact and Conclusions of Law, may result in an award of attorney fees against VCERA, upon a petition for a Writ of Mandate in Superior Court or at the Court of Appeal. He continued that the May 4, 2020 decision by the Board was in violation of the April 1999 Disability Hearing procedures, which required that every decision of the Board or Hearing Officer include Findings of Fact, which should specifically include findings in regard to incapacity and service-connected sources of incapacity, and that all such findings by the Board should specifically describe the evidence that supports the Board's each finding of fact. The decision of the Board failed to describe any evidence which supported the findings of fact. Further, the findings of fact cannot be based on medical opinion from a biased or non-credible medical witness, or upon medical opinion that was based upon inadequate medical history, , speculation, or conjecture. The motivation for applying for a Service-connected disability was also not relevant. Mr. Ornelas had been unable to return to work since the February 5, 2020 right knee replacement surgery. The defense doctor in the case, Dr. Rosenberg had not reviewed the operative report pertaining to the right knee surgery.

Ms. Kempner referenced the opposition that was filed in response to the petition for reconsideration, stating that Risk Management's position was that the Hearing Officer in the case evaluated 89 different items of evidence and discussed each item in the Summary of Evidence and gave a through explanation of which evidence was relied upon and which was not deemed to be substantial evidence. The recommended Findings of Fact should be upheld because the applicant did not meet his burden of proof, in demonstrating that his permanent incapacity was in fact permanent. He did in fact have a total knee replacement and then withdrew himself from the interactive process prior to obtaining MMI status, with regard to the right knee. Therefore, the County was deprived of engaging in the interactive process, with respect to the knee condition. Regarding the left elbow condition, the medical evidence consisted of a range of opinions, and the applicant indicated at hearing he had no opposition to moving forward with a repeat surgery on the elbow. Therefore, the Hearing Officer summarized the applicant's testimony and why the evidence, relied upon by the applicant, did not constitute substantial evidence and the Hearing Officer explained in the report why the applicant did not meet his burden of proof. For that reason, Risk Management believed that the decision of the Board on May 4, 2020, should stand.

Mr. Schumaker said that Dr. Rosenberg wanted the applicant to have a surgery on his elbow, but Dr. Ghilarducci and Dr. Zeman felt that there was a 50 percent chance of additional failure and the applicant already had one failed surgery on the elbow.

Ms. Kempner said she did not think Dr. Ghilarducci reported in the case regarding an opinion to the success or failure of a second surgery. Also, what Dr. Zeman indicated was that the surgery had a minimum of a 50% chance of success, which was different than a 50% failure rate.

Trustee Roberts asked if the Board was in violation of the April 1999 Disability Hearing procedures as Mr. Schumaker alleged, and if the Board was required to have a full evidentiary hearing, given that was the usual duty of the Hearing Officers.

Ms. Nemiroff explained that the Board was not required to have a full evidentiary hearing. The Board was authorized to send a case to a Hearing Officer, which had been done. Therefore, the Board had the option to hold a hearing but was not obligated to.

Trustee Goulet said that he believed Mr. Schumaker misinterpreted section 9(b) of the April 1999 Disability Hearing procedures when he emphasized that the Board never adopted certain items. Also, because the case had gone to a Hearing Officer, their report fulfilled all of those requirements, which was official.

Ms. Nemiroff agreed with Trustee Goulet's comment and said that when the Board adopts the Findings of Fact and Conclusions of Law and recommended decision of the Hearing Officer, that then becomes the Board's findings.

Trustee Goulet also said that with respect to the 50% chance of success, the doctor actually said that there was up to a 50% chance of failure, and not simply a 50% chance of failure. Mr. Schumaker also added up all of the workers compensation awards, which totaled about 83%, but this was irrelevant because the Board was not bound by awards in workers compensation cases.

Trustee Sedell stated that did not appreciate the implied threat from Mr. Schumaker regarding the possibility of legal action against VCERA and that the Board could possibly be liable for the applicant's attorney fees, which was a possibility in any disability retirement case.

After discussion by the Board, the following motion was made:

MOTION: Deny the Applicant's Petition for Reconsideration.

Moved by Sedell, seconded by Hintz.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell, Wilson

No: -

Absent: Bennett

Abstain: -

D. Application for Service-connected Disability Retirement—Bittmann, Janeen R.; Case No. 17-014.

1. Parties' Mutual Request for an Extension through June 30, 2020, submitted by County of Ventura-Risk Management, dated June 2, 2020.
2. Hearing Notice, dated June 2, 2020.

MOTION: Approve Parties' Mutual Request for an Extension through June 30, 2020.

Moved by Goulet, seconded by Roberts.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell, Wilson

No: -

Absent: Bennett
Abstain: -

VI. OLD BUSINESS

A. Review and Adoption of Proposed Fiscal Year 2020/21 Budget.

RECOMMENDED ACTION: Approve.

1. Staff Letter by Retirement Administrator, Linda Webb and Chief Financial Officer, Henry Solis.
 - a. Attachment A: Proposed Budget FY 2020/21.
 - b. Attachment B: Admin-Disability Budget.
 - c. Attachment C: Administration Budget.

Ms. Webb reminded the Board that this item had been tabled from the last meeting in order to allow time for staff to address certain questions from trustees regarding the disability process costs.

Trustee Sedell noted that he had reviewed the budget information in depth with staff and was satisfied with the budget information given by staff. He said that a cost benefit analysis of the new disability model would be appropriate before implementation, but he was satisfied with the proposed budget.

Trustee Goulet expressed concern regarding the annual license fee VCERA paid VSG that was listed in the Information Technology budget. The payment was paid to Vitech in advance for services that were not fully known to the Board at the time of payment and he hoped that during negotiations of the new contract with Vitech that it could be resolved. He said he also had concerns about VCERA's hosting agreement with Vitech and would like other hosting options to be explored. Lastly, noting the budget allocation for Board of Retirement elections, he asked if any consideration had been given to VCERA conducting its own elections.

Ms. Webb replied that she was not aware of VCERA ever considering conducting elections without using County Elections, but could look into it.

Trustee Sedell expressed concern with VCERA conducting its own elections, and the Board may want an independent election official conducting the elections as opposed to staff conducting elections for Trustees to whom they report.

Trustee Goulet noted that a number of other Retirement Systems conduct their own elections for their respective Boards, and he was not aware of any problems associated with that practice.

Ms. Webb reminded the Board that there were several elections scheduled in the Fall, as several board terms were expiring. While staff budgeted as if all of the elections were held, occasionally an election may not be necessary, such as when a candidate ran unopposed. Such an occurrence would naturally reduce the projected cost. Staff had also estimated high on cost because a recent election had cost more because there was an unusually large number of candidates.

After discussion by the Board, the following motion was made:

MOTION: Approve and Adopt Proposed 2020-2021 Budget, Including a Contingency of 10%.

Moved by Sedell, seconded by Ashby.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell, Wilson

No: -

Absent: Bennett

Abstain: -

VII. NEW BUSINESS

A. Renewal of Hearing Officer Contracts.

RECOMMENDED ACTION: Approve.

1. Staff Letter.

2. Proposed Contract.

MOTION: Authorize the Retirement Administrator to Execute Fiscal Year 2020-2021 Contracts for the Seven Listed Members of VCERA's Hearing Officer Panel.

Moved by Roberts, seconded by Sedell.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell, Wilson

No: -

Absent: Bennett

Abstain: -

B. LinkedIn Learning Courses.

1. LinkedIn Learning Presentation.

Learning and Organizational Development Facilitator Jerry Zaslow from the County of Ventura made a presentation on the benefits of using LinkedIn Learning for Trustee Education.

Ms. Webb said that although all of the courses in LinkedIn Learning were available to the Board, staff would identify specific courses that met the education requirements, per their policy.

VIII. INFORMATIONAL

A. VCERA COVID-19 Worksite Reopening Plan.

Ms. Webb informed the Board that all County of Ventura agencies were to submit a reopening plan based on a template provided by the County. The provided plan used that template, customized to VCERA's specific needs and plans; it had been submitted to the County and to all VCERA staff. It outlined a staggered phased approach reopening, which would be followed, barring any changes in public health conditions. The plan detailed the measures designed to ensure social distancing, disinfected work spaces, alternating staff schedules, and other precautions.

Ms. Webb also noted mailing of pay advices had been suspended for April and May, and during that time staff encouraged retirees to download their pay advices online via the secure ADP system. She added that the mailing of the pay advices would be resumed at the end of June.

B. California Association Public Retirement Systems (CALAPRS) Spring 2020 Newsletter.

IX. PUBLIC COMMENT

None.

X. STAFF COMMENT

None.

XI. BOARD MEMBER COMMENT

Trustee Sedell asked staff to confirm that there was plans for a budget committee to review the proposed budget next year.

Ms. Webb replied that yes, staff would remind the Board in April of this so that a Budget Committee could be appointed.

XII. ADJOURNMENT

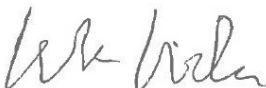
The Chair adjourned the meeting at 10:31 a.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



WILLIAM W. WILSON, Chair