

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

FEBRUARY 10, 2020

MINUTES

TRUSTEES
PRESENT: Art Goulet, Vice-Chair, Retiree Member
Steve Bennett, Public Member
Mike Sedell, Public Member
Robert Ashby, Safety Member
Jordan Roberts, General Member
Will Hoag, Alternate Retiree Member

TRUSTEES
ABSENT: William W. Wilson, Chair, Public Member
Steven Hintz, Treasurer-Tax Collector
Craig Winter, General Member

STAFF
PRESENT: Linda Webb, Retirement Administrator
Dan Gallagher, Chief Investment Officer
Leah Oliver, Chief Technology Officer
Lori Nemiroff, General Counsel
Shalini Nunna, Retirement Benefits Manager
Nancy Jensen, Retirement Benefits Specialist
Chris Ayala, Program Assistant

PLACE: Ventura County Government Center
Hall of Administration Building, Multi-Purpose Room
800 S. Victoria Avenue
Ventura, CA 93009

TIME: 9:00 a.m.

ITEM:

I. CALL TO ORDER

Vice-Chair Goulet called the Disability Meeting of February 10, 2020 to order at 9:01 a.m.

II. APPROVAL OF AGENDA

MOTION: Approve.

Moved by Ashby, seconded by Sedell.

Vote: Motion carried

Yes: Ashby, Bennett, Goulet, Roberts, Sedell

No: -

Absent: Hintz, Wilson, Winter

Abstain: -

III. APPROVAL OF MINUTES

A. Disability Minutes of January 27, 2020.

Ms. Webb noted two corrections to the minutes. On Master Page 5, last paragraph, Trustee Goulet's request for an explanation of fees for private equity investments should have included the words, "at a future meeting." Also, on Master Page 10, the motion for item VIII.F should be corrected to read, "Receive and File."

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

MOTION: Approve with Corrections.

Moved by Sedell, seconded by Bennett.

Vote: Motion carried

Yes: Ashby, Bennett, Goulet, Roberts, Sedell

No: -

Absent: Hintz, Wilson, Winter

Abstain: -

IV. RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT

MOTION: Receive and File.

Moved by Ashby, seconded by Roberts.

Vote: Motion carried

Yes: Ashby, Bennett, Goulet, Roberts, Sedell

No: -

Absent: Hintz, Wilson, Winter

Abstain: -

V. APPLICATIONS FOR DISABILITY RETIREMENT

- A. Application for Nonservice-connected Disability Retirement - Hart-Ramos, Susan A.; Case No. 19-020.
1. Application for Nonservice-connected Disability Retirement, filed April 26, 2019.
 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 December 19, 2019.
 3. Hearing Notice, dated January 30, 2020.

Catherine Laveau was present on behalf of County of Ventura-Risk Management. Shalini Nunna and Nancy Jensen were present on behalf of VCERA. The applicant, Susan A. Hart-Ramos, was also present.

Both parties declined to make statements.

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

MOTION: Approve the Application for Nonservice-connected Disability Retirement.

Moved by Roberts, seconded by Sedell.

Vote: Motion carried

Yes: Ashby, Bennett, Goulet, Roberts, Sedell

No: -

Absent: Hintz, Wilson, Winter

Abstain: -

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

- B. Application for Service-connected Disability Retirement - Myers, Christopher M.; Case No. 18-015.
1. Request from Jane Oatman, Attorney for Applicant, to move this matter to hearing, dated December 23, 2019.
 2. Response from Respondent, County of Ventura-Risk Management, filed by Stephen Roberson, Attorney for Respondent, dated January 2, 2020 and January 17, 2020.
 3. IDR Medical Examination reported by Gary Brazina, M.D., dated March 5, 2019.
 4. Hearing Notice, dated January 30, 2020.

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

Ms. Oatman summarized the circumstances of Mr. Myers' hiring and subsequent injury, relating that when hired in 2013, he disclosed he had a bullet in his shoulder from a shooting during his

previous law enforcement service in Iowa. In 2017, Mr. Myers injured his shoulder during a gun training exercise, which rendered him incapacitated. A QME doctor had deemed Mr. Myers "permanent" while attributing 75% of the injury to the training exercise incident, and restricted Mr. Myers to sedentary work. The County indicated Mr. Myers' work restrictions could not be accommodated in April 2018; Mr. Myers filed for a Service-Connected Disability Retirement on March 11, 2018.

Ms. Oatman said that in the Workers' Compensation process, authorization for treatment for Mr. Myers with a neurologist in Iowa was delayed, and it took 5 months for treatment to begin; there had been other similar delays. Physical and occupational therapies began in May 2019, but these could only reduce pain and would not cure the injury, as Mr. Myers' shoulder was "frozen"; therefore, suggesting there was hope for a cure would be disingenuous. She referenced a report from Dr. Brazina, which she said attributed the injury to Mr. Myers' job and precluded him from being a Deputy Sheriff. She said Risk Management was continuing to delay the process and treating her client as an adversary. She asked the Board to exercise its fiduciary duty and send the case to hearing.

Mr. Roberson made a brief statement, saying that Mr. Myers had been hired with the knowledge of the bullet in his shoulder, but the County was unaware of the content of the medical records from Iowa where he had continued to receive treatment. Dr. Brazina had opined that Mr. Myers was probably already developing complex regional pain syndrome from the original injury when the County hired him, and if not for the bullet in his shoulder, an AR-15's recoil would not have triggered the shoulder problems. A Ventura County Sheriff's Department study said the AR-15's recoil was 2.2 to 2.3 pounds, which all of the examining doctors said was insufficient to explain the injury, even after shooting multiple times. A hearing officer would determine the existence of a real and measurable connection between his employment and the condition, but the medical reports provided an argument against this connection. Mr. Roberson referenced Dr. Brazina's report that suggested further range of motion could be regained through sympathetic blocks and treatment.

Mr. Roberson said that in regard to the referenced delays, the County had encountered difficulties in securing treating doctors in Iowa because of the California Workers' Compensation issue involved, but ultimately Mr. Myers was able to obtain treatment. Until Risk Management knew if the nerve blocks administered in November and December of 2019 improved range of motion, scheduling a hearing would be premature.

Ms. Oatman said it was speculation to say Mr. Myers would be disabled if not for the training exercise, and upon hiring an employee the County takes the employee as they find him. A pain management doctor in Iowa indicated the only remaining option was a highly speculative stim router procedure for pain, but nothing would restore range of motion. She said delaying a hearing was putting adverse pressure on Mr. Myers and causing further financial hardship, and again asked the Board to send the case to hearing.

Trustee Sedell asked Mr. Roberson why Risk Management was opposed to moving the case to a Hearing Officer.

Mr. Roberson said Mr. Myers was still actively treating, and he was unaware of the report that Ms. Oatman referenced regarding the stim router procedure. Occupational and physical therapy reports indicated that range of motion in his shoulder was improving, though Mr. Roberson did not know whether the applicant would be able to return to full duty. Regardless of improvement, however, the County of Ventura would still contest the application for lack of real and measurable connection to County employment because of the bullet wound he received in 1998. Risk Management believed waiting 4 to 6 months for additional improvement was reasonable.

Trustee Goulet asked if the applicant was already retired.

Ms. Oatman replied no, Mr. Myers only had 3 years of service with the County.

Mr. Roberson said that he believed with the 4850 time, he likely had 5 years, and that Mr. Myers had told the County in an interview that he would likely work 5 years because his family preferred Iowa.

Ms. Webb noted that staff confirmed that the applicant had 5 years of cumulative VCERA service.

Trustee Goulet asked about Mr. Roberson's statement that, when hired, the applicant had not disclosed his continuing treatment for the previous injury.

Mr. Roberson replied that the applicant had disclosed the 1998 shooting with a bullet still in his shoulder, but after he filed for a disability retirement, the County then saw that he was actively being treated in Iowa for his shoulder pain, both before and after being hired by the County of Ventura in 2013, and was taking multiple medications for his shoulder pain. Mr. Myers qualified with a shotgun when hired by the County of Ventura, but at the shooting range qualification, a Rangemaster noticed he was using an AR-15 instead of the required shotgun. In a meeting with the Sheriff's Department, Mr. Myers said shooting a shotgun hurt his shoulder and in Iowa he had been permitted to qualify with an AR-15. The County granted his request to qualify using the AR-15; on the 2nd day of the AR-15 training class, his reported injury took place and he did not return to work.

Ms. Oatman repeated her objection to any speculation that the training incident did not cause Mr. Myer's condition.

Chair Goulet said the Board had heard enough testimony from Mr. Roberson and Ms. Oatman.

Trustee Roberts noted a report had related one specific incident which caused the applicant's injury to his shoulder, but it did not mention that it was related to anything repetitive or cumulative. He asked Ms. Oatman to elaborate on that.

Ms. Oatman said the doctor's report from when the applicant first complained of the injury lacks the details of a deposition, so more details would be developed during the hearing.

Mr. Roberson then said that he would not want to misrepresent anything to the Board and explained the training in more detail, describing that several hundred rounds would be fired in total during the training.

Trustee Bennett said that the question before the Board was whether the applicant's case should go to hearing now or whether to wait and see if Mr. Myers continues to make improvements. He asked Mr. Roberson to elaborate on Risk Management's position that there is a reasonable possibility of improvement.

Mr. Roberson again referenced records regarding recent physical and occupational therapies indicating some improvement in the shoulder's range of motion for his shoulder, though the extent of the improvement was not yet known. The applicant had the recommended nerve block procedures performed in November and December, but Mr. Roberson is unaware of how much improvement Mr. Myers has had during the last couple of months.

Ms. Oatman noted that Mr. Myers did have the nerve block procedures done in November and December 2019, but with no effective results. She added that she did not know why Risk Management did not have those reports from the Workers' Compensation case.

Trustee Bennett noted that Ms. Oatman's statement that there was no improvement conflicted with Mr. Roberson, who stated that there was.

Mr. Roberson repeated that he had seen no reports since the nerve block treatments.

Ms. Oatman said Mr. Myers' improvement would never be sufficient to return to work and that the County was employing a delay tactic to apply adverse pressure to Mr. Myers.

Mr. Roberson disagreed, saying his only goal was to see if Mr. Myers would get further improvement and, if so, how much and whether it would permit the County of Ventura to bring him back to work.

Trustee Bennett noted Ms. Oatman's assertion that Mr. Roberson had agreed that Mr. Myers could not get well enough to come back to work contradicted Mr. Roberson's statement that he did not know if Mr. Myers could get well enough to return to work. Trustee Bennett asked Mr. Roberson if Ms. Oatman's statement was accurate.

Mr. Roberson denied telling Ms. Oatman that he believed Mr. Myers would never improve enough to return to work.

Trustee Roberts asked if Mr. Myers would be willing to, or is planning to, see a CRPS specialist at UCLA, as recommended by Dr. Brazina.

Mr. Roberson said if Mr. Myers was willing to go to UCLA, Mr. Roberson would recommend to the County that it be authorized.

Ms. Oatman said that the last time Mr. Roberson said he had recommended an authorization for treatment to the County, it had taken more than five months to get approved, and she had doubts her client would believe that any authorization for treatment would be approved within a reasonable timeframe.

Trustee Roberts asked Ms. Oatman if that delay was due in part to Mr. Myers residing in Iowa rather than in California, given the complications of treating someone out of state.

Ms. Oatman replied that was a matter of dispute.

Mr. Roberson said that two doctors secured in Iowa to treat Mr. Myers later declined upon learning the treatment was for a Workers' Compensation case from California. When Risk Management ultimately secured treatment in Iowa, Mr. Myers had been traveling a couple hundred miles for treatment from his preferred doctors.

Trustee Goulet asked the Board to consider the question of whether this case should now proceed to hearing.

Trustee Bennett said that he did not think the case should proceed to hearing if there were a possibility of some recovery by Mr. Myers, though the parties were in dispute as to whether sufficient recovery for a return to work was possible. A hearing would result in a permanent finding of disability. He said it was important for the Board to cover that issue, especially considering that Mr. Myers now resides in Iowa, making assessment more difficult.

Trustee Ashby said that he believed the issue resulted from Mr. Myers' 1998 injury from which a bullet remained in his shoulder, aggravated by firing either a rifle or shotgun. A police officer's job has an expectation to fire weapons, run obstacle courses and other pursuit exercises, and to perform to the best of their ability in training exercises and in the field. The bullet in Mr. Myers' shoulder is apparently impairing his ability, though there is some speculation otherwise, given the initial injury happened in 1998 and Mr. Myers continued his duty as a police officer. Whether the incident while employed for the County of Ventura aggravated it to the point of disability is unknown. Trustee Ashby said he agreed with Trustee Bennett that the Board needed to be sure no recovery is possible before sending the case to hearing, though if the injury stemmed from the bullet in the shoulder that cannot be removed, there was no way to know how long he could do his job if he recovered.

Trustee Sedell said he would support a motion that the case not be sent to a Hearing Officer, but rather an expedited process be mutually agreed upon by both Mr. Roberson and Ms. Oatman, with medical evidence received within a certain period of time, perhaps two months. He asked the Board for further discussion on what an appropriate time should be.

Trustee Bennett said that the difficulty was in assessing whether there has been improvement, and the two sides must collaborate and cooperate. For example, regarding authorization and treatment taking five months to get, it is unclear whether the County's delay was a result of complications with Mr. Myers' move back to Iowa. As it could take two to three months to get the relevant medical evidence, the Board should be open to a longer period of time in case of difficulty obtaining the treatment evidence in Iowa. Trustee Bennett suggested that the Board assess whether a good faith effort has been made when the case comes back to the Board to set it for hearing rather than making either party give on an issue that may be out of their control. Trustee Bennett suggested directing both parties to make a good faith effort and for the Board to assess in two or three months whether a good faith effort had been made.

Chair Goulet asked if 60 days was a sensible time frame.

Trustee Bennett suggested 90 days, given the distance to the applicant's residence.

Trustee Sedell said that once the case was presented, the Board could then decide whether to ask for an expedited hearing by the Hearing Officer. Medical evidence obtained prior to 90 days should be sent in when received.

Trustee Goulet suggested that the case be set for hearing at the Board meeting closest to 90 days from now, which Ms. Webb reported would be the May 4, 2020, disability meeting. Trustee Sedell suggested it could be earlier if both parties were ready.

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

MOTION: Do Not Set for Hearing, But Direct Parties to Make a Good Faith Effort to Assess Whether Applicant Has Improved or Will Continue Improvement with Treatment; Direct Staff and Parties to Update the Board on May 4, 2020, or Earlier If the Matter Is Ready to Be Heard.

Moved by Sedell, seconded by Bennett.

Vote: Motion carried

Yes: Ashby, Bennett, Goulet, Roberts, Sedell

No: -

Absent: Hintz, Wilson, Winter
Abstain: -

Ms. Oatman then asked for clarification on the motion. She said if Mr. Myers were able to get the January 2020 pain management doctor report, could the case be presented before the May 4th disability meeting.

Ms. Webb said staff would present the case earlier than May 4th if both parties agreed that the case was ready to be heard by the Board.

Trustee Ashby said that the motion was for a maximum of 90 days, but if the case was ready, it could be brought back before May 4th.

Mr. Roberson asked if Mr. Myers would be willing to be seen by Dr. Brazina, Dr. Prager or another doctor from UCLA at the County's expense for a definitive report as to whether Mr. Myers would improve and, if so, if it is enough to enable him to return to work. If Mr. Myers were so willing, Mr. Roberson said he would try to get that scheduled.

Ms. Oatman replied that she had not yet spoken to him on that issue.

Trustee Bennett suggested that issue be explored during the 90 days and that if Mr. Myers were not willing to come to California to be seen, that would be information for the Board to consider.

VI. OLD BUSINESS

A. None.

VII. NEW BUSINESS

A. Recommendation to Solicit Plan Sponsor Comment Regarding Actuary's Letter Regarding Possible Adjustment to UAAL Amortization Periods to Manage Tail Volatility.
RECOMMENDED ACTION: Approve.

1. Staff Letter.
2. Letter from Segal Consulting.

Ms. Webb said this item was a recommendation from staff to formally share Segal's letter with participating employers in advance of Board consideration of the issue at the March 30th business meeting.

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

MOTION: Approve the Recommendation to Provide the Segal Consulting's Letter to the Plan Sponsors of the Ventura County Employees' Retirement Association Pension Plan in Advance of the Board of Retirement's Formal Consideration of the Item at the Business Meeting of March 30, 2020.

Moved by Sedell, seconded by Bennett.

Vote: Motion carried
Yes: Ashby, Bennett, Goulet, Roberts, Sedell

No: -
Absent: Hintz, Wilson, Winter
Abstain: -

B. Request for Trustee Ashby to Attend the CALAPRS Advanced Principles of Pension Management for Trustees in Los Angeles, March 30 – April 1, 2020.

RECOMMENDED ACTION: Approve.

1. Staff Letter.
2. CALAPRS Training Brochure.

MOTION: Approve Request for Authorization for Trustee Ashby to Attend the CALAPRS Advanced Principles of Pension Management for Trustees in Los Angeles, March 30 – April 1, 2020.

Moved by Sedell, seconded by Bennett.

Vote: Motion carried
Yes: Ashby, Bennett, Goulet, Roberts, Sedell
No: -
Absent: Hintz, Wilson, Winter
Abstain: -

VIII. INFORMATIONAL

A. SACRS Spring Conference 2020 – Conference Information.

IX. PUBLIC COMMENT

None.

X. STAFF COMMENT

Ms. Webb said that in order to ensure a quorum for the upcoming meetings, staff would be asking the Board members to RSVP with each agenda posting email notice. She also said that the VCERA Conference Room was now available for the Market Based Adjustment Committee and the Personnel Review Committee to meet in.

XI. BOARD MEMBER COMMENT

None.

XII. ADJOURNMENT

The Chairman adjourned the meeting at 9:44 a.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



WILLIAM W. WILSON, Chairman