



VCERA

VENTURA COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

DISABILITY APPLICANT GUIDE

Revised 9/13/2023

If there is any conflict between this guide and the County Employees Retirement Law of 1937, the law shall prevail.



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VCERA BOARD OF RETIREMENT

The Ventura County Employees' Retirement Association (VCERA) is a defined benefit, public pension plan governed by the County Employees' Retirement Law of 1937 (CERL) and administered by the VCERA Board of Retirement. The purpose of VCERA is to provide service retirement, disability retirement and death benefits to members and their eligible beneficiaries based on the requirements of CERL.

The Board of Retirement is a quasi-judicial body created by CERL to oversee VCERA. One of the Board's duties is to determine when members of VCERA are eligible for disability retirement under the standards set forth in Government Code section 31720 et seq. The Board's fiduciary duties extend both to the individual members of VCERA and to the membership of VCERA as a whole. Its duty to *individual members* includes the obligation to grant a disability retirement when the applicant has met all of the conditions specified in the retirement law. Its duty to *the association* includes the obligation to safeguard the system's assets by denying a disability retirement when the applicant has not met all the legal requisites.

TYPES OF DISABILITY RETIREMENT

Nonservice-Connected Disability

A nonservice-connected disability (NSCD) is an incapacitating injury or illness that was *not* caused by employment. To be eligible for an NSCD, a member must have five or more years of eligible retirement service credit, regardless of age. If granted by the Board, an NSCD retirement benefit will not typically exceed one-third of the member's final average compensation. Upon the member's death, 60% of his/her monthly benefit will continue to the eligible beneficiary until death, unless a modified retirement option is elected.

Service-Connected Disability

A service-connected disability (SCD) is an incapacitating injury or illness that was substantially caused by employment. There is no minimum age or service credit requirement to be eligible for an SCD retirement. If granted by the Board, an SCD retirement benefit will be equal to 50% of the member's final average compensation (or the amount of a regular service retirement, whichever is higher) and may have certain tax advantages. However, if the Board later finds a disabled retiree under age 55 to be no longer permanently incapacitated, pursuant to G.C. section 31729, his/her benefit may lose its tax-exempt status. Upon the member's death, 100% of his/her monthly benefit and its taxable status will continue to the eligible beneficiary until death.



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DISABILITY RETIREMENT LAW STANDARDS

To be deemed disabled by the Board and entitled to lifetime disability retirement benefits, a member must be *permanently incapacitated* physically or mentally for the performance of his/her usual job duties. If a member applied for a service-connected disability, there also must be substantial evidence that the incapacity arose out of and in the course of the member's employment. These legal standards are further discussed in the sections below.

Note: The criteria for determining a disability retirement case under CERL is not the same criteria used to determine benefits in a Workers' Compensation case. The legal standards and laws governing each system of benefits are separate and distinct. However, VCERA will consider medical records generated during a Workers' Compensation case.

Standard for Incapacity

Under disability retirement law, an applicant is incapacitated, physically or mentally, if he/she is unable to substantially perform his/her usual job duties. "Usual job duties" are duties frequently performed by an applicant as opposed to duties performed rarely or duties that the employer does not actually require an applicant to perform. Incapacity does not mean the inability to perform *all* the duties listed in a job classification. As to a particular duty, an applicant is incapacitated from performing that specific duty if:

- it is not physically possible for the applicant to perform the activity at all, or
- even if it is possible for the applicant to perform the duty for a period of time, it is medically probable that performance of the duty will cause further injury, and
- the applicant's employer cannot accommodate in a permanent assignment the permanent work restrictions provided by a treating or consulting physician.

Pain is not incapacitating if an applicant is able to perform the activity, even if performing it would cause some pain or discomfort, cause fear of further injury, and/or create some risk of future injury that is less than probable. However, pain can be a factor contributing to a finding of incapacity when it is probable that performance of a particular "usual duty" would cause pain sufficiently severe to make performance of that duty impossible or exceedingly difficult.

Standard for Permanency

An incapacity is *permanent* when further change in an applicant's medical condition, for better or for worse, is not medically probable with or without further treatment. This may be referred



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to as “maximum medical improvement” (MMI), which means the same as “permanent and stationary” (P&S) in Workers’ Compensation cases.

An incapacity is *not permanent* when:

- There is a medical probability that further conventional medical treatment reasonably available to the applicant will bring about a positive material change in the applicant’s medical condition, without unreasonable risk to the applicant, which will enable the applicant to perform his/her duties.
- Refusal to accept further medical treatment may be deemed unreasonable when it has minimal risk and is likely to improve the applicant’s condition to the point where he/she can perform his/her duties. An applicant’s refusal is usually found to be reasonable when the medical treatment has substantial risk, when it is not likely to improve the applicant’s condition enough to enable a return to work, or when the applicant has bona fide religious beliefs or a medical condition that interferes with pursuit of the treatment.

Standards for Service-Connection

Standards for determining whether a permanent incapacity is *service-connected* include:

- Service-connection is found when the employment makes a “substantial contribution” to the incapacity. There must exist a real and measurable link between the applicant’s employment and his/her incapacity, and the employment must have a real and measurable consequence relative to the incapacity. (An infinitesimal or inconsequential connection between employment and disability is *not* considered real and measurable. Also, employment need not be the sole cause of the incapacity.)
- Service-connection is established when the employment permanently aggravates or accelerates the underlying pathology of a pre-existing condition, causing an applicant to be disabled at an earlier time than if he/she had not worked in that position.

Service-connection is *not* found when:

- The employment merely causes a *temporary* exacerbation of symptoms.
- The employment has not played an *active* role in the development of the incapacity (i.e., the employment has merely been a passive stage for the natural progression of a nonindustrial condition).



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- There is no identifiable mechanism of injury to establish a real and measurable link between the employment and the incapacity, or when reaching such a conclusion would involve speculation.

THE DISABILITY APPLICATION PACKET

VCERA's Disability Application Packet consists of an Application for Disability Retirement, an Authorization to Obtain and Release Records and Information, and an Attending Physician Report (APR). The application must be filled out completely and signed by the applicant, member or his/her attorney. The authorization form must be signed by the member to authorize VCERA to collect medical records from his/her doctors' offices and other sources and to disclose the records on an as-needed basis. The APR must be completed by the member's physician and returned directly to the applicant along with any pertinent medical documentation (e.g., reports, status notes, test results, etc.) supporting the claim of permanent incapacity.

Note: Please read the "Application" section on page 5 on how to submit a complete disability application packet. Pay close attention to the information and instructions provided in the notes.

THE DISABILITY APPLICATION PROCESS

At the direction of the Board, VCERA implemented a disability application process ("new model") in July 2020 that included a staff-led investigation of disability applications. The new model is in contrast to any investigation conducted by the County of Ventura's Risk Management Division; *the two investigations are separate and distinct*. Ultimately, the Board will make a determination on a disability application based on the recommendation of VCERA staff or a hearing officer.

VCERA's new disability model is summarized on the following pages. For a visual representation of the process, see the flowchart in the appendix. For more in-depth information, see VCERA's Disability Retirement Process Document ("New Model") in the appendix.

Counseling

Any member, beneficiary, County department or participating district may request VCERA's disability application packet. However, *before* providing the packet, a representative of VCERA's Disability Retirement Division must provide disability counseling in writing, in person or by phone. This practice ensures that the disability process and its key requirements are known in advance.



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Application

In accordance with retirement law, a disability application may be filed:

- while the member is in service (i.e., still making retirement contributions), or
- within four months after the member's discontinuance of service, or
- within four months after the expiration of any period during which a Safety-specific presumption is extended beyond the member's discontinuance of service, or
- from the date of discontinuance of service to the time of application, provided the member has been continuously incapacitated from performing his/her job duties.

To be accepted by VCERA and deemed "filed," a *completed* disability application packet must be returned to VCERA. A completed packet will consist of a completed Application for Disability Retirement, an executed Authorization to Obtain and Release Records and Information, a completed Attending Physician Report, recent evidence of permanent incapacity, and, if applicable, evidence that reasonable accommodation of permanent work restrictions has been explored with the employer. If any of the documentation is missing or incomplete, VCERA will reject the entire application and promptly notify the applicant.

Note: The applicant is responsible for giving the member's treating or examining physician a blank Attending Physician Report in addition to his/her most recent, official job description. It is also the applicant's responsibility to obtain the completed report from the physician. A separate Attending Physician Report is required for each "type" of injury or illness claimed on the disability application.

Note: The member (or person filing on the member's behalf) must provide recent medical evidence (i.e., within the last six months) of the member's permanent incapacity from a physician who specializes in, or is qualified to opine on, the area of injury or illness claimed by the applicant.

Note: Safety members who qualify for benefits under sections 4850.3 and 4850.4 of the Labor Code may submit an incomplete disability packet (i.e., without evidence of permanent incapacity) under the County of Ventura's Advanced Disability Pension Payment (ADPP) program. Contact County HR for more information about program eligibility.

If a department files on behalf of the member, he/she will be given 30 days to join the department's application, submit a separate application for a different injury or illness, or take no action. If the member elects *not* to join the department's application, the department is responsible for supplying the required documentation to VCERA in order to meet its burden of



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proof. Regardless of who files the application, the member is ultimately responsible for proving service-connection, if applicable.

Once VCERA accepts the disability application packet, the applicant will have an additional 120 days to submit supplemental medical documentation in support of the application, unless waived by the applicant.

Investigation

Before beginning its investigation, VCERA will send a copy of the disability application and supporting medical documents to Ventura County Risk Management (or district employer, if applicable), which may conduct a separate investigation of the disability claim.

To make an evidence-based recommendation to the Board of Retirement, VCERA's investigation will be multifaceted and may involve the following tools: forms, questionnaires, interviews, subpoenas, medical record collection services, and medical examinations.

VCERA will likely require a member to undergo an evaluation by an Independent Medical Examiner (IME). This appointment will be paid for by VCERA and provide an outside expert's perspective into the member's current medical status. Additionally, the IME physician will conduct a thorough review of the medical records in the disability case file and provide a comprehensive, confidential forensic report to VCERA.

Medical-Legal Analysis

After receiving all investigatory documents, VCERA will compile them into an administrative file, which will contain the evidence in support of the disability application. VCERA staff and/or a consulting medical advisor will analyze all the evidence to determine if the medical-legal requirements described in the Disability Retirement Law Standards section above were met. However, if there is insufficient data on which to make a recommendation, VCERA *may* provide a limited time period in which the applicant can submit additional supporting evidence.

Staff Recommendation

Using the medical-legal analysis, VCERA will draft a Preliminary Recommendation summarizing all aspects of the disability case and send it to the member and his/her employer for a 21-day period of comment. VCERA will consider all submitted member and employer comments before finalizing its recommendation. VCERA may reconsider its Preliminary Recommendation on the basis of new evidence received during the period of comment.



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If VCERA recommends granting the disability application, the recommendation and relevant documents will be placed on the next practical Board meeting agenda.

If VCERA recommends denying the disability application, the case will be sent directly to an evidentiary hearing. However, if the member does not desire to go to hearing, he/she may withdraw the disability application or sign a Waiver of Hearing within 30 days.

Board Decision and Evidentiary Hearing

Upon review of staff's recommendation to grant, the Board may decide to: (a) grant the disability application, in whole or in part; (b) remand the application back to staff for further investigation; (c) refer the matter to an evidentiary hearing; or (d) take any other action it deems appropriate.

- (a) If the disability application is granted, the Board's decision will take effect 35 days after the date of decision, unless the Board elects to make it effective sooner and the parties agree. When that occurs, the member will be added to retiree payroll and paid any retroactive benefits back to the effective date. However, if the Board determines that the member is capable of performing other duties in County/District service, and if the member documented a willingness to accept a disability reassignment, the employer will collaborate with the member to identify a position that complies with his/her permanent work restrictions. Any difference in pay between the old and new positions will be paid monthly by VCERA in accordance with retirement law.
- (b) If the disability application is remanded to VCERA staff for further investigation, staff will analyze any new evidence and, if necessary, conduct further investigation. Staff may revise or affirm its original medical analysis and Preliminary Recommendation, which will be sent to the member and employer for another 21-day period of comment.
- (c) If the matter is directed to evidentiary hearing, the parties may agree to an expedited hearing, which involves the hearing officer reviewing only the case records. The alternative is a full evidentiary hearing in which the parties present their cases in a courtroom-like format. An expedited hearing may take a few months to complete; a full evidentiary hearing may take a year. The rules governing hearings are set forth in VCERA's Disability Hearing Procedures and VCERA's New Model Disability Retirement Hearing Rules in the appendix. After closing an evidentiary hearing, the hearing officer will submit to the Board a report documenting case evidence and making a recommendation on the member's claim of permanent incapacity and, if applicable, service-connection. The Board may accept or reject the hearing officer's recommendation, remand the matter to the hearing officer with further instructions, request all evidence presented at the hearing to be seen by the Board, or take any other action it deems appropriate.



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OTHER CONSIDERATIONS

Amending an Application: An applicant has the right to amend, in writing, a filed disability application at any time prior to the Board's determination on the application or the beginning of the evidentiary hearing, whichever occurs first.

Withdrawing an Application: An applicant may withdraw a filed disability application without prejudice prior to the Board's determination. By doing so, the applicant may file on the same disability claim in the future, subject to applicable retirement law. But withdrawing it after a hearing has begun shall result in dismissal with prejudice, unless the Board decides otherwise.

Service Retirement: If a member is eligible for a regular service retirement based on age and service credit, he/she may retire before, during or after the disability application process. If the disability retirement is later granted, the member may be eligible to change his/her previously elected retirement option.

Legal Representation: Although not required, members are urged to obtain qualified legal counsel to represent them during the disability application process, particularly at hearings.

Noncompliance: A member's disability application may be dismissed with or without prejudice if he/she fails to attend a medical examination, submit documentation on time, respond to VCERA's communications, cooperate in the hearing process, answer relevant questions, comply with Board or hearing officer orders, or adhere to disability process rules *without good cause*.

Re-examination: VCERA will reassess the incapacity of disability retirees every three years until the retiree has attained age 55, pursuant to VCERA's Disability Retiree Re-examination Policy (see appendix). At minimum, staff's assessment will take the form of a questionnaire and may result in an IME re-examination.

DEATH & SURVIVOR BENEFITS

The death and survivor benefits payable to the eligible beneficiary of a deceased applicant depend on the membership status of the member as of his/her death. To be considered an eligible beneficiary, the member must have designated the person on VCERA's Beneficiary Designation Form; the most recent designation will take precedence. However, the rights and claims of a surviving spouse, registered domestic partner or minor child(ren) may supersede the rights and claims of other named beneficiaries.

The following are summaries of the death and survivor benefits payable to an eligible beneficiary based on the applicant's membership status as of his/her date of death.



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Active Member. An applicant who is still employed by the County or District.

- If the member's death was *nonservice-connected*, the eligible beneficiary is entitled to a lump-sum payout of the member's retirement contributions and interest plus one month of compensation (based on his/her average pensionable earnings) for every full year of service, up to six months of compensation; or
- A monthly benefit to a surviving spouse equal to 60% of the monthly benefit that the member would have received if he/she had been granted a nonservice-connected disability retirement at the time of his/her death. *Only applies if the member was vested in VCERA (i.e., had five years of retirement service credit); or*
- A combined benefit to a surviving spouse consisting of a lump-sum payment equal to one month of pay for every full year of service, up to six months of pay, plus the monthly benefit described above, reduced by the actuarial equivalent of the lump-sum payment.
- If the member's death was *service-connected*, a monthly benefit to a surviving spouse equal to 100% of the monthly benefit that the member would have received if he/she had been granted a service-connected disability retirement at the time of his/her death. (Other service-connected death benefits may be payable to a surviving spouse or minor children.)

Deferred or Separated Member. An applicant who separated from County or District service due to layoff, resignation or termination. A member who has accrued a total of five years of service credit in County/District or reciprocal system employment is a *deferred-vested* member. A member who has less than five years of service credit is considered a *separated* member; this person is not vested in VCERA or entitled to a monthly retirement benefit.

- Upon the member's death, the eligible beneficiary is entitled to a lump-sum payout of the member's retirement contributions and interest.

Retired Member. An applicant who retired for service based on age and service factors.

- Upon the member's death, a \$5,000 death benefit is payable to his/her named beneficiary or estate, unless a reciprocal retirement system is responsible for paying its own death benefit; and
- The eligible surviving spouse, registered domestic partner or minor child(ren) will receive a percentage of the member's retirement benefit (i.e., monthly continuance benefit) for life, depending on the retirement option he/she elected at retirement.



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Upon notification of member's death, VCERA will provide written notice of the benefits payable to each beneficiary. However, if no living, eligible beneficiary is on file, VCERA will pay the estate. For more information, see the VCERA Member Handbook or contact VCERA.

Regardless of the applicant's membership status at his/her death, the eligible beneficiary may elect to continue or discontinue his/her disability application until determination by the Board. VCERA will provide a grace period during which the beneficiary can decide.

CONTACT INFORMATION

Please contact the Disability Retirement Division anytime with questions about your disability application or the application process. Responses are typically provided within 1-2 days of receipt.

Thank you,

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