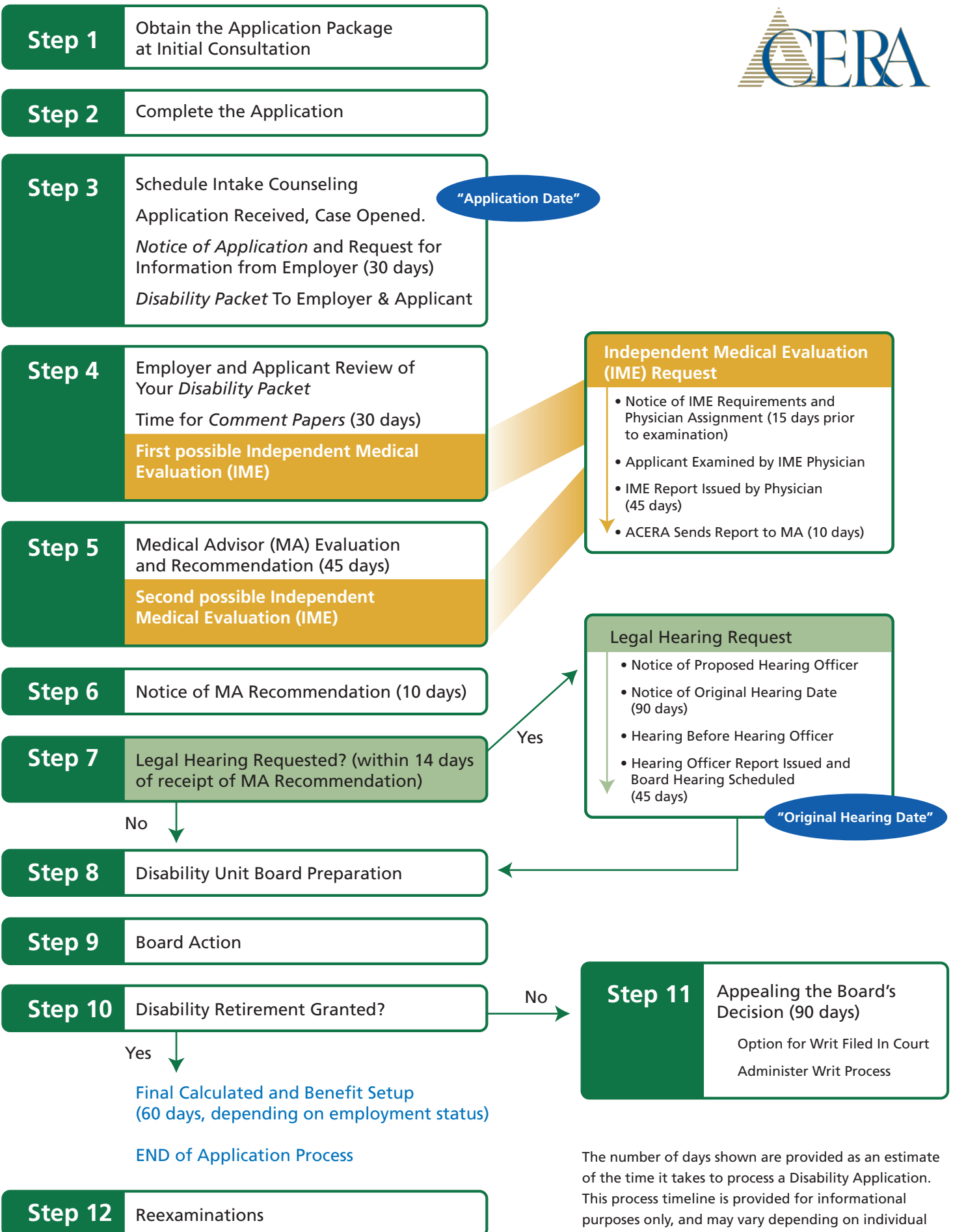




Disability Retirement Handbook



Disability Process Flow Chart



The number of days shown are provided as an estimate of the time it takes to process a Disability Application. This process timeline is provided for informational purposes only, and may vary depending on individual circumstances.

Disability Retirement Handbook

**ALAMEDA COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**

Voice: 510.628.3000 or 800.838.1932

Fax: 510.268.9574, www.acera.org

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**VOICE: 510.628.3000 OR 800.838.1932****FAX: 510.268.9574, WWW.ACERA.ORG****LEGAL DISCLAIMER:**

This Handbook provides general information about disability application procedures. It is designed to be accurate, as of the date of its issuance, November 2006, including periodic updates.

This Handbook Provides

1. A general description of the structure of ACERA's disability process
2. Roles and responsibilities of the various parties involved in the process
3. Descriptions of administrative procedures
4. Answers to basic questions

This Handbook Does Not Provide

1. Findings or a decision on your disability application
2. Answers to specific claims and questions

ACERA is governed by the County Employees Retirement Law of 1937 (Government Code Section 31450 et. seq.) as adopted and implemented by the ACERA Board of Retirement. Disability and retirement laws are complex. No statement in this Handbook is a legally binding interpretation, enlargement, or amendment of the provisions in the CERL or ACERA's policies. If conflict arises between these procedures and the CERL, the decision will be based on the CERL and other governing law.

The information presented in this Handbook should not be construed as legal advice or as a legal opinion on specific facts. For legal advice regarding specific facts, consult an attorney knowledgeable in disability retirement law matters.

Contents

Disability Process Flow Chart	inside front cover
Legal Disclaimer	2
Introduction	4
Letter to Member	4
Purpose	5
Eligibility Requirements	6
Types of Disability Retirement	6
Steps Toward Disability Retirement	7
Step 1: Obtain the Application	7
Step 2: Complete the Application	7
Step 3: Schedule Intake Counseling	11
Step 4: Employer and Applicant Review of Your Disability Packet	12
Step 5: Medical Advisor (M.A.) Evaluation and Recommendation	13
Step 6: Notice of M.A. Recommendation	14
Step 7: Legal Hearing	14
Step 8: Disability Unit Board Preparation	16
Step 9: Board Action	17
Step 10: Disability Retirement Granted and Calculated	19
Step 11: Appealing the Board’s Decision	19
Step 12: Reexaminations	20
More Information	21
Service Retirement Allowance Pending Determination of Your Application	21
Disability Retirement After Death	21
Supplemental Disability Allowance	22
Reciprocal Disability Benefits Processing	22
Safety Member Presumption	22
Taxability	23
Advanced Disability Payments—Safety Members	23
Frequently Asked Questions	24
Definitions	29
Internal Resources	34
External Resources	35



Introduction

November 2007

Dear Member,

The following requested disability retirement information is enclosed:

1. Disability Retirement Application and Instructions
 - Application for Disability Retirement
 - Authorization to Obtain and Release Records and Information
 - Disability Counseling Worksheet
 - Delayed Disability Application Affidavit
 - Medical Provider Statement
 - Treating Physician Narrative
2. Disability Retirement Procedural Information
3. Flow Chart of the Disability Retirement Application Process
4. Frequently Asked Questions (FAQs)
5. List of ACERA Resources
6. List of External Resources

You will find disability terms capitalized throughout this Handbook. This means the word, phrase, or form name is defined in the Definitions Section because it has a very specific meaning in the context of ACERA's disability Application process.

Please call ACERA's Disability Unit at 1.800.838.1932, if you have questions while reviewing this material and a Retirement Specialist will assist you.

Sincerely,
Disability Unit
ACERA Benefits Department

Purpose

This Disability Retirement Handbook is based on ACERA's *Disability Retirement Procedures* that govern the filing, proceedings, decisions, and review of decisions relating to Applications for disability retirement under the County Employees Retirement Law of 1937 (CERL).

How to Use this Handbook

In our role as administrative facilitator of your disability Application, we want you to understand what to expect at each step of this process. This Handbook will educate you about available disability retirement benefit options and help you fill out the Application forms.

The Disability Process Flow Chart is printed inside the front cover so that you can have it open for reference as you read through the section "Steps Toward Disability Retirement." This Handbook is also available online at www.acera.org.

Your Application must be based on permanent physical or psychological incapacity, or a combination of both. ACERA acknowledges that this may be a difficult time for you. Therefore, we recommend that you apply as soon as you believe you are reasonably certain your medical condition will prevent you from permanently performing your usual Duties and you have supporting documents from physicians who have treated your disabling condition. ACERA can begin processing your retirement Application, once your Completed Application has been filed.

ACERA recommends that you seek assistance to ensure the Application is properly completed and that supporting documents are properly compiled. The exact nature of the incapacity must be clearly articulated, as disability retirements are granted only upon submitting a Completed Application and proving your incapacity according to the applicable legal standard.

ACERA also provides an Active and Deferred Member Handbook that summarizes all benefits provided, including death, health, dental, and vision plan and retirement allowance options available to service and disability retirement recipients.

Capitalized Words

Disability law and ACERA disability procedural terms have specific meanings in the context of your Application. Words and terms that are briefly defined in the Definitions Section in the back of this Handbook are capitalized throughout for ease of reference.



Eligibility Requirements

Disability retirement eligibility requires the following:

1. Current ACERA membership (contributions still on deposit)
2. Documentation supporting permanent incapacitation from performing your usual Duties
3. Five (5) years of ACERA Participating Employer service credit, includes reciprocal agency service. (Non-Service Connected only)

Types of Disability Retirement

There are two types of disability retirement:

1. SERVICE CONNECTED DISABILITY (SCD)

Permanent incapacitation from performing usual Duties resulting from an injury/illness arising out of your ACERA-covered or reciprocal agency employment. You have the burden of proving the disability is service connected.

2. NON-SERVICE CONNECTED (NSCD)

Permanent incapacitation from performing usual Duties, although the Duties did not substantially contribute to your injury/illness. For this type of disability, you must be a vested member with five (5) full years of credited service.

Steps Toward Disability Retirement

STEP 1: OBTAIN THE APPLICATION

Obtain the Disability Application, a multi-page form, by contacting ACERA by mail at 475 14th Street, Suite 1000, Oakland, CA 94612, ATTN: Disability Unit, or by phone at 1.800.838.1932. Visit our web site for answers to Frequently Asked Disability Application Questions at www.acera.org or to request an Application.

STEP 2: COMPLETE THE APPLICATION

ACERA's Role

ACERA serves as the administrator of your Application process and of the disability retirement allowance, should it be granted. The ACERA Disability Unit (D.U.) is within our Benefits Department and employs Retirement Specialists, who will facilitate your Application process by providing you with the Application, conducting an intake counseling session, following up with the Medical Advisor (M.A.), the Employer, and the Board, and ensuring the administrative process moves in accordance with applicable law, ACERA D.U. policy, and the ACERA Disability Retirement Procedures.

Your Role

To achieve the goal of submitting a Completed Application, you must carefully read and respond to all questions in the Disability Application. Full instructions are in the Application. Listed below are the areas of information needed for the completion of your Application.

1. **General Information.** We need your contact information and social security number. Please, fill it out thoroughly. This enables us to communicate with you regarding your case. If you change your address and or phone number, please contact us with your new information.
2. **Application Type.** Indicate whether your Application is for SCD or NSCD. Under the SCD section, you may indicate if you want



to be considered for an NSCD, in the event your disability is found not service connected. You must have five years of credited service to be eligible for an NSCD.

3. **Reciprocity.** If you are a deferred member and have filed a disability Application with your current Employer's retirement system, you only need to provide verification that your disability has been approved, whether it's SCD or NSCD, the Effective Date, your final average salary, and benefit amount from the reciprocal agency granting the benefit.

Each system is required to pay its proportional share of the benefit based on the total amount that would have been paid had all service been in one agency. If you are receiving a disability benefit with PERS (Public Employees' Retirement System), speak to a Retirement Specialist about your ACERA benefit prior to applying.

4. **Current Status.** Let us know if you are already retired, or **Expedited Process.** Let us know if your current state of health will require an expedited process.
5. **Effective Date.** The Effective Date is the date ACERA begins paying your benefit. This will be the date you filed your Application and it is accepted by ACERA or your last day of compensation, whichever is later. If you file your Application later than your last day of compensation, you may request that an Earlier Effective Date be considered. To obtain an earlier effective date you must prove the application was delayed by inability to ascertain the permanency of your disabling condition until after your last day of regular compensation. You must provide evidence supporting your request with your Application. You may also request an Earlier Effective Date if you believe there was an administrative oversight.
6. **Buy Back Option.** If you are applying for an NSCD, you must have five (5) years of credited service with ACERA. If you do not have five (5) years, and you have eligible service available to purchase that will provide a total of five (5) years, the purchase of that service must be complete prior to filing your Application. A Retirement Specialist can assist you in determining whether or not you have eligible service credit to purchase.

7. ***Notice of Right to Legal Representation.*** You are not required to have an attorney, but you are entitled to legal representation at your own expense. If you are represented by legal counsel, please provide your legal counsel's name and contact information in this section of your Application.
8. ***Current Employment.*** Your Employer will be notified when your Application is submitted. Please provide the current employment information requested in this section of the Application.
9. ***Current Work Status with an ACERA Participating Employer.*** Please provide accurate information regarding your pay status, if you are still employed. This information is important because it will assist in determining your Effective Date and allow us to counsel you on benefit coverage.
10. ***Current Non-ACERA Employment.*** Provide all information regarding current employment in the event we must contact you regarding your current Duties, if you are working for a non-ACERA Employer.
11. ***Injury/Illness.*** Tell us about your disability. The Medical Advisor (M.A.) needs complete and accurate information to make a recommendation on your disability status. If you have more than one illness/injury, you may provide information and file the Application for all conditions. However, you must provide independent supporting documentation for each. You may not add an additional illness or injury later into the process without filing a new Application.
12. ***Permanent Incapacity from Performing Job Duties.*** State the usual Duties you were actually performing at the time you became disabled and those you were required to perform. What Duties can you presently not perform as a result of your injury/illness? Is your injury/illness permanent? How has your department accommodated you?
13. ***Safety Member Disability Presumption.*** If you are a safety member with at least five years of credited service and whose disability is based on heart trouble, cancer, blood borne disease, or exposure to a biochemical substance, you may automatically be presumed to have a Service Connected Disability, if you provide evidence that you are disabled based on one of these conditions. If your

disability is based on a presumption, the benefit is reported as taxable. If you can demonstrate that your condition was job-related without relying on the presumption, an application for a service connected disability independent of the presumption should be submitted. A service connected disability retirement independent of a presumption is reported as non-taxable, up to 50% of your final average salary.

14. All Medical Treatment within the Past Five (5) Years. State your health plan providers and history during the last five (5) years, as well as symptoms/conditions.

15. Previous Claims Filed. Provide information on workers' compensation, state disability, social security, or other benefits you have applied for.

16. Additional Information. Add anything that might help the Board decide your case.

17. Declaration. Your signature indicates you have reviewed the above information with a Retirement Specialist

Your Application is considered complete when you also include the following documents:

- a. Essential Functions Job Analysis (EFJA) requested from your Employer; this is a summary of the usual Duties of your job. If you need assistance in obtaining an EFJA, please contact your Retirement Specialist.
- b. All medical documents supporting your Application. Included in the Disability Retirement Applications Forms packet is a Medical Provider Statement. Give this form to your treating physician to use in providing a medical report supporting your claim and to provide the current status of your condition. Also included in the forms packet is a Treating Physician's Narrative. This may also be used by your physician to use as a tool to provide more extensive detail regarding your disability if this is the only report provided to ACERA regarding your condition.
- c. Delayed Disability Application Affidavit must be completed and submitted with your application if your application is filed more than four months from discontinuation of service.



Attention to detail and thoroughness with your document submissions are of high importance. An incomplete or altered Application will not be accepted and will be returned to you in its entirety. This can result in a delay in processing your Application.

STEP 3: SCHEDULE INTAKE COUNSELING

Contact ACERA to schedule an intake counseling appointment. Bring your Completed Application to the session. All Applicants are counseled in-person by a Disability Unit Retirement Specialist who assists you throughout the Application process.

Telephone intake counseling is available if you are physically unable to come to the office.

During counseling, the following critical topics will be reviewed:

1. Eligibility Requirements: Service Connected or Non-Service Connected
2. Supporting Documentation
3. Service Retirement Eligibility and Benefits
4. Effective Date of Disability Benefits
5. Retirement Allowance Estimates
6. Tax Withholding/Reporting 1099(R)
7. Final Retirement Allowance/Option Contract and Timeline
8. Current Pay Status/Accruals
9. Reciprocity
10. Safety Member Presumption of Disability
11. Legal Representation
12. Documentation Needed to Process Benefits
13. Health, Dental, and Vision Plan Coverage
14. Current Beneficiary Designation and Death Benefits

D.U. staff will review your Application for completeness and send a Confirming Letter stating the acceptance of your Application or requesting further documentation, as needed.

Information will be sought from your Employer about your job Duties, injury/illness, and other pertinent data. We may need a Pre-Employment Examination Report, Agency/Department Statement

Form, Occupational Injury/Illness reports, and Medical records. Your Employer must submit the Statement to us within thirty (30) days of receiving the request.

STEP 4: EMPLOYER AND APPLICANT REVIEW OF YOUR DISABILITY PACKET

Your Employer's Role

Your ACERA benefits are sponsored by your Employer. Therefore, your Employer is a Party to your case and has an interest in whether or not your disability benefit is granted.

Disability Packet and Employer Notification of Application

The Disability Packet contains the Completed Application, supporting documentation, and related information, as well as a calculation of your qualifying years of service. It is sent to you and to your Employer for review.

Comment Papers (30 days)

Once the Disability Packet is received by you and your Employer, a Comment Paper may be submitted to the D.U. outlining your respective positions on the Completed Application. Possible Comment Paper topics from your Employer may include their assessment of your incapacity, a request for more information, or that the M.A. examine certain documents more closely. Possible Comment Paper topics from you may include a request that the M.A. examine certain documents more closely or a letter explaining your current health status.

All statements must be supported by documentation contained in the disability packet. Argument and unsupported assertions are inappropriate for a Comment Paper.

Comment Papers must be submitted within thirty (30) days of receipt of the Disability Packet. They will be marked and become a part of the Disability Packet. Please notify the D.U. in writing or by email, if you decide not to submit a Comment Paper.

First Possible I.M.E. Referral

During your Employer review period, your Employer may refer you for an Independent Medical Evaluation (I.M.E.). The Employer may also choose the health care professional who conducts the I.M.E. This evaluation is conducted at the Employer's expense and so is at no cost to you.



STEP 5: MEDICAL ADVISOR (M.A.) EVALUATION AND RECOMMENDATION

Next, the D.U sends the Disability Packet, any Comment Papers, and any I.M.E. reports to the Medical Advisor (M.A.) for analysis and recommendation. The M.A. is an unbiased independent consultant, who reviews the file and provides a written Report and Recommendation to ACERA's Board of Retirement to grant or deny the Application within 45 business days of receiving the file.

The M.A. Report and Recommendation addresses

1. Whether you are physically or mentally incapacitated from substantially performing the usual duties of your job.
2. Whether the incapacity is permanent.
3. Whether your incapacity is service-connected (if applicable).
4. Whether you are able to perform other job duties based on restrictions imposed by your condition(s).
5. Whether you were continuously physically or mentally incapacitated to perform your duties from the date of discontinuance of service to the time your Completed Application was filed.
6. If you are found permanently incapacitated, whether annual medical examinations should be required.
7. If you requested an Earlier Effective Date, if possible, identify the approximate date you knew or should have known your incapacity was permanent and the basis for that assessment.

If you are recommended for disability, the M.A. Report also addresses whether you will be required to undergo annual medical examinations.

Second Possible I.M.E. Referral

The M.A. may request additional documents/information from the D.U and make referrals for your examination by an I.M.E. An extension of time for the M.A. Report and Recommendation is triggered by a consultation referral or requests for information.

STEP 6: NOTICE OF M.A. RECOMMENDATION

Within ten (10) days of receipt of the M.A. written Report and Recommendation (Report), the D.U. will send a copy of the M.A. Report to all Parties, along with a Request for Hearing Form.

The case can go in one of two directions at this point in your Application process as stated below:

- a. The M.A. will recommend granting your application for a disability retirement and if there is no objection from any Party, the case will go before the Retirement Board. If this occurs, proceed to Step 8; or
- b. The M.A. recommends denying your application for disability retirement or your case is contested by a Party, proceed to Step 7.

STEP 7: LEGAL HEARING

If your case is contested or the M.A. does not recommend a disability benefit, you may choose to have your case heard before a Hearing Officer. Your Employer may request a Hearing, as well, if they do not agree with the M.A. recommendation.

If any Party desires that the case be heard before a Hearing Officer, they must request a hearing within fourteen (14) days of service of the M.A. Report and Recommendation. The request must be signed by the Party requesting the Hearing.

Role of the Hearing Officer

The H.O. conducts a Hearing when the M.A. Recommendation on an Application is disputed and a Hearing is requested. Hearing Officers are obtained from a panel of an independent arbitration system, such as the American Arbitration Association. The H.O. must be a current member of the State Bar of California whose name is contained on ACERA's approved Hearing Officer panel.

Notice of Proposed Hearing Officer

This Notice is sent by the D.U. and identifies the next assigned Hearing Officer in rotation. Parties have ten (10) days, from service of the Notice, to challenge the named Hearing Officer in writing. If a Party exercises a challenge, the next Hearing Officer in the rotation shall be assigned the case. The other Party will have ten (10) days from the service of the Notice to challenge the H.O. in writing.

Withdrawing of Application with and without Prejudice

You may withdraw your Application at any time. However, if you do so after you are assigned a Hearing Officer, you withdraw with Prejudice. This precludes you from filing a future Application based on the same injury/illness.

Withdrawal of Application without Prejudice

You may withdraw your Application without prejudice prior to an H.O. assignment. An Application withdrawn without prejudice is treated as though it was never submitted. A subsequent Application, including resubmission of the withdrawn Application, is considered a new Application and must meet all requirements, including timely filing requirements.

Notice of Original Hearing Date

Once selection of a Hearing Officer is final, the ACERA Office of Chief Counsel offers all Parties the option of three Hearing dates within ninety (90) days. Once selected, the Hearing date is dubbed the “Original Hearing Date.” The ACERA Chief Counsel issues a Notice of Original Hearing Date to the Parties and the Hearing Officer stating the time and place of the Hearing. ACERA arranges for a stenographic reporter, an interpreter (if needed), and use of a Hearing room.

The Hearing

Hearings are held at ACERA’s offices. The Hearing Officer must hold a Hearing within sixty (60) days from the Original Hearing Date, except when the ACERA Office of Chief Counsel authorizes a delayed Hearing date. Failure of the Applicant to complete a Hearing within six (6) months of the Original Hearing Date may be cause for Dismissal of the Application with Prejudice.

The Hearing Officer has sixty (60) days from the Original Hearing Date to receive all of the evidence, both testimonial and documentary, to complete the Hearing (including any closing arguments and final briefing), and to close the record.

Hearing Officer’s Decision

The Hearing Officer will send a written report to ACERA summarizing the evidence, findings of fact, and making a recommendation to the Board within forty-five (45) days after the Hearing is concluded and the record is closed. The document is called the Proposed Findings of Fact and Recommended Decisions and complies with the legal requirements

of a civil administrative decision. ACERA provides all Parties with a copy of the recommendation.

Objection to the Hearing Officer's Decision

Any Party objecting to a Hearing Officer's recommendation has ten (10) days after service of the Proposed Findings of Fact and Recommended Decision to submit written objections to ACERA. ACERA will send any objections to the other Party and provide a courtesy copy to the Hearing Officer. That Party then has five (5) days to respond, in writing, to the objections. Any timely objections and responses received by ACERA will be incorporated into the record for consideration by the Board.

ACERA's Chief Counsel has sole discretion to return the matter back to the Hearing Officer for consideration of the objections and modification to the Proposed Findings and of Fact and Recommended Decisions prior to the Board Consideration Date.

No Hearing Requested

If you do not submit your request for Hearing to the D.U. within the 14-day limit, the D.U. will place the matter on the calendar for the next available Board meeting, with at least fifteen (15) days notice to all Parties of the Board Consideration Date. The Disability Packet and all subsequent documentation will be submitted to the Board for consideration, along with an Administrative Report.

STEP 8: BOARD PREPARATION

Before your Completed Application, including a copy of all the M.A. Recommendations and any Hearing Officer Proposed Findings of Fact and Recommended Decisions, is sent to the Board for a decision, the D. U. reviews the file and prepares a written report to the Board addressing the following matters:

1. ***Permanent Disability*** whether the M.A. Recommendation and the H.O. Findings support a Board decision determining permanent incapacity from performing your usual Duties
2. ***Service Connected Disability*** whether the M.A. Recommendation and the H.O. Findings substantiate the incapacity results from injury/illness or disease arising out of and in the course of employment

3. ***Non-Service Connected Disability*** summary of the M.A. Recommendation(s), and any H.O. Proposed Findings of Fact and Recommended Decisions regarding the disability not being service connected. This summary also includes a discussion about the disability being attributed to intemperate use of alcoholic liquor or drugs, willful misconduct or violation of law. If you joined ACERA on or after January 1, 1988, the summary also addresses whether the disability is due to conviction of a felony or criminal activity.
4. ***Return to Work*** whether the opportunity for accommodation or returning to work is supported by the applicable legal standard
5. ***Annual Examinations*** if you are under age 55, whether the M.A. Recommendation and/or the H.O. Findings determine that annual medical exams should be required following disability retirement
6. ***Effective Date of Disability*** recommendation of the date your disability retirement begins, which is either:
 - 1) the date your Application is deemed complete by the D.U. or
 - 2) the date after the last date you received regular compensation.

STEP 9: BOARD ACTION

Board Decision

Each decision is based on all admissible evidence presented to the Board, including but not limited to the M.A. Recommendation and Hearing Officer Proposed Findings of Fact and Recommended Decisions. ACERA staff's written administrative report alone is not deemed evidence by the Board.

Consent Calendar Cases

If no hearing is requested after service of the Notice of the M.A. Recommendation, your case will be included on the Board Agenda as a consent item. Consent items are normal business items that are grouped together and approved as one, including service retirements and death benefit payments. They are not addressed individually during the Board meeting. However, if a Board member or the Employer chooses to address your case, it will be postponed to the following month so it can be added as a regular agenda item.



Board Consideration Date: Hearing Cases

ACERA presents your Disability Packet to the Board on the date noticed to all Parties. The Board may immediately vote and take action or request that any Party, ACERA staff, and/or the M.A. respond to questions.

Any Party or their counsel may ask to orally present to the Board on this date and the Board has sole discretion to grant this request. Oral presentations are limited to ten (10) minutes and any other Party can immediately orally respond, but must do so within a five (5) minute time limit. Additional time for oral presentation or response is also in the Board's discretion. New evidence or witness testimony will not be heard or received by the Board on this date.

After presentations, the Board may take any of the following actions on your Application:

1. Approve and adopt H.O. Proposed Findings of Fact and Recommended Decisions
2. Refer Back to H.O. for further proceedings
3. Receive and review all evidence considered by the H.O. (including transcripts and affidavits, if any) and make a decision based on its own independent review of the testimony and evidence. In doing so, the Board may reject the decisions of the H.O. and make its own determinations.
4. Conduct a Board Hearing by setting the matter for a Hearing and deciding the matter as if it had not been referred to the H.O. If the Board holds the Hearing itself, the Board will render its decision by the second regular meeting after your case is submitted.

Notice of Board's Action

The D.U. notifies the Parties and their representatives of the Board's decision within ten (10) days of the Board Consideration Date. The Notice of Board Decision includes the decision, the date the decision was rendered, and notice of the right to judicial review. The Notice of Board Decision is sent by certified mail, return receipt requested.

STEP 10: DISABILITY RETIREMENT GRANTED AND CALCULATED

Your granted disability retirement can be Service Connected or Non-Service Connected and the calculations depend on the particulars of your case.

Service Connected Calculations

When you retire for Service Connected Disability, you will receive a lifetime retirement allowance payable in monthly installments, equal to one-half (50%) of your final average salary. Or, if qualified for a service retirement, you will receive your service retirement allowance, if it is greater. Your benefit amount will not exceed the limitation set forth by applicable law.

Non-Service Connected Calculations

An NSCD benefit is typically one-third (1/3) of your final average salary. However, this amount will depend on your age and service credit and is paid in monthly installments during your lifetime.

Cost of Living Adjustments (COLA)

COLA is equally applied to disability retirement grantees and regular service retirees.

STEP 11: APPEALING THE BOARD'S DECISION

Any Party may obtain review of the Board's decision in a court of law by filing a Petition for Writ of Mandate (Petition) with the Superior Court of Alameda County (Superior Court) no later than the ninetieth (90th) day following the date the Board's decision is finalized. An extension will be granted if you request the record within ten (10) days of the decision.

A copy of any Petition filed must be served on all Parties and the ACERA Office of Chief Counsel.

IMPORTANT:

The process of seeking judicial review through a petition is a complex legal proceeding and it is beyond the scope of this Handbook. However, ACERA recommends that you seek the advice of an attorney. Please note that strict deadlines apply to petitions, so you must act promptly to avoid waiving your rights to appeal.



Non-Service Connected Disability Retirement Pending Review of Right to Service Connected Disability Benefits

If the Board determines you are entitled to a Non-Service Connected Disability retirement, you may accept a Non-Service Connected Disability retirement benefit while you are pursuing a rehearing or judicial review concerning your right to Service Connected Disability retirement.

If later determined that you are entitled to a Service Connected Disability retirement, appropriate adjustments will be made to your retirement allowance retroactive to the Effective Date.

STEP 12: REEXAMINATIONS

The Board may require you to undergo annual reviews and medical examinations, at ACERA's expense, if you are under age 55 and granted a disability retirement. You will be required to complete a Continuing Disability Questionnaire Form and submit a current medical report as part of this review. These examinations and records are reviewed by the M.A. who makes a recommendation to the Board regarding whether you remain permanently incapacitated for the performance of duty. The Board will determine if you are unable to perform the usual Duties of the position you held when your disability retirement was granted.

Your retirement allowance will be cancelled, if, over a period of one year, you refuse to submit to a medical examination, supply requested information, or provide requested release forms.

More Information

SERVICE RETIREMENT ALLOWANCE PENDING DETERMINATION OF YOUR APPLICATION

If eligible, you may apply for a regular service retirement allowance pending the determination of your Application for disability retirement. You must be at least age 50 with ten (10) years of credited service to be eligible for a service retirement. If you are a Safety Member with 20 years of credited service, you may apply for service retirement before you reach age 50. Adjustments will be made to your allowance retirement retroactive to your Effective Date, if applicable, if you are found eligible for disability retirement.

If you are granted regular service retirement and found not entitled to disability retirement, you will not be eligible to return to your job because your employment terminates upon accepting a regular service retirement.

Neither you nor your beneficiaries may receive more than one type of retirement allowance for the same period of time.

DISABILITY RETIREMENT AFTER DEATH

Your Beneficiary may continue your pending disability retirement Application process if you die before the Board makes a final determination on your Completed Application and/or before your Election of Disability Retirement Allowance is executed.

The Beneficiary you designate in your ACERA Service File may elect to continue the pending Application process on your behalf. This Beneficiary must be your surviving spouse/domestic partner or minor child through the age of 21, if such children remain unmarried and are regularly enrolled as full-time students in an accredited school. The Beneficiary must also complete and execute a Continuation of Disability Retirement Proceedings After Death of Member Form.

Upon a showing of good cause, the D.U. may accept such a designation after ninety (90) days, however, in all cases where no form is received, the Application will be deemed withdrawn with prejudice six (6) months after the date of your death.



SUPPLEMENTAL DISABILITY ALLOWANCE

The Board may pay a Supplemental Disability Allowance in lieu of the full disability allowance if you are granted a disability retirement and accept alternate County or Participating Employer work with lower pay. Under such circumstances, the amount of the Supplemental Disability Allowance is equal to the difference between your salary in the former position and your salary in the new position, not to exceed the amount of your approved disability benefit.

COLA adjustments are applied to your Disability Allowance when you retire.

RECIPROCAL DISABILITY BENEFITS PROCESSING

CERL '37 encourages career public service by granting reciprocal retirement benefits to eligible members. If you have worked for another California public retirement system and met necessary requirements, your membership is reciprocal. Accordingly, there is reciprocity in disability retirement benefits among Reciprocal Systems, e.g., the CERL '37 Act Counties, the Public Employees' Retirement Systems ("PERS"), the State Teachers' Retirement System, the Judges' Retirement System, and the retirement systems of any other public agency within the State of California that has established reciprocity with PERS by meeting all necessary statutory requirements.

Generally, each Reciprocal System calculates its respective obligations based upon your service with that entity and each adjusts its payment on a pro rata basis. No retirement system or political entity is liable for more than its just financial obligation. Your combined reciprocal benefit will not be higher than it would have been were all service credit earned in one system.

SAFETY MEMBER PRESUMPTION

If you are a safety member with at least five years of credited service and whose disability is based on heart trouble, cancer, blood borne disease, or exposure to a biochemical substance, you may automatically be presumed to have a Service Connected Disability, if you provide evidence that you are disabled based on one of these conditions. If your disability is based on a presumption, the benefit is reported as taxable. If you can demonstrate that your condition was job-related without relying on the presumption, an application for a service connected dis-

ability independent of the presumption should be submitted. A service connected disability retirement independent of a presumption is reported as non-taxable, up to 50% of your final average salary.

IMPORTANT:

The Application and use of legal presumptions involve complex legal and technical issues and detailed analysis that are beyond the scope of this Handbook. ACERA recommends that you seek the advice of an attorney. You must act promptly to avoid waiving valuable rights, if this applies to you.

TAXABILITY

ACERA reports each type of retirement allowance according to the rules and regulations of the U.S. Department of Treasury.

- a. *Non-Service Connected Disability retirement:* disability retirement allowance payments are reported as taxable income.
- b. *Service Connected Disability retirement:* disability retirement allowance payments that are equal to 50% or less of your final average salary are not reported as taxable income.
- c. *Service Connected Disability retirement allowance higher than 50% of your final average salary:* If your benefit formula at retirement is higher than 50% of final average salary (FAS) and you are granted a Service Connected Disability, 50% of FAS will be reported as non-taxable income. The amount over 50% of FAS will be reported as taxable.
- d. *Service Connected Disability retirement granted based on a statutory presumption:* if the statutory presumption is work-related, your disability retirement allowance is reported as taxable by ACERA.

IMPORTANT:

State and federal tax laws are subject to change without notice. It is not the purpose of this Handbook to provide legal or tax advice.

ADVANCED DISABILITY PAYMENTS—SAFETY MEMBERS

A safety member who qualifies for benefits under Labor Code Section 4840 and applies for a service connected disability is eligible to receive Advanced Disability Payments from their employer commencing no

later than 30 days from the employee's last day in pay status. This payment will continue until the disability application is granted or denied. The payment is based on 50% of salary. If the disability application is approved, ACERA will deduct the total of the advanced disability payments made to date from the first retirement check which includes retroactive pay to the benefit effective date. If the disability application is not approved, a repayment plan will be initiated by the County's Central Collections Department.

Frequently Asked Questions

Q May I receive a regular service allowance while waiting for the Board to decide upon my disability application?

A Yes. If you meet the eligibility requirements for a regular service retirement, you may apply for the benefit pending the outcome of the disability claim.

However, receipt of a regular service retirement will make you ineligible to return to regular employment in the event that your disability Application is denied.

Q When must I file my disability Application?

A As soon as you are reasonably certain that your medical condition prevents you from permanently performing your usual Duties and

- You have supporting documentation of your disability and
- You are still employed or
- Within four (4) months after you have discontinued service or
- Any time after you have separated from employment if (1) you have been continuously disabled since your separation and (2) ACERA's ability to investigate your Application has not been impaired because of an unreasonable delay in filing the application.

Q Can I apply if I have resigned from employment and have withdrawn my retirement contributions?

A No. Your ACERA benefits are forfeited when funds are withdrawn.

Q May another person file an Application for me?

A Yes. The head of your department, a member of the Board of Retirement, or any other person may file an Application on your behalf.

Q How long does this process take?

A Usually from eight (8) to fifteen (15) months. This depends entirely on the complexity of the claim, the timeliness of the responses to ACERA's requests for information, and whether the case is referred for Hearing. However, there is no time limit set within the law.

Q Is there anything I can do to speed up the process?

A Yes: 1. Submit a Completed Application, including supporting documents and 2. Apply for an Expedited Administrative Review, if you have suffered a sudden and catastrophic incapacitating injury/illness or are terminally ill.

Q Do I need to retain an attorney to represent me?

A An Application may be filed without the assistance of an attorney. Staff is available to assist you with the Application process. However, every Applicant has a right to be represented by legal counsel. Costs of legal counsel are the responsibility of the Applicant. ACERA cannot provide you legal advice.

Q Can my Workers' Compensation attorney represent me in this matter?

A In most cases, Workers' Compensation attorneys do not handle disability retirement Applications. Check with your attorney. ACERA can provide a list of attorneys who represent disability applicants.

Q How is a determination made regarding my disability retirement application?

A A Medical Advisor (M.A.) is assigned to review medical evidence regarding your claim and to make a recommendation. The recommendation will be presented to the Board of Retirement for a final determination. If you are ultimately found not disabled, you may have the right to be reinstated to your job.

Q Does the Medical Advisor work for my Employer?

A The M.A. is an independent contractor with ACERA who reviews medical documentation regarding your claim and makes a written



Report and Recommendation based on that review. The Board uses this Recommendation to make a final determination.

Q Who will the Hearing Officer be?

A H.O.s are assigned to cases using a neutral system of rotation. Similar to the M.A., the H.O. is an independent contractor, as well as a member of the California State Bar Association and on a pre-approved list. A Hearing will occur when properly requested and the M.A. Recommendation is being contested.

Q What if my Workers' Compensation claim determines that I am permanent and stationary? Does that mean I am eligible for a disability retirement from ACERA?

A Workers' Compensation findings do not guarantee eligibility for a disability retirement from ACERA because Workers' Compensation and ACERA have different laws governing the determination of disability.

Q If my Application is approved, when will my disability retirement become effective?

A

- The date you filed your Completed Application with the Board of Retirement; or
- The date following the last day you received regular compensation, whichever is later
- You may also request an Earlier Effective Date if you filed your disability Application later than your last date in pay status and meet certain conditions.

Q Am I able to receive two types of retirement benefits: regular service and disability?

A No, you may apply for service retirement pending your disability, however, if disability retirement is granted it will replace your service retirement benefit.

Q How much will my disability retirement allowance be?

A The amount of money you receive for a Service Connected Disability retirement is 50% of your final average compensation or your service retirement allowance, whichever is greater.

The amount of money you receive for a Non-Service Connected Disability retirement is based on your age and how many years you have contributed to ACERA. It is generally equal to one-third of your final compensation but also depends on your age and years of service. If you have reciprocity with another



retirement system, your benefit will be prorated based on credited service and benefit payments in each system.

Q When will I receive my first check?

A Usually within 60 days after the Board approves your Application. In order for ACERA to process your benefit in a timely manner, you must be terminated from your Employer. ACERA can not process your retirement if you are still in the payroll system as an active employee.

Q How frequently and how long will I receive this benefit?

A It is paid monthly during your lifetime.

Q Will I be eligible for medical and dental insurance?

A Yes. If you are approved for a Service Connected Disability retirement, ACERA will provide the same monthly medical allowance as is paid for a retiree with twenty (20) years of service. The medical plans available to you are administered by ACERA.

If you receive a Non-Service Connected Disability retirement and have at least ten (10) years of retirement credit, a portion of your medical insurance costs will be paid based on the current monthly medical allowance amount.

The cost for your portion of the insurance premiums, if any, will be deducted from your retirement allowance.

All retirees are covered for dental and vision plan contributions paid from the Supplemental Retirees Benefit Reserve (SRBR), an account administered by the Board of Retirement for additional benefits. The Monthly Medical Allowance, vision, and dental benefits are non-vested benefits subject to available assets. Consequently, they may be reduced or eliminated at the discretion of the Board. Currently, dependent coverage is available and the premium is deducted from your monthly retirement allowance.

Q What benefits are payable to my spouse/domestic partner?

A If you were married or state-registered before your effective disability retirement date and are receiving a Service Connected Disability allowance, your surviving spouse/domestic partner will receive 100% of your monthly allowance for his or her lifetime.

If you were married/state-registered for at least one year before your effective disability retirement date and are receiving a Non-Service Connected Disability allowance, your surviving spouse/domestic partner will receive 60% of your allowance for life, unless you elect a different option that will actuarially reduce your monthly allowance. A \$5,000 lump sum death benefit is also payable to your nominated beneficiary.

Q May I continue to work for my Employer if I am found to be disabled by the Board?

A Yes. You may accept a new position with your Employer, if you are able to perform other Duties.

If the salary of your new job is less than what you earned when you became disabled, you will receive a Supplemental Disability Allowance from ACERA, in place of a disability retirement benefit.

The supplemental disability allowance you receive will generally increase up to the compensation you were receiving from your old job; however, it may not be greater than the disability allowance you would have received if you had accepted a disability retirement.

If a Safety Member is found to be disabled and works in a non-Safety position, the member's Safety status will be maintained.

Q May I obtain work other than with my Employer, if I am found to be disabled?

A Yes. You may obtain full- or part-time employment in an occupation that you are not deemed incapacitated to perform.

Q Can my disability retirement be canceled at a later date?

A Yes. If you are under age 55, ACERA can require you to submit to a medical re-evaluation. If the Board of Retirement determines that you are no longer incapacitated, your disability retirement can be canceled, if the Employer agrees to reinstate you to your former position.

If you are working in a position you are deemed disabled to perform, ACERA may discontinue your disability benefits.

Q Is my retirement allowance reported to the IRS?

A All disability retirement income is reported to the state and federal governments during the years you receive it.

Q Are taxes withheld from my retirement allowance?

A Federal and state tax withholding is available, at your option. Consult a tax professional to determine the taxable portion of your retirement allowance.

Definitions

Agency/Department Statement Related to Application for Disability

Retirement Form Provided to your Employer by ACERA requesting identifying, job duty, and related information from your Department. A completed form also includes a detailed statement about all efforts undertaken to find alternative employment for you within your capacity to perform, the results of this effort, or a detailed explanation why such efforts were not undertaken.

Applicant the person or entity filing the disability Application, including an Alameda County Employees' Retirement Association Member, the Employer, the Board or its agents, or any other person on your behalf who is entitled to claim disability retirement benefits on behalf of a Member

Application Date the date your Application meets all requirements and is filed and accepted by ACERA

Application for Disability Retirement the disability retirement Application forms and associated documents you submit to ACERA to identify the exact nature of your incapacity

Authorization to Obtain and Release Records and Information Form legal release providing permission to release relevant medical and employment records and information to ACERA ensuring a full evaluation of your Application

Beneficiary a person or entity designated to receive an ACERA benefit as a result of a legal arrangement or instrument

Board ACERA Board of Retirement

Burden of Proof the Burden of Proof is on the Applicant throughout the entire disability retirement Application process. This means you must prove your case throughout the Application process by a preponderance of the evidence. This includes showing a permanent incapacity (physical or mental) from your performance of duty by demonstrating substantial inability to perform your usual Duties.

- **The Burden of Proof for Non-Service Connected Disability**

You must demonstrate permanent incapacity from substantially performing your regularly assigned job Duties. For Service Connected Disability retirement, you must also demonstrate that the employment contributed substantially to the disability.

- **Burden of Proof for Safety Members with five (5) or more**

years of service Certain diseases/disabilities are presumed to arise out of and in the course of employment. For these Applicants, it is presumed that your usual job Duties caused your injury/illness and the

burden is now on your Employer to prove that the Duties did not cause your injury/illness

Chief Executive Officer (formerly known as the General Manager—G.M.) appointed by the Board as executive manager of ACERA

Completed Application an Application for Disability Retirement reviewed and determined by the D.U. to include all necessary attachments and information to support your claim

Confirming Letter letter from the D.U. confirming your Application is received and has been accepted as complete; or a letter accompanying your returned Application because it is incomplete and further information is required to process your claim.

Contested a decision and/or recommendation objected to or opposed by a Party

Continuing Disability Questionnaire Form may be required if you are under 55-years-old and granted a disability retirement

Continuation of Disability Retirement Proceedings After Death of Member Form used by spouse/domestic partner or minor who may be entitled to pursue a deceased Member's pending disability benefit by completing this form.

County Counsel Office of the County Counsel of Alameda County that represents and advises the County in legal matters

Days calendar days are every day on the calendar, Sunday through Saturday. When "days" is intended to refer only to business days, Monday through Friday, it is noted.

Delayed Disability Application Affidavit submitted when applying for disability retirement more than four months after discontinuation of service to address whether disability has been continuous since the last date of service

Designation of Legal Representation Form filed with the Disability Unit (D.U.) providing notice of your legal representation

Disability Counseling Worksheet used by staff and signed by you, during your counseling session, to ensure all critical elements of the Application process have been reviewed with you.

Disability Packet all relevant documentation received during the Application process, including the Completed Application

Disability Unit (D.U.) a team of ACERA employees who handle the processing of disability matters. The D.U. includes Disability Retirement Specialists and the Disability Manager.

Duties the usual Duties of your position that you must be able to perform, with or without reasonable accommodations

Earlier Effective Date the disability retirement allowance begins the date your Application is deemed complete by the D.U. or the date after the last date you received regular compensation, whichever is later. You may request that your allowance start at an earlier date by completing section 5 of the Application for Disability Retirement Form and attaching documentation showing 1) when you left service, 2) an inability to ascertain the permanency of your incapacity, and 3) that you have been continuously disabled since you left service. This is the date after the last date you received regular compensation.

Effective Date the disability retirement allowance begins the date your Application is deemed complete by the D.U. or the date after the last date you received regular compensation, whichever is later, unless an Earlier Effective Date is granted

Employer the public agency, including the County of Alameda or Participating Employer, by which the Member is employed at the time or immediately before, the Application is submitted to ACERA

Essential Functions Job Analysis (EFJA) Form an Employer's summary of the Duties and requirements of any particular job, including mental and physical demands. This document is generally shared with the Medical Advisor and is used to determine which job(s) within a department, if any, you are capable of performing.

He, him, his, Chairman used for convenience and intended that each gender is given exactly equal respect and treatment throughout

Hearing the presentation of evidence to a Hearing Officer (H.O.) toward the development of H.O. Proposed Findings of Fact and Recommended Decisions for consideration of your Application by the Board

Hearing Officer (H.O.) conducts a hearing when the Board Medical Advisor's Recommendation on an Application is disputed and a hearing is requested. Hearing Officers are obtained for the panel from an independent arbitration system, such as the American Arbitration Association. An H.O. must be a current member of the State Bar of California whose name is contained on the approved Hearing Officer panel.

Independent Medical Examination (I.M.E.) you may be required by your Employer, the Board of Retirement, or the M.A. to submit to a medical exam by a physician, psychologist, or specialist in the medical condition identified in your Completed Application at no cost to you.

Medical Advisor (M.A.) the physician(s) advising the Board on disability claim medical matters

Medical Provider Statement a brief (4 questions), but mandatory, written opinion from your physician addressing whether you are permanently incapacitated from performing your usual Duties. This must be filed with your Application.

Minor an unmarried/unregistered person either 1) under age 18 or 2) under age 22 and regularly enrolled as a full-time student in an accredited school

Non-Service Connected Disability (NSCD) a type of disability retirement awarded if you are found permanently incapacitated from performing your usual Duties from a cause unrelated to your employment. You must have completed five (5) years of service and must not have waived retirement in respect to your particular incapacity or aggravation.

Notice of Hearing Officer communication used to state the next assigned Hearing Officer (H.O.) assigned to your case; H.O.s are assigned on a rotating basis.

Notice of Original Hearing Date communication used to state the time and place of your Hearing

Participating Employers employers with staff who are ACERA Members: Alameda County, Alameda County Children and Families, Alameda County Housing Authority, Alameda County Medical Center, Alameda County Office of Education, Livermore Area Parks and Recreation, and Superior Court of California.

Party the Member who is the subject of the Application, the person preparing and submitting the Application (Applicant, and the Employer)

Prehearing Statement Form you must complete and serve this form on the H.O. and all other Parties. It must contain 1. a statement of contested issues and party position, 2. witness information and their testimony, and 3. documentary evidence not included in the Disability Packet.

Proposed Findings of Fact and Recommended Decisions the Hearing Officer's report on your disability Application summarizing the evidence, findings of fact, and making a recommendation to the Board

Reciprocal Systems retirement systems that have established reciprocity with ACERA for providing retirement benefits. Reciprocal Systems are the CERL '37 Counties, the Public Employees' Retirement Systems ("PERS"), the State Teachers' Retirement System, the Judges' Retirement System, and retirement systems of any other public agency of the State of California that have established reciprocity with PERS by meeting all necessary statutory requirements.

Report and Recommendation M.A. written analysis recommending the granting or denial your Application

Request for Hearing Form signed by you to request a Hearing before a Hearing Officer

Service Connected Disability (SCD) a type of disability retirement awarded if you are found permanently incapacitated from performing your usual Duties. The incapacity must result from an injury/illness

arising out of and in the course of your employment, and such employment must have contributed substantially to your incapacity.

Service File contains your retirement records, such as, enrollment questionnaire, beneficiary information, birth certification, etc.

Supplemental Disability Allowance a monthly allowance paid in lieu of a full disability allowance, if you have been granted a disability benefit and have accepted alternative County or ACERA Participating Employer work with lower pay. It is equal to the difference between your salary in the former position, for which you were found disabled, and the salary of the new position. It will not to exceed the amount of the full disability benefit.

Treating Physician Narrative Form an optional, but recommended, detailed (13 questions) written opinion from your physician addressing whether you are permanently incapacitated from performing your usual Duties. This must be filed with your Application.

Uncontested a decision and/or recommendation that is not objected to or opposed. Uncontested does not necessarily mean all Parties are in agreement with the decision and/or recommendation. The Board retains the discretion to grant or deny an uncontested recommendation.

Withdrawal with Prejudice precludes you from filing a future Application based on the same disability or injury/illness. An application withdrawn after an H.O. is assigned is deemed withdrawn with prejudice.

Withdrawal without Prejudice an application withdrawn at anytime prior to an assignment of an H.O. is treated as though it was never submitted. A subsequent Application, including resubmission of the withdrawn Application, is considered a new Application and must meet all requirements, including timely filing requirements.



Internal Resources

LOCATION

ACERA Benefits Department
Disability Unit
475 14th Street, Suite 1000
Oakland, CA 94612-1900
Hours: Monday through Friday, 8:00 a.m. to 5:00 p.m.
www.acera.org

Staff

Jenni Mimi-Hui, Assistant Benefits Manager 510.628.3007
Virginia Garrido, Retirement Specialist 510.628.3043
Mai Cao, Retirement Specialist 510.628.3009

Planning Workshops

Pre-retirement Planning and Mid-career Planning Seminars are held monthly. To attend, please call to reserve your seat. Space is limited.
510.628.3000 or 800.838.1932

ACERA Active and Deferred Member Handbook

This Handbook is available to all members and summarizes all benefits provided by ACERA.

External Resources

These resources may be helpful in pursuing your claim outside of or simultaneous with ACERA's disability Application process.

COUNTY OF ALAMEDA

OFFICE OF COUNTY COUNSEL

1221 Oak Street, Room 450

Oakland, CA 94612

510.272.6700

BETH VAN ARKEL,

WORKERS' COMPENSATION ADMINISTRATOR

COUNTY ADMINISTRATORS OFFICE,

RISK MANAGEMENT UNIT

ALAMEDA COUNTY WORKERS'

COMPENSATION PROGRAM

125 - 12th Street, 3rd Floor

Oakland, CA 94607

510.272.6045 voice

510.272.6815 fax

EMPLOYMENT DEVELOPMENT DEPARTMENT

800 CAPITOL MALL, MIC 83

SACRAMENTO, CA 95814

1.800.480.3287

SOCIAL SECURITY ADMINISTRATION

1.800.772.1213

STATE DISABILITY INSURANCE

1.800.480.3287

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF WORKERS' COMPENSATION

1.800.736.7401

We hope this material has been helpful. Please keep in mind that this Handbook simply and accurately provides general information about disability application procedures. It is designed to be accurate, as of the date of its issuance, November 2007.

ACERA is governed by the County Employees Retirement Law of 1937 (Government Code Section 31450 et. seq.) as adopted and implemented by the ACERA Board of Retirement. Disability and retirement laws are complex. No statement in this Handbook is a legally binding interpretation, enlargement, or amendment of the provisions in the CERL or ACERA's policies. If conflict arises between these procedures and the CERL, the decision will be based on the CERL and other governing law.

**ALAMEDA COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**

Voice: 510.628.3000 or 800.838.1932
Fax: 510.268.9574, www.acera.org