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San Bernardino County Employees' Retirement Association

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Area	Benefits
Applicability	SBCERA systemwide

Disability Retirement Effective Date

Policy No. 036

I. PURPOSE

The County Employees' Retirement Law of 1937 governs the Board's determination of the effective date of a member's awarded disability retirement benefit.

Pursuant to Government Code section 31724, the effective date is generally the date of application. The effective date will change if one or more of the following occurs after the date of application:

1. The day following the last day for which the member received regular compensation if the member received regular compensation, including vacation, sick, and other personal time off, after the date of application;
2. The expiration of any leave of absence with compensation¹ under provisions of Division 4 of the Labor Code, specifically compensation received as part of the employer's pay to the member under Labor Code section 4850; or
3. On the occasion the member consents to retirement prior to the expiration of leave of absence with compensation.

Section 31724 also provides protection to members whose ability to file a timely application was hindered by factors beyond their control, ensuring the member is not unjustly denied benefits due to procedural delays, specifically an administrative oversight or the member's inability to determine the permanence of their condition. This policy outlines the definitions, examples, and procedures for the Board to evaluate such circumstances to ensure fair outcomes when applications are delayed.

II. EXCEPTIONS TO THE GENERAL RULE RE

EFFECTIVE DATE

Government Code section 31724 requires that an application be deemed as filed prior to the last day of regular compensation when it has been demonstrated to the satisfaction of the Board that the filing of the application was delayed by an:

- Administrative oversight; or
- Inability to ascertain the permanency of the member's incapacity until after the date following the day for which member last received regular compensation.

A. Administrative Oversight

Administrative oversight refers to an error, omission, or failure in administrative processes that directly contributes to a delay in filing the disability retirement application. This can occur due to mistakes or inattention by an SBCERA Participating Employer, SBCERA, or other relevant administrative personnel of an SBCERA Participating Employer and the member reasonably relies on SBCERA or Employer to provide accurate guidance on the paperwork in a timely manner, and an administrative lapse prevents a timely filing.

Events that shall be an administrative oversight:

1. **Failure to Notify** – An SBCERA Participating Employer fails to inform the member of their right to file for a disability retirement after a disabling injury. (*Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453.)
2. **Lost or Misfiled Paperwork** – SBCERA misplaces the member's submitted application or fails to timely process the member's disability application or supporting documents, causing delay.
3. **Incorrect Information Provided** – A member is given inaccurate instructions about the application process by SBCERA or Participating Employer leading the member to miss the deadline to timely file an application.
4. **Miscommunication** – The member is provided incorrect information by SBCERA or Participating Employer about application deadlines or eligibility requirements
5. **Delayed Administrative Action** – SBCERA fails to process necessary forms or respond to information requests within a reasonable timeframe, preventing the member from timely completing their application.

B. Inability to Ascertain Permanency of Incapacity

Inability to ascertain the permanency of incapacity refers to circumstances where, despite ongoing medical treatment or evaluation, it was not reasonably clear that the member's condition was permanent until after the member stopped receiving regular compensation. This includes situations where the permanence of the incapacity only became clear through ongoing treatment, evolving medical conditions, or delayed medical evaluations.

Events that shall be considered an inability to ascertain permanency of incapacity:

1. **Prolonged Medical Treatment without Clear Prognosis** – A member undergoes extensive

medical treatment or rehabilitation, and physicians are unable to determine whether the condition is permanent until after the last day of receiving regular compensation.

2. **Progressive or Degenerative Condition** – The member's condition progressively worsens, and the permanent nature of the disability only becomes apparent after a series of evaluations or failed treatments, or the condition fails to improve and/or deteriorates despite medical intervention.
3. **Delayed Diagnosis** – The member is referred to multiple specialists, and the confirmation of permanent incapacity only comes after exhaustive medical testing or procedures that occur after the last day of receiving regular compensation.
4. **Mental or Cognitive impairments** – in cases regarding psychiatric claims, where a member's mental health condition or cognitive decline, might take time for doctors to conclusively establish that the incapacity is irreversible and permanent.

III. BOARD DELEGATION OF AUTHORITY TO THE CHIEF EXECUTIVE OFFICER

The Board delegates authority to the Chief Executive Officer (CEO) to review and assess cases where the information by the member is unclear in determining whether sufficient facts exist to support an earlier effective date for disability retirement. In such instances, the CEO may:

- A. **Request Additional Information** – Direct staff to obtain further documentation or clarification from the member, employer, or medical providers to better understand the circumstances of the delay and/or extend the time for the Applicant to submit additional information to substantiate their request for an earlier effective date.
- B. **Determination** – Assess whether the delay in filing their disability retirement application was due to an administrative oversight or the member's inability to determine the permanency of their incapacity until after receiving their final regular compensation.
- C. **Referral to the Board** – If the CEO determines the facts remain inconclusive, or the evidence does not support an earlier effective date, and warrants further board consideration, the case may be referred to the Board for final determination in closed session as part of the staff's recommendation on the Application.

This delegation of authority ensures that cases are processed efficiently while maintaining the Board's oversight in complex or exceptional situations.

1. Compensation as defined by Government Code section 31460. Temporary total disability (TTD) payments are not compensation under Government Code section 31460, and therefore are not considered when determining the effective date of a disability retirement benefit.

Approval Signatures

Step Description

Approver

Date

Policy Owner & Chief Counsel
Review

Barbara Hannah: Chief Counsel

Pending

Applicability

SBCERA, SBCERA Internal