

Disability Retiree Re-Examination Policy

I. Background and Purpose

The County Employees Retirement Law of 1937 contains provisions that allow the VCERA Board of Retirement (“Board”) to require any member who has been granted a disability retirement and is not yet age 55 to undergo medical re-examination. The purpose of this policy is to establish procedures for re-examination of members who have been granted disability retirements. The relevant sections of the law are:

Government Code § 31729: The board may require any disability beneficiary under age 55 to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board at the place of residence of the beneficiary or other place mutually agreed upon. Upon the basis of the examination the board shall determine whether the disability beneficiary is still physically or mentally incapacitated for service in the office or department of the county or district where he was employed and in the position held by him when retired for disability.

Government Code § 31730: If the board determines that the beneficiary is not incapacitated, and his or her employer offers to reinstate that beneficiary, his or her retirement allowance shall be canceled forthwith, and he or she shall be reinstated in the county service pursuant to the regulations of the county or district for reemployment of personnel.

Government Code § 31731: If any disability beneficiary under age 55 refuses to submit to medical examination, his pension shall be discontinued until his withdrawal of such refusal, and if his refusal continues for one year, his retirement allowance shall be canceled.

II. Staff Assessment for Re-Examination

- 1) For any member who has been granted a disability retirement by the Board and is not yet age 55, the Board authorizes staff, at its discretion, to assess every three years whether that retiree will be referred to a medical re-examination by a physician for the Board. Staff’s decision to assess may occur every three years from the date the disability was granted until the retiree attains age 55. If staff determines that an assessment of a retiree is warranted, it will take the form of a written questionnaire with affidavit completed by the retiree and/or other medical evidence as circumstances warrant.
- 2) In making a determination as to whether to proceed with re-examination of the retiree, staff shall consider the retiree’s current symptomology, level of function, ability to

perform the usual duties of the position from which he/she retired, post-retirement employment, and recent medical records pertaining to the incapacitating condition(s).

- 3) Staff will review the retiree's responses and determine whether further information is required, such as additional medical records, employment records, witness interviews and sub-rosa video. Staff will use the acquired information to assess whether the retiree should be referred to a medical re-examination by a physician for the Board.
- 4) After consideration of the acquired evidence, staff will take one of the following actions:
 - a) Refer the disability retiree to medical re-examination;
 - b) Determine the disability retiree is no longer a candidate for re-examination; or
 - c) Reassess the disability retiree for re-examination at a later date, pursuant to the assessment period described in Section II(1).

III. Re-Examination of Disability Retiree

- 1) For retirees who are referred to a medical re-examination, pursuant to Section II(4)(a), staff shall schedule the re-examination with one of VCERA's independent medical examiners at a location within a reasonable distance from the retiree's residence or other mutually agreed-upon location. VCERA shall pay all the costs of the examination, except cancellation fees caused by the retiree.
- 2) If the examining physician opines that the retiree is no longer incapacitated to serve in the position held when he/she retired for disability, staff shall make a written recommendation to the Board as to the member's incapacity. Staff will also specify in the recommendation whether the last County or District employer has indicated a willingness to consider reinstatement of the retiree.
- 3) If the examining physician opines that the retiree remains incapacitated from service in the position held when he/she retired for disability, staff shall not make a recommendation to the Board, and no change shall be made to the disability benefit.

IV. Board Action

- 1) At the noticed Board meeting, the Board will take action on staff's recommendation regarding the member's incapacity. Staff will serve a Notice of Board Decision on the applicant within five days of the Board's decision.
- 2) If the Board finds, by a majority vote, that the member is no longer incapacitated, the member shall have 30 days from service of the Notice of Board Decision to request in writing an evidentiary hearing. The evidentiary hearing shall be governed by VCERA's Disability Hearing Procedures and the New Model Disability Retirement Hearing Rules.

- 3) If the member elects to pursue an evidentiary hearing, after the hearing is completed, the Board will take action on the Hearing Officer's recommended decision and its decision will become effective immediately, unless otherwise directed by the Board.
- 4) If the member elects not to pursue an evidentiary hearing, the Board's decision in Section IV(1) will become effective immediately, unless otherwise directed by the Board.

V. Effect of Board Action

- 1) If the Board determines that the retiree is no longer incapacitated, pursuant to Section IV(2), and if the retiree's former employer offers to reinstate the retiree, the retiree's allowance must be canceled, pursuant to Government Code section 31730, and the retiree may either (a) apply to be reinstated to active service, or (b) decline to be reinstated and apply for a regular service retirement or defer retirement until such time as age and service eligibility requirements are met.
- 2) If the Board determines that the retiree is no longer incapacitated, pursuant to Section IV(2), and if the employer does not offer to reinstate the retiree, his/her disability retirement benefit shall continue to be paid, but any portion previously reported as nontaxable as a disability retirement shall be reported as taxable prospectively.
- 3) If the Board determines that the retiree remains incapacitated, his/her disability retirement benefit will not be changed.

VI. Retiree's Refusal to Submit to Re-Examination

- 1) Pursuant to Government Code section 31731, staff will recommend to the Board that any disability retiree who refuses to submit to the disability re-examination process will have their disability retirement benefit suspended until withdrawal of their refusal to cooperate in the re-examination. If the retiree's failure to cooperate continues for one year, staff will recommend to the Board that their disability retirement benefit be canceled.
- 2) Disability retirees and/or their respective counsel will be provided written notice of the date and time that the Board will conduct a hearing to consider and determine whether disability retirement benefits will be suspended or canceled.

VII. Process Review

- 1) The Board will review the Disability Retiree Re-Examination Policy at least once every three (3) years to ensure that it remains relevant and appropriate.