

## REFERENCE

### **GENERAL LAW AND AUTHORIZED BOARD ACTIONS ON DISABILITY RETIREMENT PROPOSED DECISIONS**

#### **STANDARDS FOR DISABILITY RETIREMENT**

An application for disability retirement must be made while the applicant is in service, within four months after discontinuance of service, or while, from the date of discontinuance of service to the time of the application, the applicant is continuously incapacitated to perform his or her duties (Government Code § 31722).

The Retirement Board is required to determine whether to grant or deny an application for disability retirement (Government Code § 31725), which may require such proof, including a medical examination, as the Board deems necessary to determine the existence of a permanent incapacity (Government Code § 31723). The applicant has the burden of proof. The Board may appoint a referee to hold a hearing on the matter and propose findings of fact and a recommended decision (Government Code § 31533). If the Board is satisfied based upon the evidence received at hearing that the applicant is permanently incapacitated, the Board shall grant the applicant a disability retirement (Government Code § 31724).

“Disability” is defined as any physical or mental condition that causes an applicant to be permanently incapacitated from the substantial performance of the usual duties of the job classification last held by the applicant. “Permanently” means the condition is expected to continue for such an extended and uncertain duration of time as to be considered permanent according to competent medical evidence.

The applicant is not permanently incapacitated if the usual duties of the job classification can be performed with reasonable accommodation by the employer, or the applicant unreasonably refuses medical treatment (including surgery) if there is a probability that such treatment would restore the applicant to capacity within a reasonable period of time, and the risk of harm from such treatment would not deter a reasonable person from consenting to such treatment. “Reasonable accommodation” means the agreement of the employer to modify work conditions or work environment as necessary to permit the applicant to substantially perform the usual duties of the job consistent with any limitations required by a medical provider.

A “service-connected disability” is a disability that resulted from an injury, illness or disease arising out of and in the course of the applicant’s employment, and to which the employment substantially contributed. “Substantially contributed” is defined as a real and measurable causal connection between the applicant’s employment and the disability that is more than infinitesimal or inconsequential.

The effective date of the disability retirement shall be the date the application was filed, but not earlier than the day following the last day for which the applicant received regular compensation, and not until the expiration of any accumulated sick leave unless the applicant consents to an earlier date.

## **BURDEN OF PROOF**

Neither the Referee nor SCERS has the burden of proof in disability retirement applications. The applicant has the burden of proving, based on a preponderance of the evidence, that the applicant is permanently incapacitated from the substantial performance of the usual duties of the job classification last held by the applicant, and, in the case of applications for service-connected disability retirement, whether or not such incapacity was the result of an injury, illness, or disease that arose out of or in the course of the applicant's employment, and to which the employment substantially contributed. The burden of proof never shifts to SCERS. Stated differently, SCERS does not have the burden of proving the applicant is not disabled.

## **ACTIONS AVAILABLE TO THE BOARD ON PROPOSED DECISIONS**

In compliance with Government Code § 31534, the Board must take one of the following actions:

- a. Approve and adopt the Proposed Decision of the Referee; **or**,
- b. Require a transcript or summary of all the testimony, plus all other evidence received by the Referee. Upon the receipt thereof the Board shall take such action as in its opinion is indicated by the evidence; **or**,
- c. Refer the matter back with instructions to the Referee for further proceedings; **or**,
- d. Set the matter for hearing before it using the same procedures applicable to hearings by a referee insofar as possible. At such hearing the Board shall hear and decide the matter as if it had not been referred to the Referee.