

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

SEPTEMBER 10, 2018

MINUTES

**TRUSTEES
PRESENT:**

Steven Hintz, Treasurer-Tax Collector
Mike Sedell, Public Member
Robert Bianchi, Public Member
Ed McCombs, Alternate Public Member
Craig Winter, General Employee Member
Arthur E. Goulet, Retiree Member
Will Hoag, Alternate Retiree Member
Chris Johnston, Safety Employee Member

**TRUSTEES
ABSENT:**

William W. Wilson, Vice Chair, Public Member
Peter C. Foy, Public Member
Maeve Fox, General Employee Member

**STAFF
PRESENT:**

Linda Webb, Retirement Administrator
Lori Nemiroff, General Counsel
Henry Solis, Chief Financial Officer
Dan Gallagher, Chief Investment Officer
Shalini Nunna, Retirement Benefits Administrator
Vickie Williams, Retirement Benefits Manager
Donna Edwards, Retirement Benefits Specialist
Nancy Jensen, Retirement Benefit Specialist
Stephanie Berkley, Retirement Benefit Specialist
Chris Ayala, Program Assistant
Shalaine Nolan, Office Assistant III-C

PLACE:

Ventura County Employees' Retirement Association
Second Floor Boardroom
1190 South Victoria Avenue
Ventura, CA 93003

TIME:

9:00 a.m.

ITEM:

I. CALL TO ORDER

Because Trustee Wilson was not present, Treasurer/Tax Collector, Steven Hintz chaired the Disability Meeting of September 10, 2018.

Trustee Hintz called the Disability Meeting of September 10, 2018, to order at 9:00 a.m.

II. APPROVAL OF AGENDA

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

MOTION: Approve.

Moved by Winter, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

After the vote on this item, Retirement Administrator, Linda Webb introduced VCERA's new Communications Officer, Josiah Vencel to the Board of Retirement.

III. APPROVAL OF MINUTES

A. Business Meeting of June 18, 2018.

MOTION: Approve.

Moved by Goulet, seconded by McCombs.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

IV. RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT

MOTION: Approve.

Moved by Bianchi, seconded by Winter.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

V. APPLICATIONS FOR DISABILITY RETIREMENT

- A. Application for Service-connected Disability Retirement – Stearns, Robert K.; Case No. 16-014.
1. Application for Service-connected Disability Retirement, filed March 24, 2016.
 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 21, 2018.
 3. Hearing Notice, dated August 30, 2018.

Catherine Laveau was present on behalf of County of Ventura Risk Management. Thomas J. Wicke, Attorney at Law, was present on behalf of the applicant. The applicant, Robert K. Stearns, was not present.

Mr. Wicke declined to make a statement.

Ms. Laveau declined to make a statement.

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

MOTION: Approve the Service-Connected Disability Retirement Application.

Moved by Sedell, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain: Johnston

Trustee Johnston stated that he had abstained from the vote because he knew the applicant personally, as Mr. Stearns had worked for him in the past.

- B. Application for Service-connected Disability Retirement – Alvarez, Luis A.; Case No. 17-002.
1. Application for Service-connected Disability Retirement, filed January 20, 2017.
 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 27, 2018.
 3. Hearing Notice, dated August 30, 2018.

Catherine Laveau was present on behalf of County of Ventura Risk Management. The applicant, Luis A. Alvarez, was also present.

Mr. Alvarez declined to make a statement.

Ms. Laveau declined to make a statement.

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

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

Moved by McCombs, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

C. Application for Service-connected Disability Retirement – Payton, Christopher J.; Case No. 17-008.

1. Application for Service-connected Disability Retirement, filed April 10, 2017.
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 27, 2018.
3. Hearing Notice, dated August 30, 2018.

Catherine Laveau was present on behalf of County of Ventura Risk Management. David G. The applicant, Christopher J. Payton, was not present.

Ms. Edwards informed the Board that Mr. Payton was in the hospital and therefore unable to attend.

Ms. Laveau declined to make a statement.

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

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

Moved by Johnston, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

VI. OLD BUSINESS

A. **DISABILITY RETIREE TAMARA WELCH'S APPEAL OF STAFF'S DENIAL OF REQUEST FOR RECONSIDERATION.**

1. Staff Letter.
2. Materials from March 12, 2018 Administrative Proceedings on Application for Nonservice-Connected Disability Retirement.
3. Letter to the Board of Retirement from Tamara Welch, with accompanying materials, presented during Public Comment at the July 2, 2018 disability meeting.
4. Welch's Letter requesting reconsideration and amendment of Nonservice-connected Disability Retirement to Service-Connected Disability Retirement, dated July 31, 2018, with accompanying materials to supplement those provided on July 2, 2018.
5. VCERA Letter of Denial to Welch Request for Reconsideration, dated August 20, 2018.
6. Supplemental Email from Welch, with Accompanying Social Security Administration Disability Award Letter, dated August 22, 2018.
7. Email from Retirement Administrator to Welch acknowledging request to be placed on the September 10, 2018, Board Disability Agenda, dated August 24, 2018.

Ms. Webb reminded the Board that on July 2, 2018, Ms. Welch expressed concerns about the handling of her application for disability retirement during Public Comment and submitted supporting documentation. The Board had then directed staff to refer Ms. Welch's letter and documents to the office of Risk Management for a response, which had arrived Friday September 7th after 5 p.m. For this reason, it had not been provided with the agenda materials, but forwarded via email to the Board and Ms. Welch over the weekend; hard copies were also available.

Ms. Webb continued that Ms. Welch had indicated to staff before the meeting that, given the timing of the County response letter and its length, she preferred to postpone discussion until the October 8th disability meeting.

Ms. Welch then rose and indicated she would like to speak. Trustee Hintz asked her to come forward. Ms. Welch said that she was not clear on the process for responding to the County, but she had read it and if the Board wished to proceed, it was acceptable to her. Ms. Webb said she had understood before the meeting that Ms. Welch wanted to postpone, but perhaps that was incorrect. Trustee Hintz then asked Ms. Welch if she would like to proceed or continue the item until October, and that the Board would honor her preference. Ms. Welch indicated the item could proceed.

Ms. Webb said on July 31, 2018 (between the time Ms. Welch had addressed the Board on July 2nd and receipt of the County response), Ms. Welch submitted a formal request for reconsideration because she wished to amend her disability application to a service-connected disability rather than non-service. She later supplemented the request with a copy of her Social Security disability retirement award letter. Staff, in coordination with the General Counsel, responded to Ms. Welch's request, indicating the 35-day time period for reconsideration had expired, and the decision granting the non-service connected disability retirement had become final and the Board of Retirement no longer has jurisdiction to change the outcome.

Ms. Welch asked for her case to be placed on the agenda so that she could appeal staff's determination to the Board in an effort to exhaust all potential administrative remedies.

Trustee Sedell asked for clarification about whether Board would need to vote in favor staff's denial before Ms. Welch could file because there was still the separate issue of Risk Management's response to her claims. He asked General Counsel Nemiroff if, to expedite Ms. Welch's ability to proceed with filing in court, it be prudent to approve staff's denial and then discuss Risk Management's response.

Ms. Nemiroff replied yes, that to allow Ms. Welch to take such a step, it would be important that she exhaust her administrative options. If the Board were to approve staff's denial for reconsideration, the Board could also independently move forward on her complaints regarding the disability process in general. This could be postponed to a later date to allow all parties a chance to review Risk Management's recently-received response.

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

MOTION: Approve Staff's Denial of Tamara Welch's Request for Reconsideration.

Moved by Sedell, seconded by Goulet.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

Chair Hintz suggested the Board discuss the issues relating to the procedures that were used in this matter.

Ms. Welch said that after reviewing the response from Risk Management, she believed it did not address her core concern, which was the pressure used to influence her choice to file a non-service connected disability retirement rather than a service-connected one. She said this was a tool Risk Management used to make her file as she did. She also said that, in any case, the matter should be further explored because of the conflict of interest, and hoped that the Board would move forward on the claims she made.

Trustee Goulet commented that in the response from Risk Management, it states that Ms. Welch's attorney had advised her to apply for a non-service connected disability retirement and accept the Compromise and Release in her Worker's Compensation claim and they would pay her \$99,000; Rick Management also stated that settlement of Worker's Compensation cases were never contingent on the outcome of retirement disability cases. Mr. Goulet said a letter provided by Ms. Welch dated March 17, 2017, from an attorney representing the County of Ventura read, *"I have negotiated an agreement with applicant's counsel that she would walk away from a service-connected disability retirement if we could settle the worker's compensation claim for \$99,000"*, but yet, Risk Management's response stated, *"settlement of worker's compensation cases are never contingent on the outcome of the retirement cases"*. Mr. Goulet noted the letter also said, *"Obviously, a compromise and release at \$99,000 would be contingent upon the applicant requesting the non-service connected disability retirement"*.

Mr. Pode said that the settlement of a Worker's Compensation case is not contingent on a disability retirement application; and that Worker's Compensation case may be resolved before an application for disability retirement is filed or it can be settled while a disability retirement application is pending, though the form of that settlement would look different. He said Ms. Welch's case could have been compromised with a stipulation - either before she filed for a disability retirement, or while pending - but the compromise and release aspect of the Worker's Compensation settlement case was not available to her until she separated from the County of Ventura. He continued that some employees resign, severing their relationship with the County, which makes a compromise and release available even before the disability retirement is decided. In the case of Ms. Welch, she had still been employed, so if she had applied for a disability retirement, whether service connected, or non-service connected, and was denied, the County would not be in a position to do a compromise and release.

Mr. Pode continued that, as mentioned in the letter Mr. Goulet referenced (which was between the County of Ventura's attorney and the County of Ventura's claims examiner in the Worker's Compensation case)), if a compromise and release were to be done, Ms. Welch would have had to be separated from the County; and the way Ms. Welch had been looking to separate was through a non-service connected disability retirement. While not specifically stated in the letter (which Mr. Pode noted had not laid out the strategy for the disability retirement case because it was addressed to the Worker's Compensation carrier), had Ms. Welch filed for a service connected disability retirement on the basis of separate psychiatric issues, it would have been challenged by the County because, based on what was known from the Worker's Compensation case, there was no causation.

Trustee Goulet said that he understood that, but he was trying to deal with a definitive statement in the County's response letter, as well as a definitive statement in the attorney's letter. Though he did not know how Ms. Welch obtained it, the letter had been submitted to the Board, and it showed an inconsistency in Mr. Pode's statements and those made by the attorney.

Mr. Pode replied that he believed that the statements in the attorney's letter were a short hand fashion of saying if Ms. Welch filed for non-service connected disability retirement and it was granted, then there would then be an opportunity for a Compromise and Release. What is not stated but inferred with the status of the litigation in the worker's compensation case, is if she

had filed for a service connected disability retirement, given the position the County had taken in the Worker's Compensation case, (the attorney was not involved in the decision making of that position), it was pretty certain that Risk Management would challenge that application for service connected disability retirement, unless the applicant provided further documentation and evidence that was different, or supplemented what had been presented in the Worker's Compensation case. Mr. Pode continued that, as it was indicated in the County response, there had been discussion in the disposition documents supporting the application for non-service connected disability retirement, about a potential pending Worker's Compensation settlement, but it was contingent upon a compromise and release, unless Ms. Welch was separated from the county, in one form or another.

Trustee Goulet said that the matter arose from a question he himself had raised when the Board first considered Ms. Welch's disability retirement application; that was, he had asked Risk Management if there was a quid pro quo agreement, and was told no. On page 5 of the response, it states that there was not, but the statement by the County's attorney's letter clearly says that there was a quid pro quo; this was because the attorney said in his letter that, she could settle the Worker's Compensation claim for \$99,000, if she were to walk away from a service connected disability.

Ms. Laveau said that to reiterate Mr. Pode's remarks, perhaps defense counsel's letter was a bit inarticulate in stating exactly what the situation was at the time, and that rather than looking to a single sentence, to take the evidence in totality. The County provided information showed that beyond the point of Ms. Welch applying for retirement, there was no evidence showing that there was an agreement at all, as to how her Worker's Compensation case would be settled. Further, Ms. Welch's attorney acknowledged that, and had requested intervention by the Worker's Compensation Appeals Board, noting that though the parties had discussed settlement, there was no formal agreement. So, reading one sentence without taking all of the evidence into review could potentially paint one picture, other facts put forward show that beyond the point that Ms. Welch filed for a service connected disability retirement, there was no agreement by the parties to settle her case, which was acknowledged by her attorney, after the fact.

Trustee Goulet asked Ms. Laveau if she would agree that if someone, who was not an attorney, and unfamiliar with those considerations from the Risk Management office, could look at that sentence and consider it quid pro quo, or perhaps feel pressure to choose one option over another in regard to the application for disability retirement.

Ms. Laveau pointed out this was not a letter provided to the applicant or her attorney, but an attorney-client privilege document between the County's attorney and the County's claims adjuster. So, there was no indication that language or discussion aligning to the quoted sentence was provided by anyone at the County of Ventura directly to either Ms. Welch or her attorney.

Trustee Sedell said that, rather than a "he-said/she-said" argument, what he saw was a larger issue was a big problem with the intertwining of what Risk Management is doing and what VCERA is doing, when both were supposed to helping the employees and protecting the County of Ventura at the same time. If the Board was uncomfortable with how the processes

are intertwined, that needed to be sorted out. Whether a committee or staff formulated recommendations, it seemed this larger issue that will not be solved that day. Meanwhile, the Board had assisted Ms. Welch in being able to move forward with her case legally.

In response to Trustee Sedell's comments, Mr. Pode said that was why the County prepared its response in the way it did, reviewing the differences and similarities between Worker's Compensation and disability retirement, recognizing the Board could wish to examine the issue in a broader context. In respect to Ms. Welch's position, it was worth noting that Ms. Welch was represented in the Worker's Compensation case by an attorney who is knowledgeable about the retirement cases, and she put forth an email from her lawyer in which he recommended resolving the issues with respect to the County - that being Worker's Compensation and a potential disability retirement in the future.

Trustee Goulet said that he thought that the Board should appoint a committee to work with staff on the issue.

Trustee Johnston said that he thought that the Board had done that before, but was now working on resolving the symptoms of the poor approach.

Trustee Sedell asked what the result was, and Trustee Johnston replied that former Trustee McCormick had been working on the issue before she passed away, but it was time to resume work on it. He suggested the issue be given to staff for them to bring back a recommendation.

Trustee Sedell said that he agreed with that, as long as staff worked in cooperation with Risk Management to explore solutions.

Trustee Johnston said that he agreed, and that all of the parties involved should recognize that the process needs to be fixed.

Chair Hintz directed the referral of the subject to staff for recommendations.

Ms. Webb reminded the Board during a recent discussion regarding updating the bylaws, staff had noted that the disability procedures were an actual attachment of the bylaws, which meant any single revision to the disability procedures would require Board of Supervisors approval, making gradual updates more cumbersome. She said staff would soon be bringing recommended edits to the bylaws, one of which would likely be to discontinue attaching the procedures to the larger bylaws document.

She said, the complete overhaul of the procedures would be a large undertaking, but she believed staff could provide a preliminary report by the end of the calendar year.

Chair Hintz replied that he understood that staff would submit the report and recommendations before the first meeting in January 2019.

Trustee Goulet asked whether VCERA had developed new disability procedures and submitted them to the Board of Supervisors for review and approval.

Ms. Webb replied that she had not personally worked on those changes, she believed the work and suggestions did not proceed past the draft stage, and thus had not yet been submitted to the Board of Supervisors.

Ms. Nemiroff clarified that VCERA did work with Risk Management on general concepts, such as changing the timelines and some technical procedures; the next step was to incorporate those changes into the new disability procedures and the committee had stopped meeting after Trustee McCormick's passing.

Ms. Nemiroff added that the focus of that committee was limited to creating revised disability procedures, and so she did not believe it covered the issues raised by Ms. Welch; therefore, she could not say if further revising of the procedures would address these most recent issues.

Ms. Webb said she was confident could lay out the pros and cons of those prospective options, then the Board could decide using that information.

Ms. Welch then asked if she could provide a response to some of the comments made by Mr. Pode and Ms. Laveau.

Ms. Nemiroff said that while any responses Ms. Welch made in writing could be considered by staff in coming up with recommendations regarding disability procedures, they would not be included in her administrative record regarding the reconsideration of her disability retirement.

Mr. Pode expressed a willingness to work with VCERA staff. He cautioned that jumping to the conclusion that the current system was broken would be a leap in logic, but the issue could bear further discussion over the coming months.

B. Recommendation for Disability Retirement Medical Re-Evaluation Under Government Code 31729.

1. Staff Letter.

Ms. Webb said that Board had authorized staff in May to engage an outside investigator to follow up on a report that came to VCERA through the County of Ventura's fraud hotline. The report alleged that a disability retiree was regularly engaging in recreational activities contrary to the disability the retiree claimed to have. Staff had spoken to that caller, and done an initial investigation online, particularly on social media, and had received a report from the investigator as well. While not every one of the allegations made by the caller had been substantiated, staff believed that there was sufficient evidence to merit a recommendation of re-examination. Staff had also outlined all of the potential resulting outcomes of reexamination in the provided letter.

MOTION: Approve Staff's Recommendation to Require Re-Examination.

Moved by Sedell, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

- C. Verbal Update on the Status of Pending General Member Trustee Election and Towner Civil Service Commission Appeal Process.

Ms. Webb informed the Board the General Member election process was underway and that ballots would be counted on October 5th by the Elections. There were two candidates on the ballot, neither of whom have served on the Board previously.

Ms. Webb also provided an update regarding Tracy Towner's position. The Civil Service Commission was still scheduled for September 24th, and had allotted 3 days in September with a potential fourth day in November if it was not resolved within those 3 days. Mr. Towner had asked staff to pass along and to the Board that he and his attorney were making every effort to expedite the process.

Trustee Goulet said that it was his understanding that Trustee Fox would not be running for election.

Ms. Webb said yes, Ms. Fox had indicated she did not want to run for another term as she was considering retirement and did not want to do so in the middle of another 3-year term.

VII. NEW BUSINESS

- A. Recommendation to Approve Communications Officer, Josiah Vencel to Attend the 2018 National Pension Education Association Conference (NPEA), Tucson, AZ, October 20 – 24, 2018.
RECOMMENDED ACTION: Approve.

1. Staff Letter.
2. NPEA 2018 Conference Agenda.

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

MOTION: Approve.

Moved by Goulet, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

- B. Approval of, and Authorization for Board Chair or Retirement Administrator to Execute the Amended and Restated Fee Schedule for the Walter Scott NCS Group Trust)

Comingled Fund.

RECOMMENDED ACTION: Approve.

1. Staff Letter.
2. NCS Group Trust.

MOTION: Approve.

Moved by McCombs, seconded by Bianchi.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

VIII. INFORMATIONAL

A. State Street Letter Regarding Mitigating Inadvertent Data Disclosures.

MOTION: Receive and File.

Moved by Goulet, seconded by Winter.

Vote: Motion carried

Yes: Bianchi, Goulet, Hintz, Johnston, McCombs, Sedell, Winter

No: -

Absent: Foy, Fox, Wilson

Abstain:

IX. PUBLIC COMMENT

None.

X. STAFF COMMENT

Ms. Webb gave a brief update regarding the office location negotiations.

XI. BOARD MEMBER COMMENT

Trustee Goulet informed the Board the OCERS is submitting legislative proposal at the SACRS 2018 Fall Conference to increase the compensation to the members of boards that receive stipends, from \$100 to \$200 a meeting that's attended.

XII. ADJOURNMENT

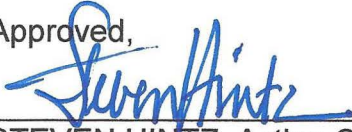
The meeting was adjourned at 9:50 a.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



STEVEN HINTZ, Acting Chair