

## **VCERA's Disability Retirement Process Document ("New Model")**

1. VCERA shall furnish a blank disability retirement application packet to any member, beneficiary, County department or participating district upon request and subsequent to counseling provided by a representative of VCERA. The packet will include an application for disability retirement form, a medical authorization and release form, and an Attending Physician Report form.
2. A completed disability retirement application packet may be submitted to VCERA by the member, the member's most recent employing department, or someone acting on the member's behalf. VCERA will notify the submitting party of acceptance of the disability application form within 10 business days, as set forth in paragraph 5.
3. If the member's department submits a disability retirement application form pursuant to Government Code section 31721,<sup>1</sup> VCERA shall notify the member within 10 business days that he/she has 30 days from the notice date to state in writing whether he/she will join in the department's application, submit a separate application for a different injury or illness, or take no action. If within the 30 days, the member joins by written notice in the department's application or submits a new disability retirement application, the member shall be responsible for providing an executed medical authorization and release form, a completed Attending Physician Report form, and recent medical evidence supporting any and all claims of permanent incapacity. (In this context, "recent" is defined as within the last 6 months.) However, if the member does not join in the department's application or file a new application within 30 days, the department will be solely responsible for meeting its burden of proof that the member is permanently incapacitated.
4. VCERA shall require applicants to submit a completed disability retirement application packet, except as described in paragraph 6. To be deemed complete, the packet must include a completed application for disability retirement form, an executed medical authorization and release form, a completed Attending Physician Report form, a medical report supporting the claim of permanent incapacity, and, if applicable, evidence that reasonable accommodation has been fully explored with the member's employer. The submitted medical report must cite recent evidence of permanent incapacity by a physician who specializes in, or is qualified to opine on, the area of injury or illness claimed by the applicant. (In this context, "recent" is defined as within the last 6 months.)
5. Upon receipt of all documents submitted by the member or on the member's behalf, VCERA will review the packet forms for completeness. If all requisite forms are complete, VCERA will deem a disability retirement application packet complete and "filed" as of the date of submission. If any requisite forms are deemed incomplete, VCERA will promptly notify the applicant of any deficiencies in the packet. VCERA will deem the application

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<sup>1</sup> All further references are to the Government Code, unless otherwise noted.

complete upon correction of the stated deficiencies, and the applicant will be notified of its acceptance within 10 business days. The applicant shall be given an additional 120 days from the notice date to provide additional medical documentation to VCERA in support of the application form, unless waived by the applicant.

6. Notwithstanding paragraph 4, under the County of Ventura's Advanced Disability Pension Payment (ADPP) program, an eligible Safety member who has qualified for benefits under sections 4850.3 and 4850.4 of the Labor Code is exempt from submitting medical evidence of permanent incapacity until his/her condition is deemed permanent. The disability application form shall be deemed filed but placed in suspended status until the member supplies a medical report stating that his/her claimed incapacity is permanent. Upon VCERA's receipt of this required medical report, the member's application status shall become active.
7. Any applicant has the right to withdraw a previously submitted disability application form without prejudice for any reason prior to the Board of Retirement's determination. The notice of application withdrawal must be provided to VCERA in writing. VCERA will confirm the withdrawal action in writing to the applicant within 5 business days of receipt of the applicant's notice.
8. Any applicant has the right to amend, in writing, a filed disability application form at any time prior to the Board of Retirement's determination on the application or the beginning of the evidentiary hearing, whichever occurs first. Written amendments alleging permanent incapacity as a result of an injury or disease not previously set forth in the original application form must be accompanied by a recent medical report supporting the claim for permanent incapacity. (In this context, "recent" is defined as within the last 6 months).
9. Upon notice of acceptance of a completed disability retirement application packet, VCERA shall within 10 business days provide to the employer a copy of the disability application form and all supporting medical documentation contained therein.
10. To expedite review of clear-cut disability cases, VCERA may, at the discretion of the Retirement Administrator, place a filed disability application on a "fast track" to Board consideration. Disability cases eligible for the fast-track process include those involving justifying circumstances, such as undisputed permanent incapacity due to catastrophic injury or terminal illness, as demonstrated by a medical report issued by a physician who specializes in, or is qualified to opine on, the area of injury or illness claimed by the applicant. Once an application is accepted for the fast-track process, VCERA will submit to the employer a copy of the filed disability application form, supporting medical documentation, relevant investigatory documents and the recommendation to the Board of Retirement to grant the disability retirement. In the Preliminary Recommendation, VCERA would base its finding of permanent incapacity on the aforementioned documentation exclusively (i.e., record review). The employer then would have 21 days

to take a position on the case before the Final Recommendation would be placed on the next available Board agenda. During the 21 days, if the employer disagrees with placing the disability application on the fast-track process, it may, upon a showing of good cause, request that VCERA remove the application from the fast-track process and investigate it under the standard process.

11. Pursuant to the authority vested in the Board of Retirement to oversee the investigation of disability applications in accordance with its duties of care and loyalty,<sup>2</sup> VCERA shall, pursuant to the authority delegated by the Board, conduct investigations of the disability applications of its members. VCERA's disability investigations are separate, distinct, and independent of any disability investigation conducted by an employer, even if the case involves the same member.
12. Notwithstanding paragraph 10, VCERA shall conduct a thorough disability investigation intended to collect evidence sufficient for staff to make a reasonable recommendation to the Board of Retirement relative to each disability application. To this end, VCERA will attempt to obtain a variety of employment, personnel, medical and other records deemed relevant to its investigation, as permitted by the member's executed medical authorization and release form. Collection tools may include, but are not limited to, forms, interviews, questionnaires, medical record acquisition services, consulting medical examinations and sub-rosa investigations. Pursuant to section 31535, VCERA may issue subpoenas on its own initiative or at the request of an applicant. In addition to investigating medical issues, VCERA shall explore whether the member's employer is able to provide reasonable accommodation relative to his/her work restrictions.
13. As part of VCERA's investigation, members may be required to attend one or more medical examinations with an independent medical examiner or any other physician engaged by VCERA. The cost of such examinations shall be paid by VCERA, unless the physician, pursuant to his/her policy, charges the member for a late cancellation or failure to attend a scheduled appointment. VCERA shall give at least 10 days' written notice of any medical examination. Repeated failure of a member to attend a duly noticed medical examination(s) may result in a staff recommendation to dismiss the noncompliant member's disability application without prejudice.
14. Upon receipt of relevant medical and other records from the applicant, the member and any other sources, VCERA will compile, index and organize chronologically the accumulated relevant documentation ("administrative file") and review it for completeness. If, in the judgment of VCERA, the evidence contained in the administrative file is contradictory, unclear or otherwise deficient, such that staff is unable to make a reasonable recommendation to the Board of Retirement relative to the disability application, VCERA may notify the applicant of the evidentiary deficiency and provide an additional 30 days for the applicant to submit additional evidence in support of the

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<sup>2</sup> California Constitution, Article XVI, Section 17. See also Government Code sections 31723 and 31724.

disability application. VCERA retains the right to close the administrative file and to refuse any additional documentation submitted by the applicant after the 30-day deadline. VCERA retains the right to require the member to attend an independent medical examination (IME) or psychiatric examination at any time, notwithstanding the 30-day deadline noted above.

15. Using the administrative file, VCERA shall, at the discretion of the Retirement Administrator, prepare a medical analysis and/or delegate the preparation of the medical analysis to a consulting medical advisor. If a consulting medical advisor is tasked with preparing a medical analysis, he/she will be authorized to review the closed administrative file in order to render an evidence-based opinion. The preparer of the medical analysis will have 30 days after the assignment to complete the report and submit it to VCERA for inclusion in the administrative file. A one-time extension may be granted to the preparer of the medical analysis at the discretion of the Retirement Administrator. If the preparer of the analysis is a consulting medical advisor, he/she may be invited to attend the Board meeting at which the analysis will be considered, if requested by the Retirement Administrator or the Board.
16. The medical analysis shall evaluate the totality of the evidence; assess whether it meets the criteria set forth in sections 31723, 31724 and 31725 relative to permanent incapacity and, if applicable, service connection; summarize the member's relevant medical history; and include a recommendation to grant or deny the disability retirement.
17. VCERA shall create and maintain a shared, secure, online disability log with Ventura County Risk Management and, if requested, other employers. The log(s) will list all active disability cases involving each employer's employees and will include their respective case statuses and, if available, the tentative dates on which the Board of Retirement will consider the cases. VCERA intends the shared disability log(s) to serve only as a planning and scheduling tool for employers.
18. Using the administrative file and the medical analysis supplied by VCERA and/or a consulting medical advisor, VCERA shall draft a Preliminary Recommendation, which will address the following subjects: the disability claims, any relevant threshold issues, pertinent medical evidence, permanent incapacity, work-related accommodations, service connection or nonservice connection, effective date of disability retirement, member eligibility for disability retirement, whether the member is capable of performing other duties, if he/she applied for disability reassignment, and, if applicable, a recommendation regarding reevaluation of a disabled member under the age of 55 pursuant to section 31729. The Preliminary Recommendation shall conclude with a statement on whether staff recommends granting or denying the disability retirement.
19. VCERA shall email the Preliminary Recommendation and medical analysis to the employer and applicant for review. The employer and applicant shall have 21 days from the date of the email to review the Preliminary Recommendation and to submit to VCERA any

objections to the Preliminary Recommendation along with the basis and evidence for the objections.

20. At the end of the 21-day period of comment, if the employer has not submitted an objection to a Preliminary Recommendation to grant a disability retirement, VCERA shall prepare a Final Recommendation for the Board of Retirement and place the medical analysis, the Final Recommendation and relevant evidence on the next practical Board Disability Meeting agenda, subject to applicable public notice requirements.
21. At the end of the 21-day period of comment, if the employer has submitted an objection to a Preliminary Recommendation to grant a disability retirement, VCERA shall consider the employer's comments relative to staff's preliminary conclusions and, at the discretion of the Retirement Administrator, either revise its Preliminary Recommendation or produce a Final Recommendation for the Board of Retirement. If VCERA reconsiders its position, notice will be sent to the objecting employer within 5 business days of receipt of the objection. If VCERA determines the objections warrant revision of its Preliminary Recommendation, VCERA will email a revised Preliminary Recommendation to the employer, as described in paragraph 19. If VCERA elects not to reconsider its Preliminary Recommendation to grant, the Preliminary Recommendation shall become the Final Recommendation. VCERA will place the medical analysis, the Final Recommendation and relevant evidence on the next practical Board Disability Meeting agenda, subject to applicable public notice requirements.
22. Using its Preliminary Recommendation, VCERA shall for all cases draft a Final Recommendation that will include the contents of the Preliminary Recommendation in addition to a summary of any previous Board action(s) and responses to employer objections, if applicable. The Final Recommendation shall conclude with a statement on whether staff recommends granting or denying the disability retirement. If the Final Recommendation is to grant a disability retirement, VCERA shall, no less than 7 days prior to the Board meeting, notify the applicant and employer (hereafter "the parties") in writing of the Final Recommendation and the date on which the Board will consider the disability application. A copy of the medical analysis and Final Recommendation shall accompany the notice to the parties.
23. In cases with a Final Recommendation to grant, the Board of Retirement will render its decision on the disability application by a majority vote of the voting members of the Board present. The Board may decide to: (a) grant the disability retirement, in whole or in part; (b) remand the application to staff for further investigation; (c) refer the matter to an evidentiary hearing; or (d) take any other action deemed appropriate by the Board. VCERA will notify the parties of the Board's decision and its effective date within 5 business days of the Board meeting.
24. If the employer desires a postponement of the Board of Retirement's consideration of a disability application, the employer must directly present its request to the Board or an

authorized Board committee at the meeting at which the disability application will be considered. Delay requests should be limited occurrences because the employer is given 21 days to review and comment on staff's Preliminary Recommendation. An employer's written request for delayed consideration, demonstrating good cause, shall be provided to VCERA no less than 4 days prior to the aforementioned Board meeting.

25. If VCERA recommends denying the disability application, the matter will not be placed on a Board agenda but rather will be directed to an evidentiary hearing, unless the member, within 30 days of the notice of Final Recommendation, elects to withdraw his/her application form or to sign a Waiver of Hearing stating that he/she elects not to exercise his/her right to an evidentiary hearing, thereby failing to exhaust all administrative remedies. The member's election shall be final. If the member elects to withdraw his/her application form, the application shall be treated as if it had never been filed. If the member executes a Waiver of Hearing within the 30 days, the matter shall be placed on the next available Board agenda with a staff recommendation to deny the disability application.
26. If VCERA determines that the applicant has met the burden of proof to receive a nonservice-connected disability retirement, but has not met the burden of proof to receive a service-connected disability retirement, VCERA will notify the applicant that it intends to recommend to the Board that a nonservice-connected disability retirement be granted and refer the application for service-connected disability retirement to an evidentiary hearing. If the applicant objects in writing to such a recommendation, VCERA will refer the entire matter to an evidentiary hearing.
27. If the member contests any part of a Board decision based upon VCERA's Final Recommendation, the member may request an evidentiary hearing on the contested matter. The member's written request for hearing must be received by VCERA within 30 days of the notice of the Board's decision.
28. If the disability application form indicated the member is interested in pursuing disability reassignment, and the Board finds that the member is permanently incapacitated, it also will make a determination as to whether the member is capable of performing other duties, based on the recommendation of VCERA after consultation with the employer. Following the Board's decision, VCERA shall give notice to the employer of the Board's determination, and the parties may proceed with their disability reassignment obligations in accordance with sections 31725.5 or 31725.65, as applicable. In the event the employer and applicant have agreed upon a suitable reassignment prior to the Board hearing on the application, the Board may approve the disability reassignment at the time the application is heard.
29. If a disability case is directed to an evidentiary hearing, VCERA and the parties may, within 30 days of the referral to hearing notice, agree to subject the case to an expedited Administrative Record Review, consisting of relevant evidence from the administrative

file compiled by VCERA instead of a full evidentiary hearing involving witnesses, upon written consent of the member, the employer and VCERA's designated attorney. Within 30 days of this agreement, VCERA will compile the Administrative Record, comprised of all relevant evidence submitted by the parties in support of their respective positions, and transmit the Administrative Record to the hearing officer. The hearing officer will issue within 90 days of the assignment a Proposed Findings of Fact, Conclusions of Law and Recommended Decision based on review of the submitted documentation only. By agreeing to an Administrative Record Review, the parties waive their rights to thereafter pursue a full evidentiary hearing, regardless of the hearing officer's recommendation to the Board. The intent of an Administrative Record Review is to reach a determination on a contested disability matter with greater efficiency and at lower cost than a full evidentiary hearing.

30. An applicant has the right to withdraw a disability application form without prejudice prior to a formal determination by the Board of Retirement. However, once a hearing officer has been assigned for an evidentiary hearing, an applicant may only withdraw the disability application form with prejudice, unless the Board or a hearing officer finds good cause to dismiss the application without prejudice.
31. The rules governing a full evidentiary hearing are set forth in Sections 4-8 of VCERA's Disability Hearing Procedures.
32. The determination options available to the Board of Retirement after the conclusion of an evidentiary hearing are set forth in Sections 9-11 of VCERA's Disability Hearing Procedures and section 31534.
33. A party's right to judicial review of the Board's decision to deny a disability application is set forth in Section 13 of VCERA's Disability Hearing Procedures.
34. Regardless of whether a statement regarding reexamination was made part of the Board's decision to grant a disability retirement, the Board may exercise its right to authorize a reexamination of a disabled member pursuant to section 31729. Upon completion of the reexamination, VCERA shall report to the Board its findings and recommendations, which may include cessation of benefits pursuant to sections 31730 and 31731.
35. Failure of a member or applicant to comply with these policies and procedures, absent good cause, may be treated as non-cooperation and may result in dismissal of the disability application without prejudice. Failure to comply includes, but is not limited to, failure to attend medical examinations, failure to submit documents requested by VCERA in a timely manner, failure to respond to VCERA's communications, failure to cooperate in the formal hearing process, failure to answer relevant questions that are not protected by a recognized legal privilege, failure to follow any order of the Board of Retirement or a hearing officer, and/or failure to comply with the requirements set forth in these procedures.

36. In the event there is a conflict between VCERA's Disability Retirement Process Document (New Model), enacted in July 2020, with the Disability Retirement Hearing Procedures, as revised April 1999, the April 1999 Procedures shall prevail, unless determined by the Board of Retirement to be contrary to the law or its legal duties thereunder.