



Disability Retirement Presumptions (2024)

Summary

The presentation will cover the disability retirement presumptions in the County Employees' Retirement Law (CERL) specifically the requirements, eligibility, and extension to file after termination of service.

Each presumption statute has a section as to whom the presumption is applicable based on the job classifications in the Labor Code. Various Labor Code sections are referenced so it is important to refer to the specific Labor Code when determining eligibility for the respective presumptions and if such positions are covered by SBCERA.



San Bernardino County Employees'
Retirement Association

Permanent Incapacity

Permanent Incapacity

- Permanent incapacity is the inability of a member to perform their usual job duties.
- A presumption is NOT a substitute for permanent incapacity.
- The member has the burden to prove the member is incapacitated from the performance of usual job duties and the incapacity is permanent.
- Only when permanent incapacity is established, a presumption may apply.

Proving Injury in Retirement Cases Non-Presumption & Presumption Cases

Service Connection in Non-Presumption Cases

- After proving permanent incapacity, service connection will be established only if the member's incapacity arose out of and in the course of the member's employment, and such employment substantially contributed to the incapacity. (Gov. Code sec. 31720.)
- Substantial contribution: There must be a real and measurable connection between the employment and the incapacity. (*Bowen v. Board of Retirement* (1986) 42 Cal.3d 572.)

Burden of Proof in Non-Presumption Cases

Non-Presumption Cases

- Causation is established by a medical opinion from a physician.
- Physician describes the mechanism by which the job was a casual factor in the incapacity.
- The Board weighs the evidence then determines whether the member has met his/her burden of proof.

What is a Presumption?

What is a Presumption?

A presumption is an assumption of fact the law requires to be drawn from one or more other facts already established in the action. (Evidence Code section 600)

What is a Presumption? (cont.)

A presumption removes the burden to prove service connection from the member.

The burden shifts to the retirement system to rebut the presumption if there is evidence that the incapacity did not or could not have arisen from employment.

Burden of Proof in Presumption Cases

Presumption Cases:

- In a presumption case, the applicant is relieved of the burden of proving that the injury or illness arose out of and in the course of employment, and that the employment substantially contributed to the incapacity.
- Once certain prerequisite facts are established, the connection between the incapacity and employment is presumed to exist.

Types

1. Rebuttable Presumption

Establishes the existence of a fact unless evidence is introduced which would support a finding that the presumed fact does not exist.

(Evidence Code section 604 and 606)

2. Conclusive Presumption

A finding of fact that the law requires to be made once prerequisite facts are established, even if there is evidence that would establish that the presumed fact is not true.

(Evidence Code section 630 *et seq.*)

Is a Presumption Rebuttable?

Rebutting a Presumption

Rebutting a presumption is challenging.

Example:

Cancer is the only presumption that has been successfully rebutted by a retirement system. The retirement system must prove:

1. The cancer is not associated with any carcinogenic exposures the member had at work or the latency period for the cancer does not match the member's employment history, or
2. Carcinogen is not reasonably linked to the primary site of the cancer.

Rebutting a Presumption (cont.)

There is no way to rebut the heart presumption. Incapacity arising from heart trouble “shall in no case be attributed to any disease existing prior to” development or manifestation of the heart trouble. (Government Code section 31720.5 (a).)

There are no cases attempting to rebut the new presumptions passed in AB 1020 (2023).

Heart Presumption

Heart Presumption

➤ Requirements:

- Permanently incapacitated.
- The heart has been placed in a troubled condition. (“...any affliction to, or additional exertion of, the heart caused directly by that organ or the system to which it belongs, or to it through interaction with the other afflicted areas of the body...” *Muznik v WCAB* (1975) 51 Cal.App.3d 622, 635.)
- The disease must manifest itself as required.

➤ Who is eligible?

- Safety Member
- Five years of service.
- Engaged in active fire suppression or active law enforcement even if not a safety member (*Ames v. Board of Retirement* (1983) 147 Cal.App.3d 906, 916.)

Heart Presumption (con't)

➤ Rebuttable?

- System may not rebut with evidence to the contrary.
- Preexisting conditions cannot be used to rebut presumption.

➤ Exceptions?

- Nonindustrial exertion *may* rebut.
- Concurrent employment *may* rebut.
- *Pellerin* found that the presumption could be rebutted. (*Pellerin v. Kern CERA* (2006) 145 Cal.App.4th 1099.)

Cancer Presumption

Cancer Presumption

➤ Requirements:

- Permanently incapacitated.
- Exposed to a known carcinogen while performing usual duties.
- Known carcinogen – Those carcinogenic agents recognized by the International Agency for Research on Cancer or the Director of the Department of Industrial Relations.
- Develops cancer while in service (up to five years after last day worked).

➤ Who is eligible?

- Safety Member
- Engaged in active fire suppression or active law enforcement.
- Five years of service.

Cancer Presumption (con't)

➤ Rebuttable?

- System may rebut with evidence to the contrary by establishing that the carcinogen is not reasonably linked to the primary site of the cancer; or
- The period between exposure and the manifestation is not within the cancer's latency period as established by the medical evidence. (*Sameyah v. LACERA* (2010) 190 Cal.App.4th 199.)

Blood Borne Infection Disease Presumption

Blood Borne Infectious Disease Presumption

➤ Requirements:

- Permanently incapacitated.
- Exposed to pathogenic microorganisms that are present in human blood that can cause disease
- Blood borne pathogen – (hepatitis B and C virus or human immunodeficiency virus (HIV))
- Develops a blood borne infectious disease or MRSA

➤ Who is eligible?

- Safety Member
- Engaged in active fire suppression or active law enforcement.
- Probation Officer

Biochemical Exposure Presumption

Biochemical Exposure Presumption

➤ Requirements:

- Permanently incapacitated.
- Becomes ill or dies due to exposure to a biochemical substance.
- Biochemical substance is any biological or chemical agent that may be used as a weapon of mass destruction, including, but not limited to, any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent.
- - System may rebut with evidence to the contrary.

➤ Who is eligible?

- Peace Officer (as defined by Penal Code section 830.1- 830.5)
- Engaged in active fire suppression or active law enforcement.

Post Traumatic Stress Disorder

Post Traumatic Stress Disorder

➤ Requirements:

- Permanently incapacitated.
- Develops and is diagnosed with PTSD based on the recent edition of Diagnostic Statistical Manual Disorders (DSM).
- System may rebut with evidence to the contrary.

➤ Who is Eligible?

- Active law enforcement
- Active firefighters
- Probation Officers

Lower Back Impairment

Lower Back Impairment

➤ Requirements:

- Permanently incapacitated.
- Injury to the lower back.
- Employed 5 years on a full-time basis.
- Required to wear a duty belt as a condition of employment.
- System may rebut with evidence to the contrary.

➤ Who is Eligible?

- Active law enforcement.

Tuberculosis

Tuberculosis

➤ **Requirements:**

- Permanently incapacitated.
- Diagnosed with tuberculosis while a member in service
- System may rebut with evidence to the contrary

➤ **Who is Eligible?**

- Job classification listed in Labor Code sec. 3212.6
 - Active Law Enforcement
 - District Attorney Investigator
 - Probation Correctional Officer

Meningitis

Meningitis

➤ Requirements:

- Permanently incapacitated.
- Develops meningitis during a period while in service
- System may rebut with evidence to the contrary

➤ Who is Eligible?

- Job Classification listed in Labor Code sec. 3212.9
 - Active Law Enforcement
 - Active firefighting
 - District Attorney Investigator
 - Probation Correctional Officer

Hernia or Pneumonia

Hernia or Pneumonia

➤ Requirements:

- Permanently incapacitated.
- Develops a hernia or pneumonia.
- System may rebut with evidence to the contrary.

➤ Who is Eligible?

- Job classification listed in Labor Code sec. 3212
 - Active Law Enforcement
 - Active Firefighting
 - District Attorney Investigator

Lyme Disease

Lyme Disease

➤ Requirements:

- Permanently Incapacitated.
- Develops Lyme disease.
- System may rebut with evidence to the contrary.

➤ Who is Eligible?

Job classification listed in Labor Code section 3212.12: (Attorney General and investigators of the Dept of Justice, Dept. of Fish and Game, employees of parks and recreations, Dept. of Forestry and Fire Protection and Conservationist with California Conservation Corps (Also see Penal Code sec. 830.1 (b) and 830.2 (e), (f), and (g).)

SBCERA – Not applicable as none of SBCERA’s participating employers have job classifications listed above.

Skin Cancer

Skin Cancer

➤ Requirements:

- Permanently incapacitated.
- Develops skin cancer.
- Employed for 3 consecutive months in a calendar year.
- System may rebut with evidence to the contrary.

➤ Who is Eligible?

Job classification listed in Labor Code section 3212.11 (Lifeguards employed by city, county, district and active lifeguards of the Dept. of Parks and Recreation)

SBCERA – Not applicable as none of SBCERA’s participating employers have job classifications listed above.

COVID-19 Presumption

Gov. Code sec. 7523 - 7523.2

COVID-19 Presumption

Government Code section 7523 – 7523.2

* repealed by AB 551 (2022)

* Effective January 1, 2024, COVID-19 Presumption is no longer law.

Member may still allege service connection so long as s/he can prove that the COVID-19 injury or illness was a result of their employment (real and measurable).