

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

MAY 1, 2023

MINUTES

**TRUSTEES
PRESENT:**

Mike Sedell, Chair, Public Member
Arthur E. Goulet, Vice-Chair, Retired Member
Sue Horgan, Treasurer-Tax Collector
Jordan Roberts, General Employee Member
Cecilia Hernandez-Garcia, General Employee Member
Aaron Grass, Safety Employee Member
Tommie E. Joe, Public Member
Will Hoag, Alternate Retired Member

**TRUSTEES
ABSENT:**

Kelly Long, Public Member
Robert Ashby, Alternate Safety Employee Member

**STAFF
PRESENT:**

Linda Webb, Retirement Administrator
Amy Herron, Chief Operations Officer
Lori Nemiroff, General Counsel
Dan Gallagher, Chief Investment Officer
La Valda Marshall, Chief Financial Officer
Leah Oliver, Chief Technology Officer
Josiah Vencel, Retirement Benefits Manager
Brian Owen, Sr. Information Technology Specialist
Michael Sanchez, Sr. Information Technology Specialist
Jess Angeles, Communications Officer
Chris Ayala, Program Assistant

PLACE:

Ventura County Employees' Retirement Association
Second Floor, Boardroom
1190 S. Victoria Avenue, Suite 200
Ventura, CA 93003

TIME:

9:00 a.m.

ITEM:

I. CALL TO ORDER

A. Roll Call.

Chair Sedell called the Disability Meeting of May 1, 2023, to order at 9:10 a.m.

Roll Call:

Trustees Present: Aaron Grass, Art Goulet, Cecilia Hernandez-Garcia, Sue Horgan, Tommie Joe, Jordan Roberts, Will Hoag, Mike Sedell

Trustees Absent: Kelly Long, Robert Ashby

II. APPROVAL OF AGENDA

Chair Sedell suggested the Board advance to Public Comments after Approval of the Agenda in order to hear a Public Comment from a member.

MOTION: Approve as Amended.

Moved by Grass, seconded by Horgan

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Roberts, Sedell

No: -

Absent: Ashby, Long

Abstain: -

After the vote on the agenda item, the Board advanced to item, VIII., Public Comment.

III. CONSENT AGENDA

A. Receive and File Pending Disability Application Status Report.

MOTION: Approve.

Moved by Goulet, seconded by Roberts

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Roberts, Sedell

No: -

Absent: Ashby, Long

Abstain: -

IV. APPLICATIONS FOR DISABILITY RETIREMENT

A. Request for Authorization to Extend IME Re-evaluation Period for Disability Retiree by Additional 24-Month Periods—Heckman, Charles; Case No. 20-017.

1. Staff Letter, dated May 1, 2023.

2. Hearing Notice, dated April 25, 2023.

Mr. Vencel related that in July 2021, the Board had granted a service-connected disability retirement to former Sheriff's Deputy, Charles Heckman. Mr. Heckman had severe neck and right shoulder injuries, and due to his relatively young age, the Board authorized staff to re-evaluate his condition in 2 years. Therefore, staff had sent Mr. Heckman an Evaluation Questionnaire in February, and then received 2 responses back from Mr. Heckman, as well as his recent medical records. Based on these documents, staff felt that he was still permanently incapacitated, and staff did not recommend re-evaluation at this time. Staff requested the Board extend the re-evaluation period by 2-year periods, up to 10 years, post retirement, given Mr. Heckman's relatively young age. Though an IME re-evaluation may never be needed, staff recommended this option in the event his condition improved. The request represented application of County Employee Retirement Law (CERL), which allowed the Board to re-evaluate disability retirees up to age 55.

Trustee Hernandez-Garcia asked Mr. Vencel what would happen after the 10-year period.

Mr. Vencel said that CERL allowed Retirement Board's to re-evaluate a disability retiree until they reached age 55, and in 10 years Mr. Heckman would reach that age.

Kasey Sirody, Executive Director for Ventura County Deputy Sheriff's Association (VCDSA), provided public comment. She said VCDSA did not understand the purpose was for the request to re-evaluate Mr. Heckman every 2 years, which seemed unreasonable and arbitrary. If VCERA had specific concerns regarding a retiree's work restrictions, that might be a reason for such a request.

Mr. Vencel said that he would point to the CERL, which gave the Board the authority to re-evaluate any disability retiree, up to age 55. In the past, there had been possible violations regarding work restrictions, and/or dramatic improvement with previous disability retirees under age 55, which were brought to the Board's attention. Staff was now identifying applicants who are particularly young and well below the age 55 milestone when granted a disability retirement; the request gave staff the discretion to send the retiree a questionnaire and to request some medical records every 2 years. In his opinion, it was not onerous, and a reasonable way to ensure that disability retirees were not receiving benefits that they should not be receiving.

Ms. Webb added that what staff's recommendation would simply allow staff not have to bring the request to the Board every 2 years, agendizing it each time, though it was certainly the discretion of the Board if they preferred such requests be brought to every 2 years instead. Disability retirements are under a lot of scrutiny across CERL systems and CalPERS. This type of request did not only apply to Mr. Heckman, because staff would recommend the same action from the Board for any disability retiree in a similar set of circumstances. As Mr. Vencel mentioned, if granted it would not mean that the disability retiree would necessarily have to undergo a medical exam, rather they would simply receive a questionnaire every 2 years. There was precedent and legal support for the recommendation.

Trustee Grass noted the Board had had a similar case that was brought to them late last year. He also appreciated the memo from VCDSA, because there were a couple of points raised in it that he had not considered the last time the Board received a similar request from staff. The memo listed 7 points, and number 6 referenced a situation where a person was brought back to work and re-certified for the Peace Officer Standards and Training (POST) certification, then began experiencing the same symptoms that caused them to retire initially. Would they then have to wait to be considered Permanent and Stationary, and have to go through exams and depositions again? In this case, Mr. Heckman's POST certification would expire soon, and he would not be eligible to be a Peace Officer in the State of California. Further, at some point he would become ineligible to work in

his own service category. Also, he believed that Trustee Goulet had brought up a point the last time the Board heard a similar request, which was that there was already a process in place where disability cases could be reviewed, if someone were to try and manipulate the system.

Trustee Roberts remarked that when he first saw staff's request, he thought that every 2 years seemed too frequent and administratively burdensome. He recalled a similar case where a young member had been granted a service-connected disability retirement and then later went on to own a CrossFit gym and participate in several CrossFit competitions, which was concerning, and the Board had requested that the disability retiree be brought back for re-evaluation. He asked, if the Board had decided to convert that disability retiree's retirement in the previous case, would VCERA still have had to pay the same pension payment amount to that member?

Ms. Webb replied that if a disability retiree were drawing a service-connected disability retirement and later deemed to no longer be disabled, then that would be the case. She stated that staff's request was comparable to what Los Angeles County does in similar circumstances. This was also not about Mr. Heckman personally, but the process concerning a very young disability retiree. Staff had also researched how other retirement systems under CERL handled similar circumstances. Additionally, because staff's request was regarding the ability to send a questionnaire to the member, staff believed it was reasonable, the research indicated that other retirement boards had been taking a tight view of the fiduciary responsibility of maintaining the disability retirement process to ensure that a disability retiree continued to be disabled. She noted Mr. Heckman's case was different from the CrossFit case mentioned earlier, which had been a "whistleblower" type case where it had been independently reported to VCERA. Staff was not questioning Mr. Heckman's service-connected disability or eligibility for it in any way.

Trustee Roberts said that even if the Board were to decide that some of the disability retirees were no longer disabled, they would still be able to receive a regular retirement; however, they would be taxed on a regular retirement. So, VCERA would still be paying these members the same amount towards their retirement benefit.

Chair Sedell suggested that the Board grant staff the authority to send out a questionnaire to disability retirees in these circumstances every 2 or 3 years, and if staff felt that the answers on the questionnaire warranted further examinations, then the case would be brought to the Board for consideration.

Trustee Roberts said that whether the Board was talking about establishing a process or just this specific disability case, he felt that sending a questionnaire every 2 years to the disability retiree, was too burdensome, and that 5 years would be more reasonable.

Trustee Grass said that by statute he believed the Board should be able to review these cases at any time. He believed he recalled that late last year the Board had heard a similar disability case and issue. Also, safety members tended to leave the state once they retired, and likely alarming for them to think that they might have to move back, because of something like this. He agreed with Trustee Roberts and he also wondered if the process should be set up so that VCERA would only send out a questionnaire to disability retirees, if and when VCERA was made aware of a potential change in a disability retiree's condition. In Mr. Heckman's case, he saw no pertinent reason to send a questionnaire, because Mr. Heckman's POST certification would be expiring soon, and he would have this issue hanging over his head.

Trustee Joe asked how many questions were on the questionnaire.

Mr. Vencel said that the last questionnaire they sent out had 9 questions, which asked about their impairment, pain, abilities, medical treatment, and recent medical records for particular body parts that were related to their disability.

Trustee Joe then asked how long it would take a disability retiree to fill out the questionnaire.

Mr. Vencel replied that it probably took them less than 30 minutes.

Ms. Webb said that ideally what staff was requesting was that the disability retiree simply complete a questionnaire; if the responses indicated a significant improvement or warranted an Independent Medical Evaluation (IME), staff would have the ability to request the disability retiree undergo an IME, at VCERA's cost. Then, if based on the IME's records there were significant improvement, staff would bring it back to the Board. However, if it was the Board's direction that before sending such a disability retiree to an IME, staff should seek approval from the Board, then staff would note such direction for the future. However, this was simply an audit function in terms of process.

Trustee Hernandez-Garcia remarked that it seemed that Safety members had certain circumstances that were not applicable to any other employee types. Given this she believed that sending out a questionnaire every 2 years seemed like a short timeframe. She then asked when this process was put into place and whether other Counties encountered similar situations with their safety employees.

Ms. Webb replied that service-connected disabilities did tend to be more common among safety employees given the physical demands of those jobs. What staff proposed was similar to what VCERA's CERL peers were doing in similar situations. Such processes had been under more scrutiny, and now VCERA had now seen a couple of cases where retired members were brought back. ff, in coordination with General Counsel and the Disability Manager, believed it prudent to follow a process similar to what was seen elsewhere. If the Board decided to change the 2-year timeframe for sending out a questionnaire for this applicant, then the timeframe should be consistent with future cases as well. Thus, whatever the Board decided today in this case, then staff would take that as direction for all such cases going forward. Ms. Webb said however, she believed staff's recommendation was best from a fiduciary perspective.

Chair Sedell said that he took some exception to the comments regarding fiduciary responsibilities because he believed the Board had done well as fiduciaries, in the way that they had handled these cases in the past, because they had requested such cases be brought back to the Board. They had also directed that a questionnaire be sent out in these types of situations, and if the Board kept following the same process, they would be doing it correctly, in relation to their fiduciary responsibility. However, the Board should consider if they wanted to be overly burdensome to staff and disability retirees, considering that there were public safety issues involved because there were different situations for different types of members, as Trustee Grass had pointed out. However, there was still a need for staff to have the ability to monitor these types of situations on a periodic basis, and although the timeframe was up for discussion, they should try and not be too burdensome to the disability retirees, especially if they were not living in the state, but the Board should also have the ability to look at that case to decide if they should push harder to get more information.

Mr. Heckman read a prepared statement to the Board, which said on April 25, 2023, he received an email notification from VCERA that this board meeting was scheduled, which was less than one week's notice, and the notice stated that VCERA staff intended to present a recommendation regarding a re-evaluation of his case for an IME. Due to the documents of his worsening symptoms related to his injuries, VCERA staff concluded that a re-evaluation by an IME was not warranted at this time. Living every day with his increasingly painful and limiting symptoms, he fully agreed with staff's assessment. During the board meeting of July 17, 2021, the Board granted him a Service-

connected Disability Retirement, according to the recommendation by VCERA staff. The Board also authorized staff to re-evaluate his level of incapacity within 24 months, “due to the applicant’s relatively young age”, because at the time he was 44 years old. This was granted in spite of the fact that age was never a factor regarding improvement prognosis of his injuries in any of the medical reports that were furnished to VCERA staff by the treating Orthopedic Surgeons, Worker’s Compensation, Orthopedic Surgeon QME, and VCERA Orthopedic Surgeon IME. All treating surgeons addressed his injuries to be permanent, without prognosis for improvement, and his Primary Orthopedic Surgeon even advised that the extremely risky neck surgery might improve his neck’s function, but, “not enough to return him to law enforcement duties”.

Mr. Heckman continued, during today’s board meeting, VCERA staff had presented to the Board a request to authorize an extension of the initial IME re-evaluation period, which was based on the medical legal unsupported discriminating factor of age. Furthermore, VCERA staff requested a blanket authorization for an additional 24 months of IME re-evaluation periods, up to 10 years. In his opinion, this overreaching authorization request was made without any medical or legal justification or good cause arguments. After reviewing board meeting minutes, he concluded that his case appeared to be the first case in which the Board coupled the granting of a service-connected disability retirement with the authorization of VCERA’s staff to conduct an IME re-evaluation with this specific timeframe, based on the medical legal unsupported discriminating factor of age. Now, VCERA was intending to again make his case precedent for an even more far-reaching authorization request. As stated in VCERA staff’s April 25, 2023, memorandum, referenced his case to the Board, “staff intends to bring the same authorization for the few disability retirees for whom the Board previously authorized an IME re-evaluation within a specific timeframe. If the Board agrees, staff would include the extension option in further recommendations, as applicable”. He respectfully implored the Board to deny staff’s request to extend the previously authorized IME re-evaluation period, in his case, and his objection was based on the following issues.

Mr. Heckman asserted that a blanket authorization of VCERA staff’s recommendation violated the spirit of the law of Government Code (GC) 31729, which stated, “*the board may require any disability beneficiary, under age 55 to undergo a medical evaluation. The examination shall be made by a physician or surgeon appointed by the board at the place of residence of the beneficiary or a place mutually agreed upon. Upon the basis of the examination, the board shall determine whether the disability beneficiary was still physically or mentally incapacitated for service in the office or department of the county or district where he was employed and in the position held by him when retired for disability*”, and in his case that would be as a Deputy Sheriff with the County of Ventura. The statute authorized the Board to require the beneficiary to undergo a medical re-evaluation and it placed the authority on democratically elected board members who answer to the public and made decisions during public meetings regulated by laws and rules incorporating public comment and inquiries. This included the opportunity for the beneficiary to make public statements and inquiries relating to staff’s reasoning for the necessity of a medical reevaluation. However, staff’s request placed carte blanche authority in the hands of staff members who were not elected and could make arbitrary decisions behind closed doors without public comment, presentation of evidence, or the ability of the disability beneficiary to state their case in front of the board. He believed it would erode trust in the transparency and accountability of VCERA decisions related to IMEs. While VCERA’s staff touted the unspecified benefits of the “value of having the discretion to re-evaluate a disability retiree”, they had failed to recognize the cost at which it came.

Secondly, he was aware that GC 31721 did not state the reasons required for a disability beneficiary to undergo board required medical re-evaluation, but neither did it address the frequency and resulting level of invasiveness that was deemed acceptable. However, our country’s core values were codified, and dictated that any government related action should not be arbitrary, unjustifiably invasive, or discriminatory. As stated previously in his case, there was no prognosis from any of the

treating or evaluating orthopedic surgeons indicating that his condition was likely to dramatically improve, even with very risky neck surgery, and using the highly subjective fact of young age as a discriminating factor to request blanket authorization for repeated and ongoing IME evaluations was not supported by the medical legal evidence in the case, and has not been applied to other beneficiaries, prior to his case.

Thirdly, VCERA staff requested blanket authority to conduct medical re-evaluations every 24 months, up to 10 years after his service-connected disability retirement was granted, which would extend to July 17, 2031. At that time, he would be 55 years of age, and granting staff's request in his case would constitute a violation of GC 31729, which set the upper age limit of board approved medical re-evaluations at age under 55.

In closing, he wanted to clarify that none of his statements or objections constituted a refusal to fully comply with the requirements of GC 31729, nor was his appeal to VCERA's Board based on any negative conduct of VCERA's staff. As he stated in the past, VCERA staff had always been professional and empathic, and he appreciated that. However, his objection was based on the fact that, in his specific case, there was no evidence of good cause to reasonably warrant continuous and ongoing IME re-evaluations, especially since the recent valuation of his status by VCERA staff showed no contradicting indications regarding the assessment of all treating orthopedic surgeons, that his incapacitation was permanent. The decision to make a disability beneficiary undergo an IME re-evaluation should be made on a case-by-case basis, based on the medical legal facts of the specific case. Continuous unreasonable scrutiny, under the pretext of age, without any medical legal evidence or good cause, placed an undue burden on disability beneficiaries who had sustained life altering injuries, while keeping the community safe and functional.

Trustee Grass said that the Board had previously talked about the issue, at length, and given the authority they had according to the GC, he believed they might be overreaching. There were also some good points made during this and the prior meeting, so, he did not think that granting the authority to staff was necessary. They would also be causing more work for staff, by having them come back every 2 years with the same request. Sometimes people did manipulate the system, but there were other things that VCERA could do, such as creating a place on VCERA's website where people could report fraud.

Chair Sedell said based on Trustee Grass's comments, it may be better that the Board segregate the 2 issues: the recommendation for Mr. Heckman's case and then the process for future cases.

Ms. Webb said that she wanted to follow up on the comments she made earlier. GC 31729 mentioned age 55, which was why staff's request was for 10 years, because it would occur right up to when the retiree turned age 55. So, it was not arbitrary, and it was based exactly on the GC, which just shined a light on the fact that the case was involving a very young applicant. So, staff's request was consistent with that GC.

Chair Sedell noted that he previously said that the Board should decide on this specific case and then the process, however, after further thought, the Board should make a motion to combine the 2 issues, so that the decision they made in Mr. Heckman's case, would align with the same process applied to future cases.

Trustee Horgan asked if it was true that VCERA only requested re-evaluations based on the age of the disability retiree.

Ms. Webb said yes, for disability retirees under age 55, given the language of the GC.

Trustee Horgan then asked if the Board were to disregard the age limit and reviewed each case on its own merits, whether that would not be discriminatory.

Ms. Webb said that in her view, yes. If there was a set of circumstances, and those circumstances repeated themselves in a completely different case, then VCERA would need to be consistent.

Trustee Horgan thanked Ms. Webb for the explanation. Further, said that she did not feel that staff's request was onerous, and that she would support staff's recommendation.

Trustee Goulet said he wanted to comment on something Chair Sedell had said, which he thought was very reasonable. The process was to send out a questionnaire, currently, and before a medical exam was required, staff would have to come to the Board to get authority. Therefore, maybe the Board needed to add a statement to the letter that was sent in these types of cases, saying, "no IME would be required unless the Board authorized it". The request was just to send out a short questionnaire, which was just a routine exercise that may or may not lead to an IME, but it would only lead to an IME with Board approval. So, he did not think it was a terribly onerous process.

Chair Sedell remarked that this was not what he believed staff was recommending.

Trustee Goulet suggested that the Board could emphasize that in their authorization.

Trustee Roberts stated that he believed that there were 2 separate issues, one regarding the disability retiree's specific case and the other regarding the process for these types of cases. He also believed that it would help the Board if the process was outlined for them before they decided to apply it to the first person. He felt that it made sense for the Board to decide on a process, where they could decide on the frequency of sending out questionnaires.

Trustee Grass said that he agreed with Trustee Roberts, in that there were 2 issues that needed to be separated, and both Trustee Goulet and Trustee Roberts had made some good points on the issue. In this particular circumstance, given the amount of time that had passed already, he would move to not authorize another 24-month period, and the Board could address the issue of a process later.

Chair Sedell then asked Trustee Grass if he could clarify his motion on whether he was suggesting that there would be no questionnaire sent out to Mr. Heckman at all or was it to deny the 2-year frequency in the recommendation from staff, and so it would be sent to him every 3 or 5 years or some other timeframe.

Trustee Grass explained that absent any other mitigating factors or information in the case, that the Board not require Mr. Heckman to complete any further questionnaires.

Trustee Roberts then asked if it was true that they currently did not have a process for this type of case.

Ms. Webb replied that the recommendation from staff was not only for Mr. Heckman's specific case, but as a process in general for similar circumstances. Mr. Heckman's case just happened to be the first one.

Trustee Horgan said she wanted to clarify that VCERA did currently have a process, but this case just happened to be the first one, because if a disability retiree was under age 55, VCERA would send out a questionnaire every 2 years.

Ms. Webb added that this was the first case like this, which was the reason that it was highlighted, because as it was previously said, it was very unusual to have a retiree that was this young. She stated that staff's request to send a questionnaire to the disability retiree every 2 years for the next 10 years probably sounded like a long time. However, if there were a similar case that came up next week, staff would request that a questionnaire be sent to them until they reached age 55 as well. The request was really based on the GC, and it was about being prudent and monitoring disability retirees with a service-connected disability retirement that were under age 55.

Trustee Grass said that one point he would like to make was that if staff extended the request for another 5 years, Mr. Heckman's POST certification would be expired, so he could not come back to work in California. So, while the GC was very specific about the age limit being under 55 years of age, when it came to certain safety members, it may not be possible for them to return to their previous jobs. So, he believed that Mr. Heckman's case was a little different in some respects, and since he would not be able to come back to work in his former position, after 5 years, it was a moot point anyway.

Ms. Webb noted that if a member was no longer disabled for their duties, but they were unable to come back to their previous position, that would be a separate step or issue. Also, in such a case, staff would recommend that the member be converted to a regular service retirement, so the member would lose the tax protection of having a service-connected disability retirement.

Mr. Vencel added that taxability would also depend on whether the department the disability retiree formerly worked for was offering the disability retiree their job back and whether it was accepted.

Chair Sedell asked Ms. Webb if she could remind the Board about the case where a disability retiree was out of state and if there was a question that arose because of a questionnaire that was sent to them.

Ms. Webb noted the case was actually reported by someone who was concerned that the disability retiree was receiving a service-connected retirement but was also competing in CrossFit competitions and very active physically. There was enough evidence in that case to warrant a request to have the disability retiree undergo an IME, under GC 31729, because the retiree was under the age of 55. She also believed the person in question was deemed no longer disabled, and the Board at the time was discussing whether they should remove the tax protection of the Service-connected Disability Retirement from the disability retiree.

Ms. Nemiroff added that in that particular case, the Sheriff's Department had said that the member could return to work, but the Board decided not to pursue the matter further because the applicant was living in another state, and he had been retired for several years.

Trustee Roberts remarked that he believed that because it had taken a few years for that case to be reported to VCERA by the County, which was a factor in the Board's decision to not convert his service-connected disability retirement. Also, the process for these situations was not tight, in order to provide the disability retiree the proper due process. This was partly why the Board needed to decide on the process first before they applied it. He could not remember if the word "discrimination" was used regarding age, but he wondered if there was a concern about that, since the age limit was in the statute.

Ms. Webb stated that the age limit of 55 came from the statute and was not just arbitrary. So, the 10-year recommendation was based on the code.

Trustee Grass remarked that these types of cases could be complex, and everyone's situation was different, and so believed that these types of situations should be taken on a case-by-case basis. He has only seen two cases in his time on the Board. He did not think there was any question in Mr. Heckman's case regarding his disability.

Trustee Horgan said that if the Board took these cases on a case-by-case basis, that may open the door to discrimination, in her view.

Trustee Grass wanted to clarify that he was not saying that sending a questionnaire initially to the disability retiree in this case was wrong, but after this 2-year period, it was obvious that there were no other mitigating factors. Also, if they were talking about the process and the Board saw that either a disability retiree was more disabled or had other difficulties, it would be silly for them to continue to send questionnaires, because at some point they should decide that the disability retiree was still disabled and not improving.

Ms. Webb said staff would say that point should be age 55, per the code. Whenever an employee applied for disability retirement, that was when the Board was deciding on the incapacity issue, and in Mr. Heckman's case, the Board had come to the conclusion that he was disabled. However, because of his young age, the guidance of the code and other sources, staff's recommendation was more of a monitoring audit process. If the Board decided to take these types of cases on a case-by-case basis, then they would be reviewing a disability retirees incapacity issue all over again, but that pass/fail review had already been done.

Trustee Grass said that he did not see in the GC where it stated that the process was required and he did not know if any of it was necessary, in any of these types of cases, because of the point Ms. Webb just made. The physicians had already stated that he was incapacitated and could not return to his job. So, he did not feel that the process was required, unless it was because someone had reported a potential case of fraud, which would be warranted in those cases.

Chair Sedell suggested that staff bring the issue of a process back to the Board at the next board meeting.

MOTION: Deny Staff's Request to Extend the Previously Authorized IME Re-Evaluation Period for Charles Heckman by Additional 24 Month Periods, Up To 10 Years After his Retirement was Granted.

Moved by Grass, seconded by Roberts

Vote: Motion failed

Yes: Grass, Hernandez-Garcia, Roberts

No: Goulet, Horgan, Joe, Sedell

Absent: Long, Ashby

Abstain: -

MOTION: Approve Staff's Request to Extend the Previously Authorized IME Re-Evaluation Period for Charles Heckman by Additional 24 Month Periods, Up To 10 Years After his Retirement was Granted.

Moved by Horgan, seconded by Joe

Vote: Motion failed

Yes: Goulet, Horgan, Joe

No: Grass, Hernandez-Garcia, Roberts, Sedell

Absent: Long, Ashby
Abstain: -

MOTION: Authorize Staff to Send Mr. Heckman a Disability Questionnaire Every 2 Years and Bring the Case Back to the Board for Review if an IME is Recommended.

Moved by Horgan, seconded by Goulet

Vote: Motion carried
Yes: Goulet, Horgan, Joe, Sedell
No: Grass, Hernandez-Garcia, Roberts
Absent: Long, Ashby
Abstain: -

B. Application for Service-connected Disability Retirement—Acquisto, Lisa; Case No. 21-013.

1. Staff Recommendation to Grant the Application for Service-connected Disability Retirement, dated April 24, 2023.
2. County of Ventura-Risk Management's Response to VCERA's Preliminary Recommendation, dated February 3, 2023.
3. Supporting Documentation for Staff Recommendation.
4. Application for Service-connected Disability Retirement, filed by Employer and Joined by Applicant, dated May 25, 2021.
5. Hearing Notice, dated April 24, 2023.

Josiah Vencel was present on behalf of VCERA. Catherine Laveau were present on behalf of County of Ventura-Risk Management. The applicant, Lisa Acquisto, was not present.

Mr. Vencel made a brief summary statement.

Ms. Laveau also made a brief statement.

MOTION: Approve Staff's Recommendation to Grant the Application for Service-connected Disability Retirement, Effective May 2, 2023 with Potential Eligibility for Disability Reassignment.

Moved by Roberts, seconded by Grass

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Roberts, Sedell
No: -
Absent: Ashby, Long
Abstain: -

C. Application for Service-connected Disability Retirement—Bell, Don Richard; Case No. 21-025.

1. Staff Recommendation to Grant the Application for Service-connected Disability Retirement, dated April 18, 2023.
2. Supporting Documentation for Staff Recommendation.
3. Application for Service-connected Disability Retirement, filed by Applicant's Attorney, Thomas Wicke, dated August 20, 2021.
4. Hearing Notice, dated April 24, 2023.

Josiah Vencel was present on behalf of VCERA. Thomas J. Wicke, Attorney at Law, was present on behalf of the applicant, Don Richard Bell, who was not present.

Mr. Vencel made a brief summary statement.

Mr. Wicke also made a brief statement.

MOTION: Approve Staff's Recommendation to Grant the Application for Service-connected Disability Retirement, Effective March 31, 2022.

Moved by Goulet, seconded by Roberts

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Roberts, Sedell

No: -

Absent: Ashby, Long

Abstain: -

D. Application for Service-connected Disability Retirement—Tedder, James; Case No. 21-028.

1. Staff Recommendation to Grant the Application for Service-connected Disability Retirement, dated April 24, 2023.
2. Supporting Documentation for Staff Recommendation.
3. Application for Service-connected Disability Retirement with Amendment, filed by Applicant's Former Attorney, Russell Ghitterman, dated September 15, 2021.
4. Hearing Notice, dated April 24, 2023.

Josiah Vencel was present on behalf of VCERA. Jane Oatman, Attorney at Law, was present on behalf of applicant, James Tedder, who was not present.

Mr. Vencel made a brief summary statement.

Ms. Oatman declined to make a statement, other than she agreed with staff's recommendation.

MOTION: Approve Staff's Recommendation to Grant the Application for Service-connected Disability Retirement, Effective September 15, 2021.

Moved by Goulet, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Roberts, Sedell

No: -

Absent: Ashby, Long

Abstain: -

V. OLD BUSINESS

A. Request Assignment to Finance Committee to Prepare Request for Proposal (RFP) for Actuarial Audit Services Task.

1. Letter from Finance Committee Chair.

Trustee Goulet said that the item was follow up to an item that was brought to the Board at the previous meeting, where the Finance Committee recommended that that the Board assign the preparation of an RFP for an Actuarial Audit to them, in lieu of appointing an Ad Hoc Committee.

Chair Sedell said noted that he did not have any concerns with appointing the preparation of the RFP for an Actuarial Audit to the Finance Committee, however, best practices among all non-profit agencies was to separate the finance committee from the audit committee. So, when it was time to select a committee to prepare an RFP for a Financial Audit, he would suggest that the Board appoint a separate committee for that responsibility, because even though the Finance Committee had been doing a great job, he would want to make sure that they were in line with best practices.

MOTION: Approve Request to Assign the Finance Committee the Task of Preparing an RFP for Qualified Actuarial Audit Services for Board Consideration.

Moved by Goulet, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Roberts, Sedell

No: -

Absent: Ashby, Long

Abstain: -

B. Alameda Corrections Project Status Update.
RECOMMENDED ACTION: Receive and file.

1. Staff Letter from Chief Operations Officer.
2. VPAC Status Report dated May 1, 2023.

Ms. Herron said that an update on the status of the Alameda Correction Project was submitted for the Board's review. Staff also planned to bring frequent updates to the Board as the project progressed.

Trustee Hernandez-Garcia asked if staff had a target date of when the contributions for the Flex Credit would stop.

Ms. Herron explained the County of Ventura was working on it, and she believed they were targeting the beginning of the Fiscal Year to stop the contributions, but it would be up to the County to decide if they could meet that deadline.

Chair Sedell stated that the two paragraphs in staff's report did not do justice to all that staff was doing, because he knew how much work would be involved to complete the project. However, the Board members appreciated all of the work that staff was doing for the project.

Ms. Webb said that unless the Board directed otherwise, staff's plan was to provide a written and verbal report on the status of the implementation to the Board at future business meetings. Staff would also be updating the Alameda section on the website regarding any major developments.

Trustee Hernandez-Garcia asked if staff was planning to hire some temporary employees to assist with the project.

Ms. Webb said that staff was looking at making mass corrections, but there were some things that needed to be manually done, so they were currently evaluating what the best approach was, such as using existing staff depending on the complexity of the task. However, staff would need some resources, so they appreciated the Board's past pledges for those additional resources for the implementation.

Trustee Hernandez-Garcia also asked what the plan for refunds associated with the implementation of the Alameda Decision.

Ms. Webb provided a brief update on the developing Alameda implementation plan. Ms. Webb said that retired members would be able to rollover their refund into an IRA, instead of receiving a cash refund.

Trustee Grass said that he couldn't imagine a scenario where a retired member wouldn't be able to roll their refund over into their 401(k) as well.

Ms. Nemiroff noted that it would just depend on whether the County of Ventura would accept the rollover, because legally it could be done, but the recipient would need to approve it.

VI. NEW BUSINESS

A. SACRS Business Meeting Agenda Items.

1. SACRS Spring Conference Business Meeting Packet.
2. SACRS Spring Conference 2023 Agenda.

Chair Sedell noted that the SACRS Business meeting agenda item was mostly informational. He also noted the SACRS Spring Conference conference agenda appeared to have great content.

After reviewing this agenda item, the Board advanced to item IX., "Staff Comment".

VII. INFORMATIONAL

VIII. PUBLIC COMMENT

Mr. Maher, VCERA member, apologized for any disruption to the Board meeting. He stated that he had become disabled after having an adverse reaction to a vaccine. He had previously worked for the County of Ventura as a Certified Nursing Assistant and as a Medical Office Assistant, and the County deemed that he was unfit to work with patients any longer, and rotated him into other positions, with most of his time spent in the maintenance department. During this time he had to take a leave of absence 3 times, and his condition had been getting progressively worse until in May 2019 when he took a leave of absence and then applied for retirement. He had also received a note from his Neurologist which stated that his condition was permanent and progressive and his Primary Care doctor said something similar. He was currently collecting Social Security Disability. Firefighters throughout Ventura County knew him because of his condition. At times he appeared normal because his condition was episodic, as it comes and goes, which could be very alarming to those around him. He had also previously traveled approximately four hours for a deposition with Mr. Roberson, the Attorney who represented the County in his disability case, and he had been shaking and convulsing on the ground. Afterwards, when he had asked Mr. Roberson for a copy of that deposition, Mr. Roberson declined to provide it because it was not being submitted into evidence and said, in Mr. Maher's words, he wanted to hide it from the Board and did not want it to influence the Board's decision. So, it had taken a few years to go through the process with VCERA to try and get a disability retirement, but in January his disability retirement case was heard by the Board for the last time, but he was not allowed to speak to the Board during a Zoom meeting, because he was told something was broken. So, he just had to sit there and watch the whole proceeding, and was not able to say anything. Mr. Roberson had ignored the doctor's notes, and all the evidence, in his case. He also said the vaccine he received was not work related and that he was not disabled at all. The Board then ruled on his case and he got nothing, and the Board did not ask any questions, they just said okay, we all agree and that was the end. He had put in nine years work for the County with the goal to someday work as a Surgical Nurse after getting his nursing degree, but that had ended and now he got zero income from that. He lived on twelve hundred dollars a month from Social Security disability with a family of four. He did not think it was fair that he was not allowed to speak, and he also did not think it was fair that Mr. Roberson withheld evidence, because anybody could see he was disabled. The situation had been a severe impact on his quality of life and his ability to go places.

Chair Sedell said that the Board understood but was unable to discuss his disability retirement case because it was not on the agenda. However, the Board would ask staff to return to the Board with a response to the claims that he made and to see what options were available to the Board. He also did not know why he was not allowed to speak, because applicants for disability retirement were typically allowed to speak at the Board meetings when their case was being heard, so staff would look into that as well.

Ms. Webb said she recalled Mr. Maher speaking at the disability meeting when his disability case was before the Board.

Mr. Maher said it took the neurologist 2½ years to find out what his condition was because it was rare, but the abbreviation for his illness was PNKD which stood for, Paroxysmal Nonkinesigenic Dyskinesia, which was permanent and degenerative.

Ms. Webb then said that one of VCERA's staff members would be contacting him. She also said that staff would bring back a summary of Mr. Maher case and the status of it.

Chair Sedell then asked if it could be brought back before the next meeting.

Ms. Webb replied yes.

After receiving Public Comment, the Board returned to agenda item, III. "Consent Agenda".

IX. STAFF COMMENT

Ms. Nemiroff informed the Board that regarding the two pending Administrative Appeals, staff received reports from the Hearing Officers on both appeals. So, staff was now working with the attorneys for the parties in the appeals to schedule a hearing in front of the Board.

Ms. Webb added that staff had also been discussing a potential request to the Board to approve a Special Meeting because staff was having difficulty accommodating the schedules for all of the parties in these cases.

Chair Sedell remarked that he would prefer that the attorneys in the appeal cases adjust their schedules instead of having all of the Board members adjust theirs.

Ms. Nemiroff said that if the Board preferred that the attorneys adhere to the set board meeting schedule she could make that clear to the attorneys.

Trustee Goulet said that he agreed with Chair Sedell.

X. BOARD MEMBER COMMENT

None.

XI. ADJOURNMENT

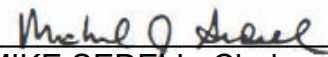
The Chair adjourned the meeting at 11:05 a.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



MIKE SEDELL, Chair