

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

SEPTEMBER 9, 2019

MINUTES

**TRUSTEES
PRESENT:**

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

**TRUSTEES
ABSENT:**

Craig Winter, General Employee Member
Tracy Towner, Alternate Safety Employee Member
Ed McCombs, Alternate Public Member

**STAFF
PRESENT:**

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

PLACE:

Ventura County Hall of Justice
Pacific Conference Room
800 S. Victoria Avenue
Ventura, CA 93009

TIME:

9:00 a.m.

ITEM:

I. CALL TO ORDER

Chair Wilson called the Disability Meeting of September 9, 2019, to order at 9:03 a.m.

II. APPROVAL OF AGENDA

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

MOTION: Approve.

Moved by Goulet, seconded by Hintz.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

III. APPROVAL OF MINUTES

A. Business Meeting of July 15, 2019.

Ms. Webb submitted two corrections to the minutes. On Master Page 6, item VI.A., the first paragraph referred to, "Mr. Allen"; however, it should have said, "Mr. Martin". Secondly, on Master Page 12, the time of adjournment said 10:10 a.m.; however, the meeting adjourned at 11:07 a.m.

MOTION: Approve with Corrections.

Moved by Hintz, seconded by Goulet.

Vote: Motion carried

Yes: Ashby, Bennett, Bianchi, Goulet, Hintz, Hoag, Sedell, Wilson

No: -

Absent: McCombs, Towner, Winter

Abstain:

IV. RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT

MOTION: Receive and File.

Moved by Sedell, seconded by Hintz.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

V. APPLICATIONS FOR DISABILITY RETIREMENT

A. Application for Service-Connected Disability Retirement – Bittmann, Janeen R.; Case No. 17-014.

1. Risk Management's Request for an Extension-Amended to submit Medical Analysis through December 2019.
2. Hearing Notice, dated August 27, 2019.

Ms. Edwards informed the Board that Ms. Bittmann had made the request for the extension through Ventura County Risk Management and VCERA staff did not object to granting such an extension.

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

MOTION: Approve Ventura County Risk Management's Request for an Extension of Ms. Bittman's Disability Retirement Case.

Moved by Bianchi, seconded by Sedell.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

B. Application for Service-connected Disability Retirement - Aldrete, Ernesto; Case No. 18-017.

1. Application for Service-connected Disability Retirement, filed May 31, 2018.
2. Medical Analysis and Recommendation, including Supporting Medical Documentation, submitted by County of Ventura, Risk Management, in support of the Application for Service-connected Disability Retirement, dated August 6, 2019.
3. VCERA Staff Letter with Supplemental Questions for Risk Management-Including Risk Management's Responses and Staff Comments
4. Hearing Notice, dated August 27, 2019.

Derek Straatsma, Attorney at Law, Chuck Pode and Catherine Laveau were present on behalf of Ventura County Risk Management. Donna Edwards and Nancy Jensen were present on behalf of VCERA. The applicant, Ernesto Aldrete, was also present.

Mr. Straatsma made a brief statement.

Trustee Ashby noted an error on Mr. Aldrete's retirement application, where it stated that the applicant's birthdate was May 22, 2018.

Trustee Goulet asked what type of exercise the applicant engaged in recreationally to stay fit while he was employed as a Deputy Sheriff.

Mr. Straatsma said that he was not sure what the applicant's non-industrial hobbies were while he was employed as a Deputy Sheriff, and medically the only thing that seemed to contribute to the injury were the stairs at his previous worksite and the things that he had worked on as causation. He said that the report had also mentioned that the applicant had participated in CrossFit for a period of time.

Trustee Goulet said that he was under the impression the applicant was currently doing CrossFit.

Mr. Aldrete replied that he could no longer do CrossFit because of his injury.

Trustee Goulet then asked if he was correct that County of Ventura policy did not allow retirees to stay on payroll and use accrued vacation time, but instead required an employee to cash out their vacation time, as the report seemed to indicate that the applicant wanted to use up all of his accrued vacation time.

Ms. Laveau said that it was her understanding that at the time Mr. Aldrete applied for disability retirement, there was a question as to whether he was entitled to 4850 time. She said that later there was a question on whether the applicant was going to be reimbursed on the 4850 time and if he was entitled to the 4850 time. She said the applicant had also asked if he could utilize his vacation time as well. She then said that ultimately the dispute related to the 4850 time which was resolved favorably to the applicant, so he had been allowed to be paid the 4850 time and to utilize his vacation time beyond that point.

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

MOTION: Approve the Application for Service-Connected Disability Retirement.

Moved by Ashby, seconded by Bianchi.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

Both parties agreed to waive preparation of findings of fact and conclusions of law.

C. Application for Service-connected Disability Retirement - Gonzalez, Carmen M.; Case No. 15-028.

1. Administrative Record.

Stephen D. Roberson, Attorney at Law and Catherine Laveau were present on behalf of County of Ventura Risk Management. The applicant, Carmen M. Gonzalez, was also present.

Mr. Roberson said that Dr. Conwisar and Dr. Rah had ordered no repetitive motion work restrictions for the upper extremities and the County of Ventura could have accommodated those work restrictions. He noted that the applicant filed for disability retirement on September 11, 2015 and at that time indicated that she would not accept another position, even if she could perform the duties and be paid the same salary. The County of Ventura then offered the applicant a modified position on July 25, 2016, but she refused to take the job and subsequently resigned on August 8, 2016. Mr. Roberson said that he felt the record was clear that the County of Ventura had offered to bring the applicant back to work in a modified position, at the same salary as her previous position, with the hope that the County could potentially transition her back to her previous position.

Chair Wilson asked if Risk Management could explain more about the modified position that was offered to the applicant.

Mr. Roberson said that in Exhibit F of the record Risk Management had submitted, "Rules for the Reception Desk Position", which detailed the duties of the position. Ms. Gonzalez had met with Nathan Wood from the County of Ventura, who had explained to her that it was a sedentary position, in which the applicant could stand and sit at will and she would be checking visitors in at the hospital. She might have to make some phone calls to identify which rooms patients were in.

Ms. Gonzalez said that there was not an ergonomic evaluation done for that position and the County of Ventura could not know how many visitors she might receive or how many names she would have to type in the computer. She said that her doctor had specifically said that she was not allowed to do any repetitive typing and no repetitive duties. She asked how the County of Ventura could say that she was capable of working in that position when the job was unpredictable in nature. She also said that what Mr. Roberson referred to as a job description was actually rules for that position.

Chair Wilson remarked that he had read in the report that the applicant had raised the issue of the chance for a large volume of people to come in to the hospital and the County's response was to have the visitors write their own name on their tags, and he thought that was a good solution.

Ms. Gonzalez replied that it would not work because some visitors who come in may not know how to read or write.

Trustee Goulet asked Ms. Gonzalez if she had tried to do the job.

Ms. Gonzalez replied that she had not.

Trustee Goulet then asked why she had not tried to do the job.

Ms. Gonzalez replied because she knew that she could not do the job.

Trustee Goulet said he did not believe this to be a good enough reason because the County of Ventura had tried to accommodate her work restrictions and she should have at least attempted to do the job to see if it could have accommodated her work restrictions.

Ms. Gonzalez replied that she was told by someone at the hospital that the position was meant for employees that the County of Ventura wanted to get rid of and asked how could she sit there in that job for 8 hours a day and do nothing.

Trustee Goulet said that there were positions where employees might not do a lot during the day, but someone still must be onsite; but Ms. Gonzalez had not even tried to do the job, and furthermore her definition of repetitive was doing something more than once in a day, which was not a legitimate definition of what repetitive meant when related to work restrictions, because the industrial definition stated that it was an action that was done more than fifty percent of the work day.

Ms. Gonzalez replied that she had not said that, and she believed the definition of repetitive to mean doing the same thing over and over again throughout the day, and she had gone to observe another employee doing that job and saw visitors come in continually throughout the day, and she felt that visitors would not wait for someone to fill out the visitor badges when there was a heavy volume of people.

Trustee Goulet said that regarding the applicant's pain, he had not seen anywhere in the report where the doctor had prescribed pain medication, and all that the applicant was taking for the pain was an over-the-counter pain reliever once or twice a day, but not every day.

Ms. Gonzalez remarked that she had been on pain medication, but that she did not want to be on them any longer because they bothered her stomach, so her doctor had advised her to try the over the counter pain medicine. She said that she did take pain medication every day because she was in pain every day.

Chair Wilson pointed out that apparently there was an individual performing that job while she was observing, so not having a job description did not seem a barrier to the applicant.

Ms. Gonzalez asked how the Board could fault her for not accepting a job when there was not a job description to accommodate her work restrictions.

Trustee Goulet asked Ms. Gonzalez if it was true that in her previous position, when she needed an accommodation, the County of Ventura had accommodated her.

Ms. Gonzalez replied yes, but her doctors said that she was unable to do that job any longer because it involved typing.

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

MOTION: Deny the Application for Service-Connected Disability Retirement.

Moved by Goulet, seconded by Bennett.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

The applicant then asked to read a closing argument.

Chair Wilson said that the case was over, and the Board had finished discussing the case.

Ms. Webb then said to Ms. Gonzalez that if she would like something submitted into the record, she could give it to staff.

Ms. Gonzalez thanked Ms. Webb and said that she would.

VI. OLD BUSINESS

None.

VII. NEW BUSINESS

- A. Retiree Request for Appeal of Staff Determination Regarding Recoupment of Overpayment.
 - 1. Staff Letter.
 - 2. History of Correspondence between VCERA and Retiree and Retiree's Counsel.

Ms. Webb reminded the Board that on December 10, 2018, the Board of Retirement adopted a Resolution terminating the non-vested \$27.50 supplemental retiree benefit after June 2019, due to the depletion of "excess earnings" available to pay it. A script was written for VCERA's pension administration system to remove the supplemental benefit from the payments of existing members. In testing the script, one of VCERA's system administrators discovered that the supplemental benefits amounts (for both the vested \$108.44 and non-vested \$27.50), when combined with those of their former spouses, did not equal \$108.44 or \$27.50. She performed a system query to determine the impacted population of this issue and sent this query to management staff. The Community Property Division staff members then researched the accounts identified on the query. The population impacted was 17 members: 2 underpayments, 15 overpayments. The payment streams were corrected for impacted members, and then retroactive calculations were made. An effort was then made to contact the impacted members and to begin the process to recoup the overpaid funds, while following all of the related IRS guidelines.

Afterward, staff received a call from Mr. Williams who had the largest overpayment among the impacted members. Thus, began a series a communication with the member and his attorney, who had some specific requests. Staff had offered to accommodate Mr. Williams with a 5-year repayment plan with zero interest or a 10-year repayment plan, with interest, but ultimately Mr. Williams said that he wanted to make an appeal to the Board regarding staff accommodations. Ms. Webb said that though staff was confident in the appropriateness to the recoupment plans offered to Mr. Williams, staff had contacted Hanson Bridgett and received an attorney-client privileged letter from Ms. Boyette of Hanson Bridgett, which supported staff's approach. Mr.

Williams' appeal was still pending the Board's decision though he had begun the 5-year, no interest repayment plan.

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

MOTION: Approve Staff's Recommendation to Deny the Request for Relief of Repayment for Mr. Williams.

Moved by Sedell, seconded by Bianchi.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

Trustee Goulet said that he had voted in favor of the motion, although he favored the 5-year repayment plan because that had been VCERA's consistent policy.

B. Recommended Changes to VCERA Service Provider Selection Policy.

RECOMMENDED ACTION: APPROVE PROPOSED CHANGES TO VCERA'S SERVICE PROVIDER SELECTION POLICY.

1. Staff Letter.
2. Service Provider Selection (Redline).

Ms. Webb noted that staff had made some suggested changes to the Service Provider Policy, provided to the Board in the redline version.

Trustee Sedell offered a correction to the beginning of the policy, where it stated, "The objective of this policy is to ensure that the process of selecting service providers is diligent and efficient." He said that he thought the word "fair" should be added so that it says, "diligent, efficient and fair".

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

MOTION: Approve the Recommended Changes to the Service Provider Policy with Correction.

Moved by Sedell, seconded by Bennett.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

C. Periodic Review of Board Policies and Charters.

1. Staff Letter.

2. Charter: Board of Retirement.
3. Charter: Chair.
4. Charter: Vice-Chair.
5. Charter: Retirement Administrator.
6. Board Policy Development Process.
7. Monitoring and Reporting.
8. Trustee Communication.

Ms. Webb noted this group of policies were Board policies, making it presumptuous for staff to provide recommended changes. Ms. Webb said that 3 years ago the Board had designated Trustees McCormick and Hoag to review the policies and provide recommended edits to the Board. Ms. Webb recommended the Board designate at least 2 trustees to work with staff to provide edits to the Board for these policies at a later meeting.

Trustee Goulet volunteered, provided he could work on them from home.

Trustee Sedell also volunteered to help review and provide edits on the policies.

The Chair then appointed both Trustee Sedell and Goulet to review the policies and work with staff on providing edits for full Board review.

D. Recommendation for Authorization to Attend the 2019 Abbott LP Advisory Board, Abbott Annual Meeting, and ILPA Summit, November 4 – 7, 2019 in New York, NY.

RECOMMENDED ACTION: Approve.

1. Staff Letter by C.I.O., Dan Gallagher.
2. 2019 Abbott LP Advisory Board Meeting Notice.
3. Abbott Annual Meeting Invitation.
4. 2019 ILPA Summit Brochure.

Mr. Gallagher requested the Board approve a \$100 increase to the estimated cost of travel to provide for incidentals, as was suggested to him prior to the meeting by Trustee Goulet.

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

MOTION: Approve with the Additional Amount for Incidentals.

Moved by Ashby, seconded by Bianchi.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter
Abstain:

- E. Recommendation to Approve Communications Officer, Josiah Vencel to Attend the 2019 National Pension Education Association Conference (NPEA), Naples, FL, October 19 - 23, 2019.

RECOMMENDED ACTION: Approve.

1. Staff Letter.
2. NPEA 2019 Conference Agenda.

MOTION: Approve.

Moved by Sedell, seconded by Bianchi.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

- F. Report on Due Diligence Visit to Parametric, Submitted by Trustee Towner and C.I.O., Dan Gallagher.

RECOMMENDED ACTION: Receive and File.

Mr. Gallagher noted that both he and Trustee Towner had conducted the due diligence visit to Parametric's office in Minnesota and they returned with no due diligence concerns. He then said that their detailed report had been provided.

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

MOTION: Receive and File.

Moved by Ashby, seconded by Goulet.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

- G. Report on Due Diligence Visit to Adam Street Partners, Submitted by C.I.O., Dan Gallagher.

RECOMMENDED ACTION: Receive and File.

Mr. Gallagher said he had conducted the due diligence visit with Adam Street Partners and again returned with no concerns.

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

MOTION: Approve.

Moved by Ashby, seconded by Bianchi.

Vote: Motion carried

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

No: -

Absent: McCombs, Towner, Winter

Abstain:

VIII. INFORMATIONAL

A. 2019 Pension Bridge Alternatives Conference.

B. Article – “What Does a Yield Curve Inversion Mean for Investors”.

IX. PUBLIC COMMENT

None.

X. STAFF COMMENT

(00:47:48) Ms. Webb informed the Board that the office remodel had begun, hence the reason for meeting offsite, and some staff had begun to move to the 3rd floor to facilitate the remodel. She said that Julie Stallings and Leah Oliver were responsible for keeping that on track and she could not be more grateful for their hard work on the project. Also, Josiah Vencel had begun to assist in the logistics of moving staff to and from their temporary work stations.

Ms. Webb reminded the Board that the annual Board Retreat would be in two weeks at the Ventura Beach Marriott.

Ms. Webb said the ballots for General Member Special Election had been mailed out to the active general members and the election day was September 16th, with ballots being counted shortly thereafter.

XI. BOARD MEMBER COMMENT

(00:53:29) Trustee Sedell remarked that on the disability agendas it routinely stated that there was a recommendation by staff; however, the recommendations were not by VCERA staff, but by Ventura County Risk Management staff.

Ms. Webb agreed that the recommendation wording was unclear, and it should state that it is Risk Management's position; staff had planned to look at all the disability wording in regard to recommendations to the Board. She also said that such distinctions and issues were to be included in Ms. Dunning's presentation at the upcoming Board Retreat. Staff had been asked to cover the fiduciary responsibilities of the Board under the law in regard to disability cases and to identify any areas for improvement that the Board may consider.

Trustee Bianchi announced that he would be resigning from the Board after the meeting because he would be moving to Santa Barbara to be closer to his kids. He said that the time he had spent on the Board had been rewarding and that he was impressed by both the Board and staff. He also said that he believed VCERA members to be in good hands.

Chair Wilson, Trustee Sedell and Trustee Goulet thanked Trustee Bianchi for his service and said that he would be missed.

XII. ADJOURNMENT

The meeting was adjourned at 10:03 a.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



William W. Wilson, Chair