

SBCERS

Santa Barbara County Employees'
Retirement System

DISABILITY RETIREMENT



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This brochure provides general information about disability retirement. Readers are encouraged to contact the SBCERS Disability Retirement Division (805-568-2939) for more detailed information.

The administration of SBCERS disability retirement benefits is governed by Article 10 of the County Employees Retirement Law of 1937-CERL (Government Code § 31450 et seq.), as adopted and implemented by the Santa Barbara County Board of Supervisors and the SBCERS Board of Retirement. Nothing in this brochure supersedes the governing law. The procedures described in this brochure are authorized by the CERL, the Board's Bylaws and the Board's adopted policies.

WHAT IS DISABILITY RETIREMENT?

Disability retirement benefits are available to eligible members of SBCERS. There are two types of disability retirement:

1. Service-connected:

Permanent incapacity for the performance of duty resulting from an injury or disease arising out of and in the course of your employment and where such employment contributes substantially to the incapacity. This monthly benefit is equal to *the greater* of either ½ of your final average compensation or the monthly amount you would be entitled to if you qualify for a service retirement. You may apply for this benefit after completing any length of service, if you meet other eligibility criteria.

2. Non-service connected:

Permanent incapacity resulting from an injury or illness not related to your employment. To apply for this benefit, you must have five or more years of SBCERS service credit or a combination of SBCERS and reciprocal credit totaling 5 or more years. This monthly benefit is generally ⅓ of your final average salary, but could be more or less depending on your age

and length of service at the time the benefit is granted.

WHEN SHOULD I FILE AN APPLICATION?

In general, you should file an application for disability retirement *as soon as you are reasonably certain that your medical condition permanently prevents you from performing your usual duties.*

You can file an application while you are in service; within four months of discontinuing service; within four months after the expiration of any period during which a presumption is extended beyond your discontinuance of service; and you can file at any time if, from discontinuance of service to the date of application, you were continuously incapacitated to perform your usual duties.

WHAT ARE THE LEGAL CRITERIA FOR GRANTING DISABILITY RETIREMENT BENEFITS?

To be granted a service-connected disability retirement, the member must prove by a preponderance of substantial evidence that: (1) he/she is substantially unable to perform the usual duties of his or her job, or those of available alternative assignments in his/her job classification, even with reasonable accommodations; (2) that the incapacity is permanent; and (3) the incapacity arose out of the course of the member's employment and such employment contributed substantially to the incapacity. In a non-service-connected disability retirement application, the third element need not be proven.

IF APPROVED, WHEN WILL MY DISABILITY RETIREMENT BECOME EFFECTIVE?

Government Code § 31724 and the Board's Guidelines for Disability Retirement Effective Dates govern the establishment of the effective date of a disability retirement. Generally, the benefit is effective as of the date the application is received by SBCERS, but not earlier than the day after the member last received regular compensation. In some cases, the effective date may precede the date of application if the member can show to the Board's satisfaction that the filing of the application was delayed by administrative oversight or by inability to ascertain the permanency of the incapacity until after the date following the last day of regular compensation.

HOW LONG DOES THE PROCESS TAKE?

Time periods may vary depending upon complexities of the completed application; however, the average time frame to bring an application to an initial Board hearing is 5 to 8 months. If a matter is referred to evidentiary hearing, resolution of the matter will take additional time, typically an additional 6 months.

DO I NEED AN ATTORNEY?

Retention of legal counsel is not required, but you may choose to be represented by an attorney at your own cost at any time in the application process.

MAY I RECEIVE A MONTHLY RETIREMENT ALLOWANCE WHILE MY DISABILITY APPLICATION IS BEING PROCESSED?

You may retire for service if you meet the minimum service retirement eligibility requirements and waive your right to return to work.

Safety members may receive Advanced Disability Payments pursuant to Labor Code §4850.4 from your employer while a final determination on your entitlement to a disability retirement is pending. Please contact your department's human resources division for eligibility criteria.

DISABILITY RETIREMENT PROCEDURES

THE APPLICATION

Part "A": General applicant information.

Part "B": Authorization for Release of Medical and Employment Information forms

Part "C": Supplemental Questionnaire regarding medical and employment information

Part "D" Physician's Statement: A statement from your treating physician regarding your medical condition.

The application will be deemed complete when all parts of the Applicant are received.

THE INVESTIGATION

The assigned Disability Specialist compiles pertinent information, including medical

records, Workers' Compensation records, employment information and a job analysis.

INDEPENDENT MEDICAL EXAMINATION (IME)

You will be examined by one or more independent medical examiners (IME) in the appropriate specialty of medicine. Prior to the exam, the independent medical examiner is provided with pertinent documents pertaining to your application, and is asked to opine on the issues of permanent incapacity and causation. Following the examination, the independent medical examiner provides a written report which will be shared with you or your counsel, and in the case of psychiatric reports, with your treating physician or your counsel.

INITIAL BOARD ACTION

After the investigation and IME phase is complete, the Board of Retirement will consider staff's recommendation for action on your application. The Board meets monthly to discuss disability retirement matters. Board action options include grant, deny, refer to hearing, refer back to staff for further investigation, dismiss without prejudice to the filing of a later application or to continue the matter to a future agenda. You will be notified in writing of the date and time of the agenda item as well as the proposed recommendation.

EVIDENTIARY HEARING

The Board may elect to refer your application to an evidentiary hearing. If your application is denied by the Board, you have a right to request such a hearing. Hearings are conducted by a Referee, also known as a

Hearing Officer, who will conduct a proceeding to consider all the evidence, apply the disability retirement law and render a proposed finding of fact and recommendation to the Board. You will be notified in writing of the date, time and location of the hearing. At the hearing, you may be called upon to testify about your condition. Expert witnesses may also be called to testify on the medical-legal issues. The Board is represented by legal counsel and you may also retain counsel to represent you during the hearing process. If you decide not to retain counsel, SBCERS will arrange a pre-hearing conference at which the hearing officer, the Board's counsel and disability staff will discuss with you pre-hearing procedures, evidence exchange rules, and generally what to expect at the hearing. Prior to the hearing, you and the parties may request the issuance of subpoenas for production of documents or to compel personal appearance of witnesses at the hearing. You also have the right to take depositions of witnesses in advance of the hearing and to conduct other discovery as allowed by the Board's Disability Retirement Procedures. Within 45 days after the matter has been heard and submitted, the referee files with the Board a written report. The report includes a summary of the evidence, findings of fact and conclusions of law, and a recommended decision. You will also receive a copy of the report. The parties may then file written objections to the referee's report to be filed with the Board.

BOARD ACTION FOLLOWING THE HEARING

The Board will consider the referee's report and all timely filed objections at the next regular meeting following the close of the objection period. Government Code § 31534 allows the Board to take one of the following actions:

- approve and adopt the proposed referee findings/recommendation, or
- require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon receipt thereof, the board shall take such action as in its opinion is indicated by such evidence, or
- refer the matter back with or without instructions to the referee for further proceedings, or
- set the matter for hearing before itself. At such hearing, the Board shall hear and decide the matter as if it had not been referred to the referee.

BOARD FINAL DECISION

All Board final decisions are made in writing and served upon you and interested parties.

Judicial Review: If your application is denied, you may seek judicial review of the Board's denial in the Superior Court.

Other Options: If you do not wish to seek judicial review, additional options include electing a refund of contributions, deferring retirement, retiring for service (if eligible) or returning to work.