

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

MAY 4, 2020

MINUTES

TRUSTEES PRESENT: Arthur E. Goulet, Vice-Chair, Retiree Member
Steven Hintz, Treasurer-Tax Collector
Mike Sedell, Public Member
Robert Ashby, Safety Employee Member
Jordan Roberts, General Employee Member
Will Hoag, Alternate Retiree Member

TRUSTEES ABSENT: William W. Wilson, Chair, Public Member
Steve Bennett, Public Member

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

Vice-Chair Goulet presided over the meeting as Chair in Trustee Wilson's absence, and called the meeting of May 4, 2020, to order at 9:00 a.m.

II. APPROVAL OF AGENDA

Chair Goulet proposed that the agenda be amended by moving item VIII. Closed Session after item "XII. Board Member Comment, to allow the Board to adjourn after the Closed Session.

MOTION: Approve.

Moved by Sedell seconded by Hintz

Vote: Motion carried

Yes: Goulet, Hintz, Hoag, Roberts, Sedell

No: -

Absent: Bennett, Wilson

Abstain: -

III. APPROVAL OF MINUTES

A. Disability & Business Meeting of April 20, 2020.

Chair Goulet provided the following corrections to the minutes. On Master Page (MP) 5 item III.A: delete "you" in the full paragraph; MP 8: replace "and" with "an" in the next to last paragraph; MP 13: correct spelling of "did" in the second paragraph and replace "effects" with "affects" in the following paragraph; MP 15: insert the word "for" prior to the word "the" in the first paragraph; MP 16: add an apostrophe "s" in the third full paragraph and correct the word "analyses" in the following line, and the motion was missing the approved contract amount of \$5,000; MP 18: replace "Chairman" with "Chair".

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

MOTION: Approve with Corrections.

Moved by Sedell seconded by Hintz

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett, Wilson

Abstain: -

IV. RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT

The Board heard public comment on this item from Catherine Laveau of Ventura County Risk Management.

Ms. Laveau said that in previous disability meetings there had been some discussion regarding why the investigative process for some disability applications takes longer than for others. One mentioned contributing factor was a procedure allowing a member to file a disability retirement application prior to the submission of a medical report which deemed their condition as permanent and stationary. Ms. Laveau provided an example of a pending disability retirement case to demonstrate how the filing of a disability retirement application prior to reaching a permanent and stationary status could delay the process significantly.

Trustee Sedell noted that the status reports were summarized and did not indicate whether a disability case was delayed because of the actions of both parties, or if a delay was caused by some other circumstance which prevented the applicant from receiving timely processing of their disability retirement application.

Ms. Laveau replied that Risk Management strove to provide the essential details of the disability cases to the Board, but how that information was relayed to the Board in the Pending Disability Status Report was up to VCERA's staff.

Ms. Webb noted that some of the issues that had been raised should be solved or minimized by the new disability retirement model in development.

Trustee Sedell said he was satisfied that the issues were being addressed in the new disability retirement model.

Mr. Vencel said that unfortunately the opportunity for delays were inherent in the current disability process, and as Ms. Laveau pointed out, some delays could be caused by a variety of legitimate reasons. He estimated that under the new procedure it would take around 12 months from the time staff received the disability retirement application to the time they would make their recommendation for approval or denial of a case to the Board. He then asked the Board if they wished to see more information in the pending disability status report related to causes for delay.

Chair Goulet recalled the status report was recently streamlined, and one of the format changes was to bold updates from the previous report.

Ms. Webb said that minimizing delays was one of the major reasons that the Board chose to develop a new disability retirement model. While there were legitimate reasons for delays, staff was working to identify and eliminate the unnecessary ones in the new process.

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

MOTION: Receive and File.

Moved by Hintz seconded by Sedell

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett, Wilson

Abstain: -

V. APPLICATIONS FOR DISABILITY RETIREMENT

- A. Application for Service-connected Disability Retirement—Mongeon, James L.; Case No. 17-012.
1. Proposed Findings of Fact and Recommended Decision to Grant the Application for Service-connected Disability, filed by Hearing Officer Humberto Flores, dated November 16, 2019.
 2. Objection to Hearing Officer's Proposed Findings of Fact and Recommended Decision from Respondent, County of Ventura-Risk Management, filed by B. Derek Straatsma, Attorney for Respondent, dated November 21, 2019.
 3. Remand Letter requesting a supplemental report from Hearing Officer Humberto Flores, filed by Lori Nemiroff, General Counsel, dated January 21, 2020.
 4. Amended Proposed Findings of Fact and Recommended Decision after Remand to Grant the Application for Service-connected Disability, filed by Hearing Officer Humberto Flores, dated March 23, 2020.
 5. Hearing Notice, dated April 27, 2020.

Josiah Vencel and Nancy Jensen were present on behalf of VCERA. B. Derek Straatsma, Attorney at Law, was present on behalf of County of Ventura Risk Management. David G. Schumaker, Attorney at Law, was present on behalf of the applicant, James L. Mongeon, who was not present.

Chair Goulet expressed concern with the hearing officer's Amended Proposed Findings of Fact and Recommended Decision After Remand because it did not adequately address the County's argument that Mr. Mongeon failed to follow physicians' recommendations that could have permitted him to return to work, as stated in VCERA remand letter to the hearing officer. Furthermore, the amended report failed to mention any other physician who might have supported Dr. Silverman's recommendations.

Mr. Straatsma noted that the hearing officer's amended report did not address item 3 of the remand letter, asking whether additional treatment would allow the applicant to return to work. Another issue was that the hearing officer discounted Dr. Silverman's opinion on treatment options because the doctor allegedly had a bias against the applicant. Chair Goulet concurred on this point.

Mr. Schumaker replied that page 24 of the amended report stated, "Therefore, it was not established that by sufficient medical evidence, with reasonable medical certainty that additional treatment would allow Applicant to return to his usual job duties." He believed there was enough evidence to establish permanency of the condition and to grant the applicant a service-connected disability retirement, recommended twice by the hearing officer.

Chair Goulet said that the problems with the report were the speculation regarding Dr. Silverman's attitude and the omission of other doctors that may have given credence or less credence to Dr. Silverman's recommendation.

Mr. Schumaker replied that there was objective medical evidence and medical opinion to support the hearing officer's finding. He added that an applicant seeking a disability benefit involves an economic motivation, which is irrelevant to the case.

Mr. Straatsma defended Dr. Silverman's opinion of the applicant's credibility, noting that the doctor had nothing to gain by holding that opinion.

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

MOTION: Approve the Service-connected Disability Retirement Application.

Moved by Hintz, seconded by Ashby.

Vote: Motion carried

Yes: Ashby, Hintz, Roberts, Sedell

No: Goulet

Absent: Bennett, Wilson

Abstain: -

B. Application for Service-connected Disability Retirement—Ornelas, Eduardo G.; Case No. 18-012.

1. 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.
2. Claimant's Objections to Hearing Officer's Summary of Evidence and Suggested Findings of Fact and Conclusions of Law, filed by David Schumaker, Attorney for Applicant, dated April 18, 2020.
3. Respondent's Answer to Applicant's Objection to the Summary of Evidence and Suggested Findings of Fact and Conclusions of Law from Respondent, County of Ventura-Risk Management, filed by Carol Kempner, Attorney for Respondent, dated April 27, 2020.
4. Hearing Notice, dated April 27, 2020.

Carol Kempner, Attorney at Law was present on behalf of County of Ventura-Risk Management. Shalini Nunna and Nancy Jensen were present on behalf of VCERA. David G. Schumaker, Attorney at Law, was present on behalf of the applicant, Eduardo G. Ornelas, who was not present.

Trustee Sedell then asked if Chair Goulet could have the attorneys for both parties reference the Master Page numbers whenever they were referencing a page from disability cases.

Chair Goulet noted that it was easier for the Board when the parties referenced the Master Page number for the Board. Ms. Webb said that staff would be discussing ways for the various reports to be numbered so that references to various documents could be easily and quickly identified during proceedings.

Mr. Schumaker made a brief statement.

Ms. Kempner also made a brief statement.

Chair Goulet asked Ms. Nemiroff to inform the Board of their options regarding the disability case.

Ms. Nemiroff said the Board could adopt the Hearing Officer's recommendation to approve or could send the matter back to the hearing officer with instructions or request the full case file to review and make a decision on its own or the Board could hold their own hearing De Novo.

Trustee Sedell said that while he understood the physical demands placed on Safety members, it was also important for the Board to allow the Hearing Officers to do the job asked of them, unless there was good reason to override their recommendations. Therefore, they should approve the Hearing Officer's recommendation in the case.

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

MOTION: Approve the Recommendation by the Hearing Officer to Deny the Service-connected Disability Retirement Application.

Moved by Sedell, seconded by Goulet.

Vote: Motion carried

Yes: Goulet, Hintz, Roberts, Sedell

No: Ashby

Absent: Bennett, Wilson

Abstain: -

- C. Application for Service-connected Disability Retirement—Myers, Christopher M.; Case No. 18-015.
1. Approved minutes from the Board of Retirement Disability Meeting on February 10, 2020.
 2. Request with attachments from Respondent, County of Ventura-Risk Management, to require Applicant, Christopher M. Myers, to attend a medical appointment with Dr. Lawrence Richman from Respondent, County of Ventura-Risk Management, filed by Stephen D. Roberson, Attorney for Respondent, dated April 6, 2020.
 3. Response to County of Ventura-Risk Management's request filed by Jane Oatman, Attorney for Applicant, dated April 8, 2020.
 4. Hearing Notice, dated April 27, 2020.

Stephen D. Roberson, Attorney at Law was present on behalf of County of Ventura-Risk Management. Shalini Nunna and Nancy Jensen were present on behalf of VCERA. Jane Oatman, Attorney at Law, was present on behalf of applicant, Christopher M. Myers, who was not present.

Mr. Roberson made a brief statement.

Ms. Oatman also made a brief statement.

Chair Goulet referenced the motion from the February disability meeting for clarification, which read, *"Do Not Set for Hearing, But Direct Parties to Make a Good Faith Effort to Assess Whether Applicant Has Improved or Will Continue Improvement with Treatment; Direct Staff and Parties to Update the Board on May 4, 2020, or Earlier If the Matter Is Ready to Be Heard"*. Chair Goulet then asked Ms. Oatman if she had offered an alternate doctor for the applicant to see for further examination, given that she did not approve of Dr. Richman, the doctor that Mr. Roberson had suggested.

Ms. Oatman replied that she was not asked to offer an alternative and was simply told by the County of Ventura that they wanted the applicant to see Dr. Richman. Further, the applicant had received more treatment since the Board heard the case in February, and the applicant's treating physician had addressed the question of whether future treatment would allow the applicant to return to work, and that report had been presented for the Board's review. Therefore, the treating physician had already addressed all the medical questions that the County of Ventura wanted answered by Dr. Richman.

Trustee Sedell reiterated the motion that Chair Goulet had previously read and said that the motion directed both parties arrange for the applicant to see another doctor to determine if further treatment would allow for him to return to work, which did not happen. He then said that he had not seen in any of the reports that Ms. Oatman had recommended a reference to any physician to perform that evaluation.

Ms. Oatman replied that the treating physician had already performed that evaluation.

Trustee Sedell said that was not what the Board had directed her to do at the February disability meeting.

Ms. Oatman said that she was told by the County of Ventura that they had scheduled an appointment for the applicant with Dr. Richman and he must attend, and she was not given the opportunity to select another doctor.

Trustee Sedell replied that Ms. Oatman could have easily told the County that there was another doctor that she would prefer that the applicant see.

Ms. Oatman replied that she would be happy to search for another physician to evaluate Mr. Myers.

Trustee Roberts said that after reviewing the new information and hearing the discussion, he did not believe that Ms. Oatman had made a good faith effort to have the applicant further evaluated as directed in February, since she had the opportunity to recommend other doctors to evaluate the applicant since then. Therefore, the case should not be sent for a hearing, since a good faith effort had not been made.

Ms. Oatman replied that Mr. Roberson had never been open to the idea of sending the applicant to another IME, so she did not feel it had been an option. While she would be happy to search for a neutral doctor for the applicant to see, she did not believe that the County would be willing to discuss that option.

Chair Goulet repeated that in February the Board had instructed both parties to make a good faith effort to have the applicant seen by another physician. So, if Ms. Oatman were to, in good faith, provide a short list of doctors, then if the County were to object, she could return to Board and say she had done her best.

Trustee Sedell said that he would suggest that Ms. Oatman provide a list of five doctors she deemed reasonable and objective, and to allow the County to choose one of those five doctors to evaluate the applicant and to then have the case brought back to the Board within 45 days for a decision of whether the case should be sent for hearing.

Ms. Oatman replied that she did not believe that there were that many experts physicians out there and she believed three medical experts would be a more reasonable number.

Trustee Sedell then said that if both sides agreed that there were only three medical experts then the number required would be three, but if either party believed that there were five medical experts to choose from, then a list of five would be required.

Mr. Roberson suggested that Ms. Oatman recommend three doctors and he would also select three doctors for the applicant to see, and if both parties couldn't agree on any of the six doctors, then the matter would be brought back to the Board for them to pick one of the six recommended doctors for the applicant to see.

Trustee Sedell said that he had a problem with that process because each party could pick doctors that they believed would be sympathetic to their client and case would go nowhere. Both parties would need to work together to find a physician to evaluate the applicant or the Board would have to decide if the case would move forward or not.

Ms. Oatman then requested that the motion be very specific as to what the doctor who was chosen would address. The only question should be, was there medical treatment that would improve the applicant's range of motion fully to resume his job.

Mr. Roberson said that the question should be broader, the question the doctor should address should be, what future medical treatment would be appropriate for the applicant to undergo and whether that future medical treatment would improve the applicant's condition and potentially permit the applicant to return to work.

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

MOTION: Bring the matter back to the Board in 45 days, or at the July 13, 2020 Disability Meeting, to determine whether to set the case for hearing, and before then:

- Ms. Oatman will select 5 doctors who are qualified to opine on Complex Regional Pain Syndrome and who she believes would be reasonable and objective. The County will select one of the 5 doctors if they believe one is acceptable.
- If Ms. Oatman cannot find 5 qualified doctors, then 3 may be selected if the County agrees that there is a limited pool of doctors and that selecting among 3 options is reasonable. If the County does not agree to less than 5 on this basis, then Ms. Oatman must propose 5.
- The selected doctor will evaluate the applicant to determine what medical treatment is recommended to allow Mr. Myers to reach maximum potential range of motion, and to what degree that level of improvement is likely to enable him to return to work.
- If the County finds none of Ms. Oatman's selected doctors suitable, the parties need to agree on an appropriate process to move this case forward. If they do not, the Board will take its own action.

Moved by Sedell, seconded by Hintz.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett, Wilson

Abstain: -

Ms. Oatman asked for clarification regarding the motion.

Chair Goulet replied that staff would send both parties a letter which would state the motion from the record.

VI. OLD BUSINESS

A. Request for Reconsideration of Board Action to Engage Consultant for VCERA Managers' Compensation Survey.

RECOMMENDATION: Approve Reconsideration.

1. Letter from Chair Wilson.

Chair Goulet said that he appreciated the willingness of VCERA's executive managers to request that the matter be postponed until January 2021, because of the current environment.

MOTION: Approve Request for Reconsideration of Board Action to Engage Consultant for VCERA Managers' Compensation Survey.

Moved by Ashby, seconded by Roberts.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett, Wilson

Abstain: -

B. Reconsideration of Board Action to Engage Consultant for VCERA Managers' Compensation Survey.

RECOMMENDATION: Postpone Until January 2021.

MOTION: Approve Reconsideration of Board Action to Engage Consultant for VCERA Managers' Compensation Survey and Postpone Until January 2021.

Moved by Ashby, seconded by Hintz.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett, Wilson

Abstain: -

Before adjourning to Closed Session, the Board continued to items "X. Public Comment", XI. Staff Comment", and XII. Board Member Comment.

VII. NEW BUSINESS

A. None.

VIII. CLOSED SESSION

- A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: Retirement Administrator
(Government Code section 54957(b)(1))
- B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: General Counsel
(Government Code section 54957(b)(1))
- C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: Chief Investment Officer
(Government Code section 54957(b)(1))

IX. INFORMATIONAL

- A. None.

X. PUBLIC COMMENT

None.

XI. STAFF COMMENT

Ms. Webb respectfully requested that the Board continue to let staff know ahead of future meetings, if they would be able to attend given the vacancies currently on the Board to ensure there was a quorum.

Mr. Gallagher said that NEPC's preliminary investment return model predicted April's return as 4.7%; the period from January 2020 to the end of April 2020 as -9.42%; and, a fiscal year-to-date return as of the end of April 2020 as -3.97%. He cautioned that the numbers were based on publicly traded index data, and that audited figures for VCERA were not expected to be available until the Board's second meeting in May.

XII. BOARD MEMBER COMMENT

Chair Goulet said that he believed that there was a misunderstanding of the meaning of the words "truing up" of the County of Ventura's pension contribution at the end of the fiscal year, as discussed in the previous meeting. His impression was that most of the Board believed the County made up most of the deficit amount at the end of the fiscal year, so he requested that staff clarify the term "truing up" in that context. He had been in conversation with Chief Financial Officer, Henry Solis regarding the subject, but Chair Goulet said he was still uncertain if he fully understood it, other than it being an accounting arrangement, which was not the same as the County making up the deficit.

Mr. Solis stated that if the County were to make up the deficit at the end of the fiscal year, there would be no reason for the County to pre-fund in advance. The concept of pre-funding was for the County to pay their contribution to the pension fund at the beginning of the fiscal year, and VCERA could invest that money and earn the assumed rate of return. He explained that the truing up of the deficit created by giving the County a pre-fund discount does not mean the deficit is made up by the County at the end of the fiscal year but is made up from the earnings of the fund. Otherwise, the County would have no incentive to pre-fund their contribution to VCERA on July 1st.

Chair Goulet said that he was not concerned with the County's incentive for paying the contribution early, but that the members of the Board thought that the system would be made whole at the end of the fiscal year. So, the impression that he had from Mr. Solis' remarks at the previous meeting was that at the end of the fiscal year, regardless of what the investment earnings were, VCERA would be made whole with respect to the contribution. Because of comments made at the previous meeting, such as, "*there would be no cost to the fund since the discount would be trued up later*" and "*VCERA could true up the discount later*" he wanted the concept clarified.

Ms. Webb said that her impression of the term, "true up" was that if the County was going to pay a lumpsum at the beginning of the year, the payment would either be over or under relative to the actual cost of the contribution and once the year was complete, if they had overpaid then they would be refunded, and if they underpaid then they would pay the difference, but a good faith effort to pay the estimated cost would be made and the true up was just aligning the estimate with the actual cost.

Chair Goulet replied that was what he had thought as well, but the majority of the Board may have had a different understanding.

Mr. Solis stated that another assumption may be that the County was providing the full amount of the contributions, but the reality was that the County decides how much employer retirement contributions to prefund based on a projection provided by VCERA, which is based on the prior year's payroll. The actual payroll would differ as there were things that affect actual payroll such as employee turnover, vacancies, pay raises, etc.

Ms. Webb asked Mr. Solis if the past projections of contribution costs was usually underestimated or overestimated.

Mr. Solis replied that since he became VCERA's C.F.O. in 2009, the County had intentionally provided an amount so that they would not have a remaining balance in the pre-funding at the end of the year and had consistently exhausted the pre-funded amount.

Chair Goulet noted that the County had exhausted the pre-funded amount last year as well and had subsequently paid the remaining balance due. He then asked Mr. Solis if he disagreed with Ms. Webb's statement of what she believed the term "true up" to mean, which was what he thought and that the Board may have thought.

Mr. Solis replied that it was an accounting adjustment at the end of the year because the County's contribution allowed funds to remain fully invested; otherwise VCERA would have to redeem investments to generate the cash needed to meet our system's cash needs. Therefore, VCERA would receive the full amount of the contribution, less the discount and an accounting entry is made at the end of the year to reflect the discount.

Chair Goulet said that he believed there had been enough discussion on the subject and that Ms. Webb's statement was much clearer than Mr. Solis's explanation which referenced investments, when the question was, if the County contributed too much would they receive a refund and if they contributed too little would we receive the balance due.

Mr. Solis clarified that if the County had prefunded too little then the prefunded balance would have been exhausted and they would pay any remainder going forward. If the County had contributed too much, the balance would carry over into the next year.

Chair Goulet then said that the County would then get paid back because they would have money already contributed for the next fiscal year.

Ms. Nemiroff explained that balance would be carried over to the next fiscal year because VCERA could not refund due to the Exclusive Benefit Rule. Ms. Nemiroff then read CERL code section 31582, "*Transfers shall be adjusted at the end of the fiscal year to reflect the actual contribution required for that year*". Therefore, that was the "true up" because it was the truing up of contributions paid if the estimate were wrong; it had nothing to do with investment earnings or whether VCERA earned the assumed rate of return from the pre-funded contribution.

Chair Goulet asked if any of the Board members had any comments.

Trustee Sedell replied that he fully understood the matter and continued to support the Board's decision regarding the pre-funding discount.

Chair Goulet said that he just wanted to make sure that the Board understood what the term, "true up" really meant.

XIII. ADJOURNMENT

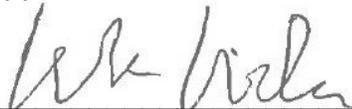
The Chair adjourned the meeting at the conclusion of closed session at 10:31 a.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



WILLIAM W. WILSON, Chair