

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

OCTOBER 7, 2019

MINUTES

TRUSTEES

PRESENT:

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

TRUSTEES

ABSENT:

Steve Bennett, Public Member
Craig Winter, General Member
Ed McCombs, Alternate Public Member

STAFF

PRESENT:

Linda Webb, Retirement Administrator
Lori Nemiroff, General Counsel
Dan Gallagher, Chief Investment Officer
Shalini Nunna, Retirement Benefits Manager
Donna Edwards, Disability Benefits Specialist
Nancy Jensen, Disability Benefits Specialist
Chris Ayala, Program Assistant

PLACE:

Ventura County Hall of Administration
Multi-Purpose Room
800 South Victoria Avenue
Ventura, CA 93009

TIME:

9:00 a.m.

ITEM:

I. CALL TO ORDER

Chair Towner called the Disability Meeting of October 7, 2019, to order at 9:01 a.m.

II. APPROVAL OF AGENDA

MOTION: Approve.

Moved by Ashby, seconded by Sedell.

Vote: Motion carried

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

No: -

Absent: Bennett, McCombs, Winter

Abstain: -

III. APPROVAL OF MINUTES

A. Business Meeting and Board Retreat of September 23, 2019.

Trustee Goulet offered the following corrections to the minutes. On Master Page 9, in the first paragraph, Mr. Pettit's title should have appeared as Assistant County Executive Officer, not as CEO. On Master Page 11, the fourth paragraph should have stated that Trustee Towner was appointed as Chair.

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

MOTION: Approve with Corrections.

Moved by Wilson, seconded by Ashby.

Vote: Motion carried

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

No: -

Absent: Bennett, McCombs, Winter

Abstain: -

IV. RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT

Disability applicant John La Bellarti submitted a public speaker card and addressed the Board about the amount of time his pending disability case was taking and said the delays had resulted in his loss of COBRA health insurance coverage. He said that even if his disability application were approved immediately, he would still not be eligible for retiree medical insurance. He believed his loss of coverage could have been prevented if his disability application had been processed timely and not connected to his Worker's Compensation case. He noted that he had been discouraged from approaching the Board of Retirement previously by his attorney, who said the Board was happy with the current disability process and that Ventura County Risk Management handled disability retirement cases and Worker's Compensation cases as a "package deal".

Ms. Edwards confirmed that even if Mr. La Bellarti were granted a disability retirement, he would not be eligible for retiree medical insurance through the County of Ventura due to his present lack of County medical coverage. She did not recall staff seeing this happen before because most Safety officers could obtain medical insurance through their unions, but the applicant's Harbor Patrol union did not offer that option.

Chair Towner asked about Mr. La Bellarti's next step in the disability process.

Ms. Webb said staff had no authority to help Mr. La Bellarti regarding his medical insurance, but she did not foresee further delays in his disability case, which was scheduled for a hearing in December.

Mr. La Bellarti said he could tolerate delays with his disability case if he had not lost his medical insurance.

Trustee Sedell suggested that VCERA speak to Mr. La Bellarti's former medical insurance carrier to see if anything could be done to restore his coverage.

Trustee Goulet questioned why Risk Management was challenging Mr. La Bellarti's disability retirement application.

Ms. Laveau from Ventura County Risk Management replied that over the past year there had been discussions regarding Mr. La Bellarti's permanency, and as to service-connection questions regarding whether there was a real and measurable connection to his job duties. She added that his physician, Dr. Rosenberg, issued a supplemental report that failed to address the relevant issues, resulting in another deposition with the doctor. Also, Mr. La Bellarti's counsel had been unresponsive to requests from both staff and Risk Management.

Chair Towner said that Mr. La Bellarti's case was definitely on the Board's "radar" and that staff would be in contact regarding its status.

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

MOTION: Receive and File.

Moved by Goulet, seconded by Ashby.

Vote: Motion carried

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

No: -

Absent: Bennett, McCombs, Winter

Abstain: -

V. APPLICATIONS FOR DISABILITY RETIREMENT

A. Application for Nonservice-connected Disability Retirement – Hawthorne, Patrick E.; Case No. 18-028.

1. Application for Nonservice-connected Disability Retirement, filed November 14, 2018.

2. Medical Analysis and Employer's Statement of Position, including Supporting Medical Documentation, submitted by County of Ventura, Risk Management, in support of the Application for Nonservice-connected Disability Retirement, dated September 23, 2019.
3. Hearing Notice dated September 26, 2019.

Catherine Laveau was present on behalf of Ventura County Risk Management. The applicant, Patrick E. Hawthorne, was also present.

Mr. Hawthorne offered corrections to the Employer's Statement of Position. The date of injury was listed as March 24, 2018, but it should have been March 24, 2017. The last day worked was listed as March 23, 2018, but it should have been March 23, 2017.

Chair Towner asked Ms. Laveau if she agreed with the changes.

Ms. Laveau replied that she agreed.

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

MOTION: Approve Application for Nonservice-Connected Disability Retirement.

Moved by Sedell, seconded by Ashby.

Vote: Motion carried

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

No: -

Absent: Bennett, McCombs, Winter

Abstain: -

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

VI. OLD BUSINESS

- A. Results of Disability Retirement Re-Examination Under Government Code Section 31729 – Debra Spafford.

RECOMMENDED ACTION: Adopt Determination of Continued Incapacity.

1. Staff Letter.
2. VCERA Letter to IME Doctor with Job Description.
3. IME Report.
4. VCERA Letter to IME Doctor Requesting Supplemental Report with Job Analysis.
5. Supplemental IME Report.

Ms. Webb summarized the timeline of Ms. Spafford's medical re-examination case, which began as a result of an anonymous claim that her physical activities conflicted with her work restrictions. After staff received the initial IME report from the contracted doctor, it was discovered that the job

description given to the doctor was outdated. Staff provided the doctor with the updated job description, and a supplemental IME report was returned stating that Ms. Spafford remained permanently incapacitated from performing the duties of a Fire Captain. Therefore, Ms. Webb said that staff recommended adopting the position of the IME report, which would leave Ms. Spafford's benefits unchanged.

Thomas J. Wicke, Attorney at Law, said he agreed with staff's recommendation.

Trustee Goulet asked why Dr. Rosenberg was chosen as the IME for the re-examination when he was previously the QME on the applicant's disability case.

Ms. Edwards replied that after soliciting names of IME doctors who had represented the County, staff was referred to three doctors. Only one, Dr. Rosenberg, was willing to take the case.

Trustee Goulet commented that Dr. Rosenberg's report was one of the worst he had seen, simply reiterating what other doctors had previously reported.

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

MOTION: Adopt Staff's Position that Debra Spafford Remain Permanently Incapacitated from the Performance of the Duties of Fire Captain.

Moved by Ashby, seconded by Sedell.

Vote: Motion carried

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

No: -

Absent: Bennett, McCombs, Winter

Abstain: Goulet

VII. NEW BUSINESS

A. \$50 Million Additional Commitment to HarbourVest Partners Real Assets Fund IV.

RECOMMENDED ACTION: Approve.

1. Staff Letter by C.I.O., Dan Gallagher.
2. Recommendation Memorandum from NEPC.
3. HarbourVest Real Assets Fund IV, Presentation Deck.

After discussion by the Board, staff and consultant, the following motion was made:

MOTION: Approve a \$50 Million Increased Commitment to HarbourVest Real Assets Fund IV; and, Subject to the Approval of Board Counsel, the Board Authorizes the Board Chair or the Retirement Administrator to Approve and Execute the Required Contract Addendum.

Moved by Hintz, seconded by Sedell.

Vote: Motion carried

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

No: -

Absent: Bennett, McCombs, Winter

Abstain: -

Trustee Goulet remarked that although he did not oppose investing with HarbourVest, he was concerned with its fee structure, namely that it did not charge fees based on invested capital.

B. Request for Board Direction on Implementation of Fiduciary Counsel Recommendations Regarding Disability Process and Procedures.

1. Staff Letter.

Senior Deputy Executive Officer Chuck Pode from Ventura County Risk Management requested to speak before the Board regarding VCERA's fiduciary counsel recommendations. Mr. Pode said he had submitted a speaker card to address any issues or questions from the Board. He again expressed Risk Management's interest and desire to have a "place at the table" regarding the disability process. He recognized that VCERA had issues to address and that Risk Management wanted to work with the Board and VCERA's staff on those issues.

The president of the Ventura County Professional Firefighters' Association (VCPFA), Kevin Aguayo, requested to speak before the Board regarding Ventura County Risk Management. Mr. Aguayo said that he took issue with the way Risk Management treated County employees, particularly its practice of delaying disability retirements up to two or three years in some cases.

Trustee Goulet asked Mr. Aguayo if he was suggesting, as Mr. La Bellarti testified early, that there was a problem with VCERA's disability retirement process due to Risk Management's linkage between disability retirement and Worker's Compensation.

Mr. Aguayo replied yes.

Ms. Webb summarized the timeline of the Board's recent efforts to improve the disability application process, its consideration of delinking VCERA's disability procedures from its bylaws as an addendum, and its hearing of a presentation by VCERA's fiduciary counsel entitled "The Board of Retirement's Roles and Responsibilities in the Disability Retirement Adjudications." Ms. Webb reminded the Board that Ms. Dunning addressed its legal and fiduciary duties, including its plenary authority over the disability retirement process, its duty to investigate, its quasi-judicial role, and the requirement that an employer not advise or make recommendations but merely take a position on applications. She noted that the current disability process model, when viewed in light of the fiduciary responsibilities presented by counsel, revealed certain weaknesses that needed to be addressed. Therefore, staff had developed four potential disability process models for the Board's consideration. She added that, whatever the Board decided, staff would continue to work with Risk Management to carry out the Board's instructions.

Trustee Wilson recalled that Ms. Dunning said no other county governed by the California Employees Retirement Law (CERL) used a similar disability process model. But he wondered if there were delays under those other models and, if so, were they shorter than VCERA's delays.

Ms. Webb remarked that staff had surveyed other CERL systems about that issue. While all disability process models had delays, none shared VCERA's specific experience of delays

related to an applicant's pending Worker's Compensation case because their processes did not link the two.

Trustee Wilson said he believed that a major factor in considering a change to the disability process would be an undue hardship placed on employees due to delays, but he also noted the lack of arguments claiming that the Board's disability retirement decisions were unfair.

Ms. Webb said one of the weaknesses in the current model was that VCERA was unable to view aspects of the process that had been delegated to Risk Management, so therefore could not take issue with a process they could not see.

Trustee Wilson said that if Risk Management was putting disability retirement applications on the "back burner" because of Worker's Compensation cases, that would be an issue that would be displeasing to the Board.

Ms. Webb observed that, under the current model, staff could not refute or disagree with Risk Management's position on applications because staff did not have access to all the information collected by the employer. Essentially, VCERA staff's past role was more in the nature of a clerk, and unable to advise the Board on most cases; the role of investigator had been delegated to the employer.

Trustee Goulet reminded the Board that the County of Ventura did not have a fiduciary responsibility to the applicant, but the Board of Retirement did. He said he had realized during Mr. Aguayo's comments that the problem was the linkage between disability retirements and Worker's Compensation. If the Board decided to bring the disability process in-house, any approved service-connected disability retirement applications should have no impact on Worker's Compensation cases. Trustee Goulet speculated that the County might believe that it could prove detrimental to the County's Worker's Compensation cases.

Ms. Webb said another weakness in the current process was that an Independent Medical Examination (IME) rarely occurred in a disability retirement case.

Trustee Sedell acknowledged the fiduciary issues inherent in the current process, but he noted that there had been past situations in which the Board needed to review Worker's Compensation records, albeit not often.

Ms. Webb stated that staff's primary role was to protect the Board and employees from risk by ensuring transparency and compliance with the law. Therefore, the disability procedures required updating, and the Board's decision on the process model options would provide the direction staff needed to make recommended changes to those procedures.

Trustee Sedell asked to hear the County of Ventura's stance on the issues raised.

Mr. Pode said that in discussions with colleagues from other county systems, they expressed envy of Ventura County's Risk Management's "seat at the table" in the disability retirement process. He noted similarities between Worker's Compensation and disability retirement and said that, although they differ, they do inform one another. He reiterated that Risk Management evaluated the facts of a case, applied the law to the facts, took a position, and presented it to the Board for a decision. Mr. Pode believed this helped to ensure that the disability decisions made were the correct decisions, which he believed was owed to taxpayers and County employees.

Trustee Sedell told Mr. Pode that he wanted to know the County's position on which disability process model the Board should adopt.

Chair Towner clarified Trustee Sedell's question by asking which of the four process model options described by staff did the County feel comfortable with.

Mr. Pode said that Risk Management wanted a "seat at the table," which meant taking a position on cases as well as participating in the discovery process and hearing process. Although he had not spoken to his supervisor or the County CEO about it, he personally leaned toward Option 2. He added that, although Option 3 seemed viable, he was concerned that the County would be too far removed from the process in that model, making it more difficult to accomplish some of the County's goals, such as retaining good employees; he referenced a disability reassignment case coming before the Board next month. Mr. Pode concluded that the government code supported this solution, that it was cost effective for VCERA, and that it was good for employees because they continue to receive employee benefits as opposed to retiree benefits.

Trustee Ashby expressed concern about Ventura being the only CERL county using the current disability process model. He cited the Board's duty to resolve disability cases timely and sympathized with Mr. La Bellarti's situation. He believed the Board should bring the disability process in-house, which was Option 4, pursuant to its plenary authority and fiduciary responsibility while still communicating with Risk Management regarding an employee's disability retirement case.

Trustee Sedell questioned using the Option 2 model, noting that the Board had been told many times that it could not review all the records and reports related to disability cases.

Ms. Webb replied that if the Board chose that model, it would have access to all the records, reports and documents that they currently do not receive.

Trustee Sedell thought the access issue was due to a legal issue. But if it was due to a procedural issue, he asked why the Board did not currently receive all records and reports.

Ms. Webb replied that staff had discussed that topic with Risk Management and was told that the County had reservations about providing VCERA with an applicant's entire Worker's Compensation case. She added that VCERA staff had been told previously that Risk Management only provided information that supported its position on a disability retirement case and that the current disability hearing procedures did not require providing information that contradicted its position.

Mr. Pode said he was surprised to hear Ms. Webb and Ms. Nemiroff's past request that Risk Management provide documents that may not support Risk Management's position, adding that the Board may soon see a statement in reports stating, "There were no other documents that took a different position." Mr. Pode was not aware of an instance in which there were opposing medical reports for a disability application supported by Risk Management.

Ms. Webb asked Mr. Pode if there were any situations, he was aware of in which VCERA staff believed an IME was warranted but that Risk Management refused to have performed.

Mr. Pode replied that he knew of scenarios that would be uncomfortable for Risk Management, but he said the County would not ask VCERA to not order an IME. He added that there could be competing work restrictions presented that could cause difficulty for the employer. With respect

to Trustee Sedell's comment on records availability, Mr. Pode cited attorney-client privileged documents in Worker's Compensation cases that Risk Management would not disclose to VCERA's staff.

Chair Towner believed the issue of attorney-client privileged documents was a good argument for severing the link between Worker's Compensation cases from disability retirement cases.

Mr. Pode said VCERA would have a similar issue if a disability retirement case were challenged, as the challenge would proceed without an attorney-client privilege with the Board's counsel.

Trustee Goulet noted that the Option 3 process model suggested the Board could delegate the investigation component to an outside vendor. When he asked if there were outside vendors that could perform disability retirement case investigations, Ms. Webb replied yes. Trustee Goulet did not believe that the authority for investigations should be delegated. He supported Trustee Ashby's suggestion of bringing the process in-house (Option 4), but he could settle for Option 3.

Ms. Webb said that regardless of the model that the Board selected, the employer would still retain the full rights of a party to the process, and it could make objections and provide input on reassignments or modified job duties. She added that all the process models would require additional staff and training.

Trustee Sedell remarked that he would like to see more information from staff regarding Options 2 and 3, such as the full cost to VCERA and the expected benefits to staff and the Board.

Trustee Hintz said he was not bothered that Ventura County's disability process differed from other counties, nor did the current disability procedures raise red flags for him as long as Risk Management's report was not presumptively conclusive on the Board's decision. However, Trustee Hintz disapproved of the slow resolution of disability cases and wanted the Board's decision on a disability model to speed up the process.

Trustee Wilson said he was concerned about timing, making the right decisions, and all the major changes with bringing the process in-house. He said he supported trying Option 2 for a year, but if that was unsuccessful, then trying Option 3. He believed that the Board had rendered correct decisions on disability cases. He also wondered if the delays in disability retirement cases were largely caused by the many 60-day and 90-day extension requests approved by the Board.

Trustee Ashby thought that the Board should implement a new structure without a phase-in and that the newly adopted model should comply with CERL, thus giving the Board the ability to fulfill its fiduciary responsibilities.

Trustee Sedell cautioned the Board about venturing too far too quickly into a new process. He also noted the possibility of even longer disability cases if the Board would need to review the full investigative record.

Ms. Webb said that VCERA would receive the investigative record at the same time as Risk Management, so it should not cause further delays.

Trustee Sedell said the Board and Risk Management could conduct separate investigations of the file at the same time and reach different conclusions, which could also cause delays.

Ms. Webb said that many delays the Board was witnessing would not be solved by the Option 2 model, unless the disability hearing procedures were changed to address extensions.

Ms. Nemiroff noted that Option 2 did not afford staff the ability to request an IME when VCERA believed the applicant was permanent and stationary. She added that Option 2 also did not allow VCERA to independently investigate disability retirement cases but merely to review Risk Management's investigation.

Chair Towner said he supported Option 4, but he could also support Option 3 with the caveat that if the process was not working, the Board could move to Option 4.

Trustee Sedell said that the Board still did not know the full impact of Option 3 and that he would like to see the item brought back with a much more detailed analysis.

Mr. Pode said that if the Board chose Option 3 or 4, the attorney-client privilege issue would still not be resolved.

Chair Towner agreed, but he added that Option 3 would enable the Board to obtain information directly, to have the authority needed to fulfill its responsibility, and to eliminate the worry of not having documentation currently unavailable to the Board.

Trustee Sedell said he was not against Option 3, but he did not want to make any drastic changes without doing the due diligence to make the decision.

Trustee Goulet thought that the Board should choose Option 3 or 4.

Trustee Hoag said he supported Option 3 or 4, whichever would bring efficiency to the process. He also said that Mr. Bellarti's situation should not have happened.

Trustee Wilson left the meeting at 10:12 a.m., before the vote on this item.

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

MOTION: Adopt Disability Retirement Process Option 3, Full In-House Independent Investigation Performed by VCERA Staff or Through Partial Delegation to VCERA's Outside Vendor.

Moved by Ashby, seconded by Goulet.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Towner

No: -

Absent: Bennett, McCombs, Wilson, Winter

Abstain: Sedell

Trustee Sedell said he abstained because he had wanted to see more information on the options presented.

VIII. INFORMATIONAL

A. CALAPRS Trustees Round Table.

- B. Invitation for Loomis Sayles's "A Candid Market Discussion in Los Angeles."
- C. Western Asset Management's 3-Day Client Program Seminar.
- D. Western Asset Management's 2-Week Client Program Seminar.
- E. Western Asset Management's "Save the Date!"
- F. PIMCO Educational Seminar.
- G. Invitation for TOIGO's 30th Anniversary Celebration.

IX. PUBLIC COMMENT

None.

X. STAFF COMMENT

Ms. Webb reminded the Board that it would continue to meet in the Hall of Administration's Multi-Purpose Room for the remainder of the calendar year, as renovations at the VCERA office were ongoing. She also noted that staff was waiting on supplemental risk assessment data before presenting VCERA's business plan to the Board, which she hoped to do at October's Business Meeting.

XI. BOARD MEMBER COMMENT

None.

XII. ADJOURNMENT

The meeting was adjourned at 10:22 a.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



TRACY TOWNER, Chairman