



BOARD OF RETIREMENT

Staff Report

File #: 19-1156

Agenda Date: 12/3/2020

Agenda #: 2.

FROM: Barbara Hannah, Chief Counsel

SUBJECT: 2021 Medical Advisor Panel and Hearing Officer Panel

RECOMMENDATION:

Recommend that the Board approve the 2021 Medical Advisor Panel and Hearing Officer Panel; recommend that the Board adjust the hearing officer's hourly rate to \$200 per hour.

BACKGROUND:

Annually, the Board reviews, considers, and determines the members of the Medical Advisor and Hearing Officer panels for the upcoming calendar year. On January 9, 2020, the Board approved both the current Medical Advisor and Hearing Officer panels.

Medical Advisors:

Medical Advisors (MA) are essential to the overall process review of disability retirement cases and lead medical advisors to the Board of Retirement. The MA's recommendation is crucial to the ultimate determination made by the Board on granting or denying a member's disability retirement benefit. Therefore, it is important to have a panel of MAs that will give accurate advice to the Board based upon review and analysis of the medical evidence. At the beginning of 2020, SBCERA approved three doctors to its MA panel, one of which is no longer serving on the panel. Consequently, the Board, at its August 6, 2020, added Dr. Jeffrey Wainstein to the panel. Beginning in 2018, staff started the practice of evaluating the performance of each medical advisor in the following areas:

- Knowledge of the Issues of Disability Retirement;
- Accuracy of the Medical Advisor's Recommendation; and
- The ability to receive and return all assigned files within the required timeframe.

For this evaluation period, staff evaluated Drs. Mohr and Naqvi. Staff agreed that both are knowledgeable on medical issues applicable to disability retirement. Both communicate well with staff and provide clear explanations of medical conditions. As of the date of the evaluations, Dr. Wainstein had yet to complete a review of a case. However, the case Dr. Wainstein completed for the October Board, staff agreed that his report was well written, clear, and concise. Given the ratings and feedback provided by staff, staff recommends approval of Drs. Mohr, Naqvi, and Wainstein to the 2021 Medical Advisor Panel.

Hearing Officers:

Similar to the role of the medical advisors, a hearing officer is also essential to the overall disability retirement process, and more specifically, an administrative review of the Board's initial determination of a member's application. The hearing officer is an impartial adjudicator who weighs the evidence and provides a recommendation to the Board. Currently, there are 10 hearing officers on the panel,

who are licensed attorneys. For the year 2020, there have been no issues with any of the hearing officers or their respective reports. Therefore, staff recommends approving the 2021 Hearing Officer Panel listed in Exhibit B.

Hourly Rate of Pay for Hearing Officers:

Regarding the hourly rate paid to a hearing officer, staff is requesting an adjustment of the rate from \$150 to \$200 per hour. It has been more than 10 years since SBCERA has adjusted the fees for a hearing officer adjudicating administrative appeals. In addition, staff polled other CERL systems regarding the hourly rate paid to its hearing officers. Between six (6) of the large CERL systems, the hourly rate for hearing officers ranged from \$190 to \$200 per hour, and an outlier of \$318 due to a particular CERL system contracting with the Office of Administrative Hearings. Essentially, an adjustment of the hourly rate to \$200 per hour is in line with other similarly situated CERL systems.

Moreover, an adjustment of the hourly rate is supported due to the change and expansion of a hearing officer's jurisdiction to adjudicate cases. On November 7, 2019, the Board approved updates to the Procedures for Disability Retirement and Formal Hearings (2019), which added new issues to the administrative review, such as a review where it was determined the applicant was ineligible to apply for disability retirement because of a termination of cause or resignation in lieu of termination. In addition, on November 7, 2019, the Board also approved a revision to Benefits Policy No. 025 - Benefits Appeal, expanding the jurisdiction of a hearing officer to hear non-disability retirement benefit appeals.

Along with this expansion of jurisdiction, the hearing officers are tasked with adjudicating appeals where a member is appealing the recalculation of his or her retirement benefit due to the Board's implementation of the California Supreme Court ruling in Alameda County Deputy Sheriffs' Association et al. v. Alameda County Employees' Retirement Association, et al.

Based on the above, staff recommends the Administrative Committee recommend adjusting each hearing officer's hourly rate to \$200 per hour.

Upon recommendation by the Administrative Committee and approval by the Board, staff will prepare contract amendments for individuals to serve on the Medical Advisor Panel and Hearing Officer Panel for the 2021 calendar year.

Staff continues to research adding additional Medical Advisors to the panel.

BUDGET IMPACT:

Costs for this item are included in the current year administrative budget.

STRATEGIC PLANNING GOAL/OBJECTIVE:

Operational Excellence & Efficiency

STAFF CONTACT:

Barbara Hannah
David Lantzer

ATTACHMENTS:

Exhibit A: Confidential Memo - Approval of Medical Advisor Panel

Exhibit B: [Proposed] 2021 Medical Advisor and Hearing Officer Panels