

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

183



**FROM:** Human Resources

**SUBMITTAL DATE:** August 14, 2003

**SUBJECT:** Industrial Disability Safety Retirement and Reinstatement Procedures

**RECOMMENDED MOTION:** That the Board of Supervisors adopt Resolution 2003-405, and approve Board Policy C-32, Industrial Disability Safety Retirement and Reinstatement Procedures.

**BACKGROUND:** Under California Government Code §21150, et seq., it is the responsibility of the County of Riverside to make determinations relating to industrial disability retirements for local safety members as well as reinstatement of such retirees. The procedures the County follows are generally outlined in the Government Code but have never been formally adopted locally. We recommend that this be done now. The procedures that provide the process on which these determinations are based are detailed in Attachment A.

Ronald W. Komers  
Asst. County Executive Officer/  
Human Resources Director

**FINANCIAL DATA:** N/A  
**CURRENT YEAR COST:**  
**NET COUNTY COST:**  
**BUDGET ADJUSTMENT:**  
**SOURCE OF FUNDS:**

**ANNUAL COST:**  
**IN CURRENT YEAR BUDGET:**  
**FOR FY:**

**C.E.O. RECOMMENDATION:**

**APPROVE**

**COUNTY EXECUTIVE OFFICER SIGNATURE**

FORM APPROVED  
COUNTY COUNSEL

AUG 20 2003

B. J. ...

Department Recommendation:  
Per Executive Office:  
 Consent  Policy  
 Consent  Policy

Prev. Agn. Ref.

Dist. *ALL*

AGENDA NO.

**3.28**

RESOLUTION NO. 2003-405

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE  
COUNTY OF RIVERSIDE ESTABLISHING PROCEDURES  
FOR DISABILITY RETIREMENT DETERMINATIONS  
FOR SWORN LOCAL SAFETY OFFICERS UNDER THE  
PUBLIC EMPLOYEES' RETIREMENT LAW  
AND FOR REINSTATEMENT OF LOCAL SAFETY OFFICERS  
RETIRED ON ACCOUNT OF DISABILITY UNDER  
THE PUBLIC EMPLOYEES' RETIREMENT LAW

THE BOARD OF SUPERVISORS of the County of Riverside finds:

A. The County of Riverside is a contracting agency of the Public Employees' Retirement System ("PERS"); and

B. Government Code Sections 21154 and 21157 of PERS retirement law require that a contracting agency determine whether a sworn local safety member employee is incapacitated from his/her job duties for purposes of the Public Employees' retirement law; and

C. In the event of a dispute regarding retirement or reinstatement of a sworn local safety officer, where a judicial determination of incapacity is necessary, the Board of Supervisors is required by California Government Code sections 21156 and 11512, as well as the holdings in *Usher v. County of Monterey* (1998) 65 Cal.App.4<sup>th</sup> 210 and *Langan v. City of El Monte* (2000) 79 Cal.App.4<sup>th</sup> 608, either to hear the appeal itself with an Administrative Law Judge ("ALJ") to assist and advise the Board in the conduct of the hearing, or at the Board's discretion, to have the hearing conducted by an Administrative Law Judge, who will then submit a proposed decision to the Board upon which it may act. In either case, the appeal hearing is required to be conducted consistent with the provisions of the Administrative Procedures Act ("APA"); and

D. The delegation of decision-making authority to an ALJ in disability retirement or reinstatement matters for sworn local safety members is in the best interest of the County;

FORM APPROVED  
COUNTY COUNSEL

AUG 20 2003

BY 

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in regular session assembled on August 26, 2003 that effective upon the adoption of this resolution, the Riverside County procedure for disability retirement determinations for sworn Local Safety officers under the Public Employees' Retirement Law and for reinstatement of Local Safety officers who are retired on account of disability under the Public Employees' Retirement Law, shall be established as follows:

SECTION 1. In accordance with the authority of the Human Resources Director to make determinations of disability pursuant to Resolution 74-108, the Board of Supervisors of Riverside County hereby delegates full authority to the California State Office of Administrative Hearings (including such Administrative Law Judge's as may be appointed from time to time) to determine individual disputes regarding the disability status of a sworn local safety officer or the reinstatement of a previously retired employee, subject to judicial review in the Riverside County Superior Court; and to make any other related determinations which are necessary in order to adjudicate the rights and duties of the parties.

SECTION 2. The Administrative Law Judge's decision shall be the final decision of the Board of Supervisors. In the absence of judicial review that may be sought by any aggrieved party, the Administrative Law Judge's decision shall be certified by the County to PERS in the manner and within the time provided by law.

SECTION 3. This Resolution, including the Rules of Procedure promulgated from time to time by the Board of Supervisors to implement this Resolution, is intended to constitute the Board of Supervisors' comprehensive plan for resolving disputed disability cases when an application for disability retirement is initiated either by the local sworn safety member or by the County of Riverside, as well as in cases where a previously retired sworn local safety member seeks reinstatement or in which the County seeks to reinstate a previously retired sworn safety employee.

**COUNTY OF RIVERSIDE, CALIFORNIA**  
**BOARD OF SUPERVISORS POLICY**

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**PURPOSE:**

Under California Government Code §21150, et seq., it is the County's responsibility to make determinations relating to disability retirement applications for its employees who are sworn local safety members of the Public Employees' Retirement System ("PERS"), as well as to reinstatement of such retirees. The procedures set forth herein describe the process to be followed when there is: 1) a safety member-initiated application for disability retirement, 2) a County-initiated application for disability retirement of a safety member, 3) a County-initiated reinstatement of a previously retired safety member, and/or 4) a previously retired safety member-initiated reinstatement application. The following paragraphs set forth the procedures to be followed in such cases.

**SAFETY MEMBER INITIATED APPLICATION FOR DISABILITY RETIREMENT:**

- A. An application for disability retirement may be secured from the Human Resources Department, the Sheriff's Department or PERS. The employee must fully complete and sign the application and submit it directly to PERS.
- B. Upon receipt of a completed application for retirement from a safety member, PERS mails a copy of the application along with a request for determination letter to the Human Resources Department. The date of the request for determination letter shall begin the six month timeframe in which the delegated authority has to make a determination and so certify that determination to PERS. This is in accordance with Government Code Section §21157.

At the time the County of Riverside is notified of an application for industrial disability retirement, the employee is provided a copy of these Procedures.

- C. Investigation and Proposed Disposition. Upon application for a disability retirement, the Human Resources Director, pursuant to Board of Supervisors Resolution 74-108 shall investigate all facts and circumstances pertaining to the application for disability retirement. Assessing incapacity may include securing medical and other records, taking statements of the employee and/or others, and ordering the employee to submit to medical and/or psychiatric examination(s).
- D. Medical Examinations. All medical information transmitted by the physicians shall be in conformity with all laws and regulations (e.g. "Confidentiality of Medical Information Act," Civil Code §56, et seq. and the "Health Insurance Portability and Accountability Act of 1996" PL 104-191 ("HIPAA")). Medical examinations shall address the functional limitations of the employee with respect to performing the job requirements and essential functions of the employee's position, but shall not include diagnosis or treatment plan except insofar as they may pertain to the employee's ability to perform the

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essential functions of the position. Medical reports generated in connection with any workers' compensation proceedings, including any diagnostic and treatment information contained in such reports relating to the question of incapacity may also be considered. It is the employee's responsibility to fully cooperate and to provide all relevant facts and to attend medical evaluations. Failure to cooperate may constitute grounds for denial of the application. Upon completion of this investigation, the Board of Supervisors or their designee shall, based upon the investigation, determine whether to approve or deny the application for disability retirement. If the Board of Supervisors or their designee approves the application, the County shall certify such determination to PERS. Should the County deny the application, the employee shall be advised of his/ her rights to appeal the determination as described in the Hearing Procedures herein.

**COUNTY-INITIATED APPLICATION FOR DISABILITY RETIREMENT OF A SAFETY MEMBER:**

- A. If the County determines the employee is substantially incapacitated from performing the usual and customary job duties based upon medical and other available evidence, and if the disability is of permanent or uncertain duration, and an application for disability retirement has not been filed with PERS by the employee, the Board of Supervisors or their designee may elect to make an application on behalf of the County for disability retirement of the safety member. The employee shall be notified: (1) that an initial determination of incapacity from the performance of duty has been made; (2) that an application for disability retirement has been submitted to PERS by the County; and (3) whether the condition is determined to be industrial or non-industrial.
- B. If the employee disputes the County's determination, the employee shall promptly be advised of his/her right to appeal the determination, as described in the Hearing Procedures herein.

**COUNTY-INITIATED REINSTATEMENT OF PREVIOUSLY RETIRED SAFETY MEMBER:**

- A. Government Code section 21192 permits periodic medical evaluations of previously retired safety employees for the purpose of determining whether incapacity from performance of the substantial range of essential job duties from which the employee was retired is still present. Should the County initiate such medical evaluation, it is the responsibility of the retired employee to fully cooperate in the investigation. Failure to cooperate may constitute grounds for cancellation of all or part of the retirement under Government Code section 21175. The County shall provide notice to the retired employee of the date, time

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and place of the medical evaluation and the name and address of the medical evaluator.

- B. If the County determines from a medical evaluation[s] and other available evidence that the previously retired employee is no longer incapacitated from his/her employment, and that there is a vacant position within the job classification from which he/she was retired, the employee shall be reinstated to his/ her previous job classification and the retirement cancelled. Such reinstatement may be conditional upon completion of such additional training as may be necessary to re-establish skills or other requirements of the position. It is the responsibility of the retiree to fully cooperate in any training that may be necessary to meet the requirements of the position. Failure to cooperate may constitute grounds for cancellation of the retirement.
- C. Should the retiree object to reinstatement, the retiree shall be advised of his or her rights to appeal the determination as described in the Hearing Procedure herein.

**PREVIOUSLY RETIRED SAFETY MEMBER-INITIATED APPLICATION FOR REINSTATEMENT:**

- A. Government Code section 21191 permits a sworn safety member who received a disability retirement to seek reinstatement on the grounds that the incapacity no longer exists, and Government Code section 21192 sets forth the process and requirements.
- B. As part of his/her application for reinstatement, the retiree shall provide a written statement of all the facts and circumstances upon which his/her request for reinstatement is based and enclose all medical, psychiatric and other documentation supporting the request. If evaluations result in a determination of fitness for reinstatement, when an opening occurs in the department from which the employee was previously retired, the employee shall be reinstated to his/her former position. Such reinstatement may be conditional upon completion of such additional training as may be necessary to re-establish skills or other requirements of the position. Failure to cooperate may constitute grounds for cancellation of the retirement.
- B. If the County determines the reinstatement application should be denied, the retiree shall be advised of his/her rights to appeal the determination as described in the Hearing Procedure herein.

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**DISPUTED INDUSTRIAL CAUSATION WITH RESPECT TO DISABILITY  
RETIREMENT APPLICATIONS:**

- A. If, following the evaluation of medical reports and other evidence, the County determines that the cause of the claimed incapacity is not industrial, the employee shall be given written notice of the County's determination.
- B. If the employee wishes to contest the determination regarding industrial causation, the issue of industrial causation shall be resolved by the Workers' Compensation Appeals Board pursuant to Government Code §21166, and shall be initiated by the employee by filing a timely petition for finding of industrial causation pursuant to Government Code §21166.
- C. Following the decision of the Workers' Compensation Administrative Law Judge ("WCALJ"), the party aggrieved by the WCALJ's decision may seek appellate review pursuant to Government Code §§21167 and 21168.

**TIME LIMITS FOR OBJECTING TO DETERMINATIONS BY COUNTY:**

- A. Time lines for the employee's/retiree's objection and appeal of the County's determination of disability shall be the applicable provisions of Government Code section 11500 et seq. If no objection is received in writing within the applicable time period, the County shall certify the disposition of the matter to PERS.
- B. Pursuant to Government Code §21157, determinations with respect to applications for disability retirement or for reinstatement shall be acted upon by the County within six months of the request for determination letter from PERS, unless such time is waived by the employee. A waiver of the six-month time limitation does not prevent the County from making its determination before six months has elapsed from the time of the application.

**ADMINISTRATIVE HEARING IF OBJECTION TIMELY FILED:**

- A. If timely objection is made by the employee to the County's determination regarding retirement or reinstatement, the Board of Supervisors or their designee shall endeavor to schedule a hearing with the Office of Administrative Hearings no later than ninety (90) calendar days after the date of the appeal notification.

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B. At their discretion, the parties may request a Pre-trial Conference before an ALJ to be assigned by the Office of Administrative Hearings. If a Pre-hearing Conference is scheduled, the subjects to be addressed at the Pre-hearing Conference may include the following:

1. Clarification and narrowing of issues.
2. Stipulations.
3. Settlement of any or all issues in dispute.
4. Discovery schedule.
5. Trial date.
6. Briefing schedule.
7. Issuance of subpoenas to ensure witness attendance at hearing.
8. Order of proof.
9. Burden of proof.
10. Scope of evidence including such matters as receipt of medical reports in lieu of live testimony.
11. Recording of proceedings by certified shorthand reporter.
12. Other procedural matters.
13. Other matters that bear upon the issues in dispute.

**HEARING PROCEDURES:**

- A. Following a determination by the County and the timely filing of an appeal by the employee/retiree, the appeal hearing shall be conducted by the ALJ in conformity with the Administrative Procedures Act ("APA").
- B. The County shall inform the employee/retiree of the date, time and place of the hearing.
- C. An Administrative Law Judge (ALJ) shall conduct the hearing, and shall render a decision on all contested issues, with the exception of industrial causation. Review of the ALJ's decision may be by Writ of Mandate in the Riverside County Superior Court.
- D. Costs. The parties shall each bear all costs incurred by that party, including cost of witnesses and representatives, and the costs of any transcript of the hearing ordered by the party. The per diem costs of the court reporter and the hearing officer shall be the responsibility of the County.

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- E. Findings and Conclusions. Consistent with time requirements of the APA, the ALJ shall render a decision in the matter containing the findings of fact and conclusions of law reached by said ALJ. In the absence of request for judicial review by any aggrieved party the County shall certify the ALJ's decision to PERS, or shall order or deny reinstatement of a retiree based thereon. Pursuant to Code of Civil Procedure §1094.6, the ALJ and/or the County shall state the limitation period for seeking judicial review in the decision rendered. An Affidavit of Mailing shall accompany the decision when sent to the employee/retiree.

**ADVANCE DISABILITY RETIREMENT BENEFITS:**

For those employees receiving advance disability retirement benefits pursuant to Labor Code section 4850.4, said benefits shall continue until such time as the ALJ renders a decision and serves it on the parties.

**JUDICIAL REVIEW:**

- A. Any judicial review of the decision of the Administrative Law Judge shall be taken by the aggrieved party pursuant to Code of Civil Procedure §§1094.5 and 1094.6 within the time limits provided by law. The decision of the ALJ will be considered final for purposes of any appeal or writ upon service of the decision on the parties.
- B. If a Petition for Writ of Mandate or Review is filed in the Superior Court, the County shall promptly inform PERS.
- C. Upon completion of all appellate review and the decision having become final, the County shall advise PERS.

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RESOLUTION NO. 74-108  
OF BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE  
DELEGATING AUTHORITY FOR DISABILITY DETERMINATIONS

(Section 21023.6, Government Code)

WHEREAS, the County of Riverside, hereinafter referred to as Agency, is a contracting agency of the Public Employees' Retirement System;

WHEREAS, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such Law;

WHEREAS, the Board of Supervisors of said County has determined upon legal advice that it may delegate authority to make such determinations to the incumbent of the position of Personnel Director of said County; now, therefore,

BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in regular session assembled on MAR 19 1974 that said Board of Supervisors does hereby delegate to the incumbent of the position of Personnel Director of said County the authority to make determinations under Section 21023.6, Government Code, on behalf of the Agency, of disability and whether such disability is industrial and to certify such determinations and all other necessary information to the Public Employees' Retirement System; and,

BE IT FURTHER RESOLVED that such incumbent be and he is authorized to make applications on behalf of the Agency for disability retirement of employees in employments in which they are local safety members and to initiate requests for reinstatement of such employees who are retired for disability.

ATTEST:

DONALD D. SULLIVAN, Clerk

By E. H. Hoover  
Deputy

(Seal)

Raymond Brown  
Chairman, Board of Supervisors  
County of Riverside

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.  
NANCY POMERO Clerk of said Board  
By Nancy Romero Deputy

RTS:elr  
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