

# AGENDA

## THE MEETING OF THE

### DISABILITY PROCEDURES AND SERVICES COMMITTEE

and

### BOARD OF RETIREMENT\*

## LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 NORTH LAKE AVENUE, SUITE 810

PASADENA, CA 91101

9:00 A.M., WEDNESDAY, August 2, 2017 \*\*

*The Committee may take action on any item on the agenda,  
and agenda items may be taken out of order.*

#### COMMITTEE MEMBERS:

Vivian H. Gray, Chair  
Marvin Adams, Vice Chair  
Alan Bernstein  
Ronald Okum  
David Muir, Alternate

- I. APPROVAL OF THE MINUTES
  - A. Approval of the minutes of the regular meeting of July 5, 2017
- II. PUBLIC COMMENT
- III. ACTION ITEMS
  - A. Late-Filed Applications - Government Code Section 31722
- IV. FOR INFORMATION
  - A. Distinguishing Normal Degenerative Changes Vs Cumulative Trauma Injuries in Patients with Arduous Vs Sedentary Jobs – Presentation as submitted by Mark Ganjianpour, M.D.
- V. REPORT ON STAFF ACTION ITEMS
- VI. GOOD OF THE ORDER

(For information purposes only)

## VII. ADJOURNMENT

**\*The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

**\*\*Although the meeting is scheduled for 9:00 a.m., it can start anytime thereafter, depending on the length of the Board of Retirement meeting. Please be on call.**

**Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.**

**Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to members of the Committee less than 72 hours prior to the meeting, will be available for public inspection at the time they are distributed to a majority of the Committee, at LACERA's offices at 300 North Lake Avenue, suite 820, Pasadena, California during normal business hours from 9:00 a.m. to 5:00 p.m. Monday through Friday.**

**Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling the Disability Retirement Services Division at 626-564-2419 from 7:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence.**

MINUTES OF THE MEETING OF THE  
DISABILITY PROCEDURES AND SERVICES COMMITTEE  
and  
Board of Retirement\*\*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION  
GATEWAY PLAZA - 300 N. LAKE AVENUE, SUITE 810, PASADENA, CA 91101

Wednesday, July 5, 2017 10:25 A.M. – 10:38 A.M.

**COMMITTEE MEMBERS**

PRESENT: Vivian H. Gray, Chair  
Marvin Adams, Vice Chair  
Alan Bernstein  
Ronald Okum

ABSENT: David Muir, Alternate

**ALSO ATTENDING:**

BOARD MEMBERS AT LARGE

Anthony Bravo  
Shawn Kehoe

STAFF, ADVISORS, PARTICIPANTS

JJ Popowich  
Steven Rice  
Vincent Lim  
Eugenia Der  
Mike Herrera  
Allison E. Barrett  
Frank Boyd  
Angie Guererro  
Maria Muro  
Michelle Yanes

Ricki Contreras  
Vickie Neely  
Anna Kwan  
Robert Hill  
Kerri Wilson  
Mario Garrido  
Marco Legaspi  
Marilu Bretado  
Thomas Wicke  
Hernan Barrientos

Ricardo Salinas  
Maria Silva  
Jason Waller  
Tamara Caldwell  
Ruby Minjares  
Shamila Freeman  
Justin Stewart  
Danny Hang  
Russell IUrina  
Darren Huey

ATTORNEYS  
Thomas J. Wicke

GUEST SPEAKER  
None

The meeting was called to order by Chair Gray at 10:25 a.m.

I. APPROVAL OF THE MINUTES

A. Approval of minutes of the regular meeting of June 1, 2017

Mr. Okum made a motion, Mr. Adams seconded, to approve the minutes of the regular meeting of June 1, 2017. The motion passed unanimously.

II. PUBLIC COMMENT

III. ACTION ITEMS

IV. FOR INFORMATION

A. Policy Regarding Board-Ordered Second Medical Opinions

Ms. Contreras informed committee members that the Policy Regarding Board-Ordered Second Medical Opinions currently states that a case must be authorized by the board after staff has received at least one initial supplemental report from the panel physician.

Mr. Kelly asked if the quality assurance of panel physicians is an issue and is that why Board-Ordered Second Medical Opinions are being requested. Mr. Boyd replied by stating that if staff determines that there is additional information needed, a supplemental report will be requested. Furthermore, Ms. Contreras stated that the Panel Physicians Guidelines are going to be revised in the near future and will be brought to the Disability Procedures and Services Committee as an agenda item.

Ms. Contreras stated that there are some changes that staff have been working on for a few years to revise disability forms and these changes will also be brought to the committee and board for their input.

Ms. Gray suggested for staff to put together a brief informational video for new panel physicians and routinely suggest that the physicians watch this video at least yearly as a refresher course and Mr. Boyd and Ms. Contreras stated that this is a great idea and will be considered.

V. REPORT ON STAFF ACTION ITEMS

Committee members requested a copy of Board-Ordered Second Medical Opinions Policy to be distributed to the Board of Retirement members at the next Board of Retirement meeting.

VI. GOOD OF THE ORDER

Committee members stated that staff is doing a great job in putting reports together.

VII. ADJOURNMENT


With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 10:38 a.m.

\*\*The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.



July 20, 2017

To: Disability Procedures & Services Committee  
Vivian H. Gray, Chair  
Marvin Adams, Vice Chair  
Alan Bernstein  
Ronald Okum  
David Muir, Alternate

From: Francis J. Boyd,   
Senior Staff Counsel

For: August 2, 2017 Disability Procedures & Services Committee

Subject: **LATE-FILED APPLICATIONS  
GOVERNMENT CODE SECTION 31722**

### **RECOMMENDATION**

That the Disability Procedures & Services Committee recommend to the Board of Retirement that it terminate LACERA's Late-Filed Application Policy.

### **INTRODUCTION**

At the April 5, 2017 meeting, the Disability Procedures & Services Committee was presented with a March 23, 2017 memorandum recommending changes to the LACERA's Late-Filed Application Policy (applications filed more than four months after the member discontinued service) in order to comply with Government Code section 31722. A copy of the memorandum is attached. The following is a summary of the Committee's prior discussion and staff's revised recommendation to terminate the policy instead of revising it.

#### **1. "Discontinuance of Service" vs. "Went off Work."**

Section 31722 instructs that applications filed more than four months "from the date of discontinuance of service" require proof of continuous incapacity from the date of the discontinuance of service to the time of the application. The March 23, 2017 memorandum recommended that the following statements be removed from the policy because they refer to the time the member "left work" rather than the date of "discontinuance of service," the language used in Section 31722:

- A. A physician's statement from the member's treating physician who was treating the member at the time member went off work, stating the member has been continuously

incapacitated for duty from the time s/he left work to present,  
OR

- B. A physician's statement from a current treating physician, in the specialty for which the member asserts incapacity for duty, dated within 6 months of the date the application is filed, stating the member has been continuously incapacitated for duty from the time s/he left work to present AND a copy of the report, or off-work-slip, [sic] from the member's prior treating physician, which [sic] took the member off work.

The Committee agreed with this recommendation.

## **2. The Board of Retirement should weigh the evidence in regard to Section 31722**

The March 23, 2017 memorandum also recommended that the following statement be removed so that the Board could weigh the evidence, not staff, and determine whether or not the member met the requirements of Section 31722:

Applications which do not include the above information will be rejected by staff for processing

This would allow the member to have an opportunity to appeal the Board's decision and have a hearing in front of a referee. The Committee agreed with this recommendation.

## **3. "Discontinuance of Service" vs. "County Service"**

As noted above, Section 31722 instructs that applications filed more than four months "from the date of discontinuance of service" require proof of continuous incapacity from the date of the discontinuance of service to the time of the application. Historically, LACERA has used the definition of "county service" under Government Code section 31640 when evaluating the timeliness of applications under Section 31722.

Two decisions, *Weissman v. L.A. County Employees' Ret. Ass'n.*,<sup>1</sup> a 1989 case involving LACERA, and *Cameron v. Sacramento County Employees' Retirement System*<sup>2</sup> a 2016 case involving Sacramento County, held that "discontinuance of service" under Section 31722 occurs when a member ceases work for a salary from which deductions were made, not when the member ceases "county service" under Section 31640. Based on these two decisions, the March 23, 2017 memo

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<sup>1</sup> *Weissman v. L.A. County Employees' Ret. Ass'n.* (1989) 211 Cal.App.3d 40.

<sup>2</sup> *Cameron v. Sacramento County Employees' Retirement System* (2016) 4 Cal.App.5th 1266.

recommended that LACERA's late-filing policy add the following statement, defining "discontinuation of service" under Section 31722:

'Discontinuance of service' is defined as the date a member last received compensation from which deductions were contributed into a retirement system.

Concerned that some member's applications may be rejected because of the above definition, the Committee requested the Legal Office explore sponsoring legislation to clarify the term "discontinuance of service" as used in Section 31722. After discussing this matter, the Legal Office has determined that additional legislation is not necessary. Instead, the Legal Office agreed that it would be best to terminate our current late-filed application policy and evaluate late-filed applications under Government Code section 31722 on a case-by-case basis. The reasons for this revised staff recommendation are discussed below.

## DISCUSSION

As noted above, both the *Weissman* and *Cameron* decisions held that "discontinuance of service" under Section 31722 occurs when a member ceases work for a salary from which deductions are made, not when the member ceases "county service" under Section 31640. This definition is in line with the discussion of a member's last day of regular compensation contained in *Katosh v. Sonoma County Employees Retirement Assn.*,<sup>3</sup> *Porter v. Board of Retirement of Orange County Employees Retirement System*,<sup>4</sup> and *Astorga v. Retirement Bd. of Santa Barbara County Employees Retirement System*.<sup>5</sup> These decisions determined that members' earned benefits from which contributions were made constitute regular compensation under Section 31724.

After the April 5, 2017 committee meeting, I reached out to other CERL counties to find out how they interpret "discontinuance of service" under Section 31722.<sup>6</sup> There was a general consensus that the definition stated in *Weissman* and *Cameron* is correct. It was also the consensus that the issue raised in these decisions rarely occurs. Of the counties I spoke with, only one county, Sonoma, does not follow the *Weissman* and *Cameron* decisions and instead uses "county service" under Section 31640 when applying Section 31722.

My conversations with other counties prompted discussions where applying the *Weissman* and *Cameron* definition of "discontinuance of service" would pose certain

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<sup>3</sup> *Katosh v. Sonoma County Employees Retirement Assn.* (2008) 163 Cal.App.4<sup>th</sup> 56, 78.

<sup>4</sup> *Porter v. Board of Retirement of Orange County Employees Retirement System* (2013) 222 Cal.App.4<sup>th</sup> 335, 342-343.

<sup>5</sup> *Astorga v. Retirement Bd. of Santa Barbara County Employees Retirement System* (2016) 245 Cal.App.4<sup>th</sup> 386, 391.

<sup>6</sup> Marin, Contra Costa, San Mateo, Fresno, Kern, San Joaquin, Stanislaus, Merced, and Mendocino counties did not respond to my email request.



challenges. In some circumstances the member's service status can be a moving target. For example, if a member still in "county service" files a disability-retirement application more than four months after he or she ceases to work for a salary from which deductions are made, but still has unused leave balances, the member may elect to receive the unused leave balances—this would put them back into "service" and make their application timely.


These discussions and a rereading of the *Piscioneri*<sup>7</sup> case, which held that an application must be processed by a retirement association so that the applicant has an opportunity to develop the facts to support his or her contention of continuous incapacity, led me to rethink my previous recommendation and instead recommend that the Board terminate its current late-filed application policy. This would allow staff to evaluate late-filed applications on a case-by-case basis and counsel out-of-service members about using their leave balances.

It is important for the Committee to understand that most disability-retirement applications are filed while the member is still in service. And the vast majority of late-filed applicants who are found permanently incapacitated are able to meet the continuous incapacity requirement of Section 31722. Given the small number of late-filed applications and the potential that our current late-filed application policy could reject an application without affording due process, the Legal Office recommends that the Board of Retirement terminate LACERA's Late-Filed Application Policy. CERL and the case law provide adequate guidance for addressing the timeliness of applications, and staff cannot take any action on a late-filed application without Board approval, allowing the Board final authority to address the issue on a case-by-case basis. This allows more oversight by the Board than our current policy which authorizes staff to reject an application.

## CONCLUSION

As noted in the current Late-Filed Application Policy, the Board of Retirement has the fiduciary responsibility to administer the plan in accordance with County Employees Retirement Law of 1937. As demonstrated above, LACERA's current late-filed application policy does not comply with Section 31722. I therefore recommend that the Committee recommend to the Board of Retirement that it terminate LACERA's Late-Filed Application Policy.

Reviewed and approved.



Steven P. Rice, Chief Counsel

Attachment

c: Each Member, Board of Retirement

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<sup>7</sup> *Piscioneri v. City of Ontario* (2002) 95 Cal.App.4<sup>th</sup> 1037, 1044-1045.



March 23, 2017

To: Each Member,  
Disability Procedures & Services Committee

From: Francis J. Boyd,   
Senior Staff Counsel

Subject: **LATE-FILED APPLICATIONS**  
**GOVERNMENT CODE SECTION 31722**

### RECOMMENDATION

I recommend the Disability Procedures & Services Committee instruct staff to forward the proposed changes to LACERA's Late-Filed Application Policy, as described in this memorandum, to the Board of Retirement for final adoption.

### INTRODUCTION

A recent decision decided by the Third Appellate District of the Court of Appeal, *Cameron v. Sacramento County Employees' Retirement System*,<sup>1</sup> prompted me to review the Board's current policy for late-filed applications under Government Code section 31722,<sup>2</sup> and I have determined that our current policy requires some adjustment.

### DISCUSSION

#### I. "Discontinuance of Service" under Section 31722

Section 31722 provides:

The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, **from the date of discontinuance of service to the time of the application**, he or she is continuously physically or mentally incapacitated to perform his or her duties. (Emphasis added).

Section 31722 instructs that applications filed more than four months "**from the date of discontinuance of service**" require proof of continuous incapacity from the date of discontinuance of service to the time of the application.

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<sup>1</sup> *Cameron v. Sacramento County Employees' Retirement System* (2016) 4 Cal.App. 5<sup>th</sup> 1266.

<sup>2</sup> All references hereafter to section will be to the Government Code unless otherwise indicated.

Understanding the legal definition of "discontinuance of service" under the statute is critical in implementing a policy that comports with the law.

"County service" is defined under Section 31640 as follows:

'County service' means the employment of a person by a county, district, municipal court, or superior court.

"Service" under the CERL is defined in Section 31641 as follows:

'Service' means uninterrupted employment of any person appointed or elected for that period of time:

- (a) For which deductions are made from his earnable compensation from the county or district for such service while he is a member of the retirement association.
- (b) In military service for which the county or district or member is authorized by other provisions of this chapter to make, and does make contributions.
- (c) For which he receives credit for county service or for public service or for both pursuant to the provisions of this article.
- (d) Allowed for prior service.

In *Weissman v. Los Angeles County Employees' Retirement Assoc.*,<sup>3</sup> the Second District Court of Appeal addressed the phrase "discontinuance of service" in Section 31722 and stated:

The ordinary meaning given to the word 'discontinuance' is termination or cessation of activity. . . . [T]he statute defines 'service' in section 31641 as uninterrupted employment for a period of time for which deductions are made from the member's earnable compensation. It follows that 'discontinuance of service' plainly and ordinarily **means a member who has ceased to work for a salary from which deductions were made.**<sup>4</sup>

"Discontinuance of service," as used in Section 31722, was also at issue in the *Cameron* case. The facts in this case contained the following timeline:

**December 8, 2007:** Cameron stopped working.

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<sup>3</sup> *Weissman v. Los Angeles County Employees' Retirement Assoc.* (1989) 211 Cal.App. 3d. 40.

<sup>4</sup> *Id.* at p. 46, emphasis added.

**May 15, 2008:** He received the balance of his vacation pay and sick leave. Though he remained in county service, he never received compensation from which deductions were made after May 15, 2008.

**June 16, 2008:** The medical evidence established that Cameron was continuously incapacitated beginning June 16, 2008 up through June 22, 2009 when his incapacity became permanent.

**June 24, 2009:** He filed an application for a service-connected disability retirement alleging incapacity due to his neck. At the time he had not retired or resigned and was still in county service.

The court, relying on Section 31641 and the *Weissman* decision, held that "discontinuance of service" under Section 31722 occurs when a member last receives compensation from which deductions were contributed into the retirement system regardless of whether the member is still in county service. The court specifically stated:

'Service' as defined in the CERL is the 'period of time' '[f]or which deductions are made from [a member's] earnable compensation.' Thus, when this period discontinues, the relevant section 31722 alternative time limitations for submitting an application for disability retirement are triggered. These alternatives do not turn on whether the member remains an employee of the county. They turn on the point in time when the member stopped being compensated for his employment and consequently, stopped making contributions to the retirement system.<sup>5</sup>

The court concluded that Cameron's June 24, 2009 application was not timely under Section 31722 because it was filed more than a year after he discontinued service and because the evidence failed to establish that he was continuously incapacitated from May 15, 2008 through June 24, 2009.

## **II. LACERA's Current Late-Filed Application Policy**

On October 1, 2013, the Board of Retirement implemented a new policy for accepting late-filed applications for disability retirement. A copy of the policy is attached.

According to the policy, applications filed more than four months after service has ended are only accepted under the following circumstances:

- A. A physician's statement from the member's treating physician who was treating the member at the time member **went off work**,

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<sup>5</sup> *Cameron* at 1282.

stating the member has been continuously incapacitated for duty **from the time s/he left work** to present, OR

- B. A physician's statement from a current treating physician, in the specialty for which the member asserts incapacity for duty, dated within 6 months of the date the application is filed, stating the member has been continuously incapacitated for duty **from the time s/he left work to present AND a copy of the report, or off-work-slip**, [sic] from the member's prior treating physician, which [sic] took the member off work.

Applications which do not include the above information **will be rejected by staff** for processing. (Emphasis added.)

Historically, LACERA has considered members in service for purposes of measuring the timeliness of the application under Section 31722 if they are in still in "county service" under Section 31640.

### **III. LACERA's late-filed application process does not comply with Section 31722.**

Our current policy for late-filed applications, which requires applicants to prove continuous incapacity from the time the member "went off work" instead of the time the member "discontinued service," does not comply with Section 31722. Also, LACERA has incorrectly considered members in service under Section 31722 if they are still in county service at the time the application is filed.

#### **1. "Discontinuance of Service" vs. "Went off Work."**

As noted earlier in this memorandum, Section 31722 instructs that applications filed more than four months **"from the date of discontinuance of service"** require proof of continuous incapacity from the date of discontinuance of service to the time of the application. The *Weissman* and *Cameron* decisions confirm that the term "service" as used in the statute turns on the point in time when the member stopped being compensated for his employment and consequently, stopped making contributions to the retirement system, not the time the member went off work. Oftentimes, members continue to receive compensation, such as sick leave and vacation pay, after they stop working. Because deductions are made from this compensation, the member would be considered in service under Section 31722.

#### **2. Proof of a physician taking a member off work is not a prerequisite for a disability retirement under Section 31720.**

Option B of our policy applies when the physician completing the physician's statement was not treating the member when they stopped working. In addition to having this

doctor attest that the member was continuously incapacitated from the time they left work to the time the application is filed, the physician statement form must include "a copy of the report, or off-work-slip [sic], from the member's prior treating physician, which [sic] took the member off work."

Entitlement to a disability retirement is established when members meet their burden to prove by a preponderance of evidence that they are permanently incapacitated for the performance of their usual duties.<sup>6</sup> Neither Section 31720 nor any case requires that a member produce an off-work slip or a report from a doctor removing the member from work as prerequisite for a disability retirement. LACERA's policy therefore should not require a member to produce such a document to prove the threshold issue of whether or not an application is filed timely.

**3. The Board of Retirement should determine whether or not an application meets the requirements under Section 31722, not staff.**

LACERA's late-filed application policy states that applications which do not meet the criteria of either option A or B will be rejected by **staff** for processing. In doing so, members are denied an opportunity of having a hearing to prove their case.

The case of *Piscioneri v. City of Ontario*<sup>7</sup> is on point. *Piscioneri* involved application of Government Code section 21154, a statute of limitations applicable to employees in the Public Employees Retirement System, which is similar to Government Code section 31722. The Court of Appeal held that the city could not deny a hearing in reliance on the fact that the application was not filed while the applicant was in service or within four months of discontinuance of service and ignore the fact that the application would be timely if the applicant was, from the date of discontinuance of service, continuously physically or mentally incapacitated to perform his or her duties. The court stated that the applicant must be given an opportunity to develop the facts to support his contention of continuous incapacity. The court specifically stated:

But we agree with the trial court that the question of incapacity is a factual question to be determined at the administrative hearing. It would be premature to decide it as a legal issue before a hearing was held. . .<sup>8</sup>

Likewise, the question of whether or not a LACERA member was continuously incapacitated from the date service discontinued through the date the application was filed is a factual question which should be heard and decided by the Board of

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<sup>6</sup> Government Code section 31720; *Lindsay v. County of San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 160; *Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332; *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; *Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 694-696; *Schrier v. San Mateo County Employees' Retirement Association* (1983) 142 Cal.App.3d 957, 961-962.

<sup>7</sup> *Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037.

<sup>8</sup> *Id.* at 1044-1045.

Retirement. And the member should be afforded the right to appeal the Board's decision and have an administrative hearing.

#### **4. LACERA's Current Interpretation of Discontinuance of Service**

As explained above, "discontinuance of service" under Section 31722 occurs when a member last receives compensation from which deductions were contributed into the retirement system. It is not based on whether a member is in "county service" as defined under Section 31640. LACERA's practice of using "county service" for purposes of measuring the timeliness of the application under Section 31722 is contrary to law as interpreted by the courts in *Weissman* and *Cameron*.

#### **IV. Proposed changes to LACERA's Late-Filed Application Policy**

Attached to this memorandum is a copy of the current LACERA Policy Statement, Criteria for Acceptance of Late-Filed Applications for a Disability Retirement with my recommended redlined changes. These changes include:

- The following statement defining the phrase "discontinuance of service" under Section 31722 will be added:

**'Discontinuance of service' is defined as the date a member last received compensation from which deductions were contributed into the retirement system.**

- Options A and B under the "Statement of Policy" have been removed and have been replaced with the following statement:

LACERA will accept an application for a disability retirement benefit in accordance with Section 31722. Applications filed after the statutory deadline of 4 months after discontinuance of service will be accepted if accompanied by a completed Physician Statement for Disability and/or Addendum to the Physician Statement for Disability stating the member has been continuously incapacitated for duty from the date service was discontinued to the present.

- The following paragraph has been removed:

Applications which do not include the above information will be rejected by staff for processing.

## V. Implementation of Proposed Changes in Policy.

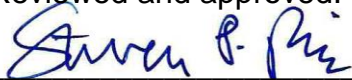
It is important for the committee to understand these proposed changes in policy will result in the following changes in Disability Retirement Service's (DRS) processing of late-filed applications:

- More applications will be subject to an analysis under Section 31722 by defining the discontinuance of service as date the member last received compensation from which deductions are contributed into the retirement system.
- Upon receipt of the application, DRS staff will be required to look at Member Service Workspace to confirm the date the member last received compensation from which deductions were contributed to LACERA to determine the date service was discontinued.
- The panel physician will need to know the date the member discontinued service and provide an opinion as to whether or not the evidence supports a finding that the member was continuously incapacitated from the date service discontinued to the date the application was filed.
- The Disability Retirement Evaluation Report will make a recommendation to the Board, based on the evidence obtained, to make a finding as to whether or not the application was timely filed.
- The Physician Statement and Addendum to the Physician Statement for Disability Retirement forms will need to be revised to reflect LACERA's changes in its late-filed application policy.

## CONCLUSION

As noted in the current Late-Filed Application policy, the Board of Retirement has the fiduciary responsibility to administer the plan in accordance with County Employees Retirement Law of 1937. As demonstrated above, LACERA's current late-filed application policy does not comply with Section 31722. I therefore recommend that the Committee instruct staff to forward the proposed changes to the Board of Retirement for final adoption.

Reviewed and approved.



Steven P. Rice, Chief Counsel

Attachment

c: Each Member, Board of Retirement



# Distinguishing Normal Degenerative Changes Vs Cumulative Trauma Injuries in Patients with Arduous vs Sedentary Jobs



*Mark Ganjianpour, MD*

*Board Certified Orthopedic Surgeon*

*LACERA*

*August 2, 2017*



# Approaches in Clinical Medicine Vs IME

- Clinical Medicine
  - History/Physical/Assessment/Treatment Plan
  - Patient and Physician are both striving to find the best treatment plan and return to pre-injury level of activities
- IME (Forensic Medicine)
  - History/Physical Exam/Medical Record Review/Assessment of Incapacities/Permanent vs transient Incapacities/Physical Requirements of Job duties/Contribution of job duties to the incapacities
    - Physician reliance on patient driven information
    - Thorough review of medical records is paramount to substantiate opinion



# Cumulative Trauma (CT) Injury

- Type of CT Injury varies by the job requirements and physical demands
- Always hard to determine causation in positions involving Light and even Moderate work
- Often existing CT Injury Claim through Workers Compensation System and either received or currently receiving treatment
- Patient perception is that CT claim is service connected
  - Treating physician statement of disability
  - Accepted workers compensation claim



# Workers Comp Vs Disability Retirement

- Threshold for acceptance as a workers comp vs Disability Retirement claim is different and need to be considered
  - Worker Compensation
    - Any Contribution (even 1%) from employment that can be attributed to the injury or illness is treatable and compensable by workers compensation
    - Presumptions in case of safety officers
  - Disability Retirement
    - The contribution from the employment must be “measurable and substantial”
    - No Presumption



# Physical Class I Sedentary

- This class is Limited to Sedentary Activity, with no lifting or Carrying and with little or no walking. Few positions are categorized as Class I, but in rare instances a job may be designated in this manner by the Administrator, OHS to permit employment or an applicant with a marked physical Limitation.



# Physical Class II- Light Work

- This Class includes administrative and clerical positions requiring light physical effort, which may include occasional light lifting to a 10lb limit, and some bending, stooping, or squatting. Considerable ambulation may be involved.



# Physical Class III- Moderate Work

- This Class requires that the incumbent stand or walk most of the time with bending, stopping, squatting, twisting, reaching, working on irregular surfaces, occasional lifting of objects weighing over 25lb, and frequent lifting of 10-25lb.



# Physical Class IV-Arduous Work

- This class involves frequent heavy lifting over 25lb, often combined with bending, twisting, or working above ground on irregular surfaces. It includes those positions which occasionally demand extraordinary physical activity such as those in safety positions.





# CT Claims

## (Light and Moderate Work)

- Cervical spine pain, spasms, and degeneration due to prolonged computer monitor use, phone use, etc.
- Shoulder Tendonitis and Rotator cuff tears due to frequent work at or above shoulder level (lifting files)
- Upper extremity tendonitis (Tennis Elbow/Medial Epicondylitis)
- Carpal Tunnel Syndrome due to keyboarding
- Lumbar spine pain, spasms, and degeneration due to prolonged sitting

## Arduous Work

- Spine (Cervical/Lumbar) discs, facet degeneration, spondylolesthesis, etc
- Arthritis of weight bearing joints (Hip/Knees/ Ankle/shoulder/ Base of the thumb)
- Shoulder/knee/ Ankle overuse, tendon and ligament tears
- Previous underlying dormant injury which is significantly exacerbated as the result of prolonged heavy arduous work
- Simple surgery (meniscectomy) that later leads to more serious disabling condition (arthritis)



# Substantial and Measurable Contribution in CT

- Age of the patient
  - Young vs Old patients and their presentation
- Number of service years
- Exact Job duties
  - Important and heavily relied upon when trying to ascertain if incapacities precludes return to work
  - Availability of alternative work to accommodate incapacities and compliance with restrictions



# Substantial and Measurable Contribution in CT

- Reliance on the medical records and documentation provided
  - Evaluation by initial treating physicians and documentation of the CT injury
  - Records from private insurance
    - Prior motor vehicle accidents
    - Prior surgeries or injuries before the date of employment at LA County
    - Sports related injuries
    - Existence of co morbid conditions such as polyarthralgia, inflammatory arthritis involving non-weight bearing joint, Diabetes (Carpal Tunnel Syndrome)



# Substantial and Measurable Contribution in CT

- Comparison of Diagnostic Testing will provide ample objective evidence to base an opinion
  - (Xrays/MRI/CT/EMG/etc)
    - Prior to employment or injury
    - Progression or lack of progression of the degenerative changes while the individual was doing usual and customary job duties
    - Progression of the degenerative changes after individual stops performing job duties



# Reliance on Neutral Physician Evaluators (AME/QME)

- More substantial and comprehensive reports
- Discussion of causation and apportionment is more details and opinion is often substantiated by medical evidence
- Medical records are reviewed and available for review by the IME
- AME/QME theoretically independent and conflict free

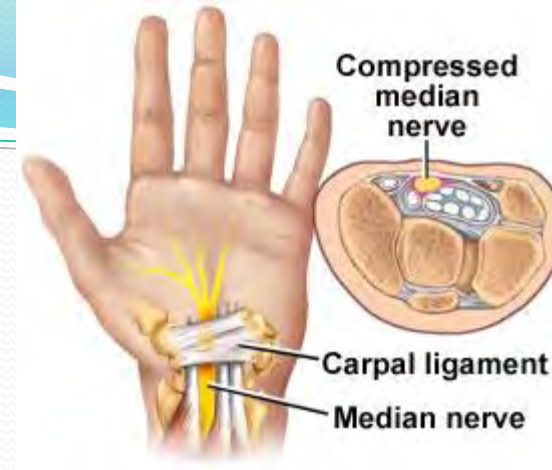


# None Medical Records

- Interactive Process Meeting notes
  - Discussion regarding available position and employees involvement in choosing the right position to conform to work restrictions
  - Willingness to provide alternative job to the employee
  - Willingness of the employee to work with the work restrictions and within capabilities
- Disciplinary actions



# Case I



- 57 yo Court Reporter (light work)
  - 26 years of service in the same position
  - Developed symptoms of CT and CMC joint Arthritis Bilateral hands 5 years ago
  - History of Diabetes
  - C5-C6 and C6-C7 Disc herniation and Spine degeneration
  - Treatment documented and no previous injuries or other concurrent employments noted
- 41 yo Court Reporter (light work)
  - 4 years of Service in the same position, but 10 years as data entry position prior to this job
  - 2 previous workers comp case involving Carpal Tunnel and prior to work at LAC
  - Dx of knee arthritis, shoulder arthritis, lumbar spine complaints and previous MRIs, and cervical spine surgery prior to employment with LAC

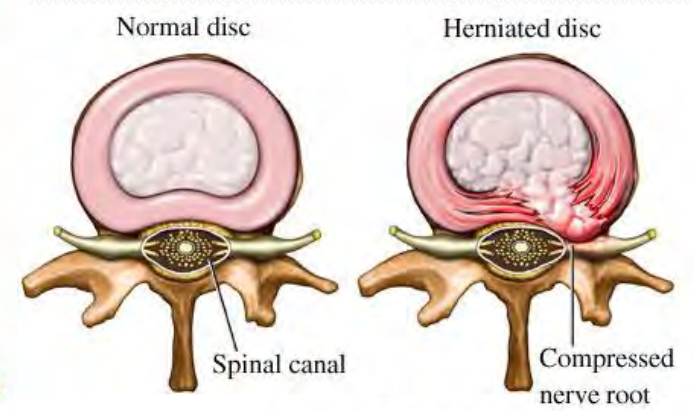




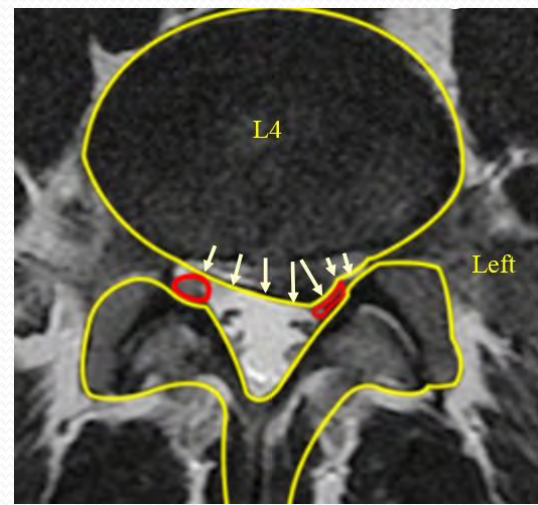
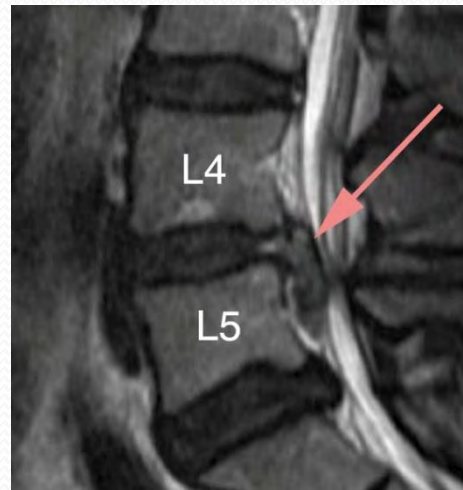
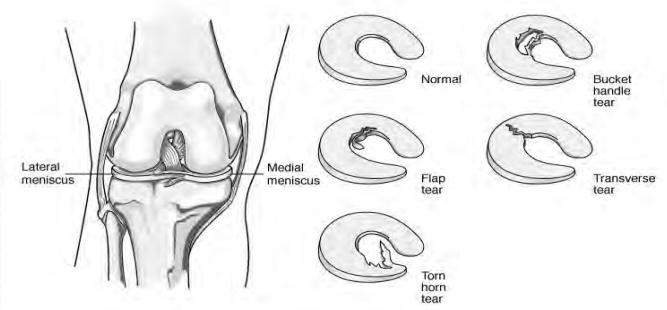
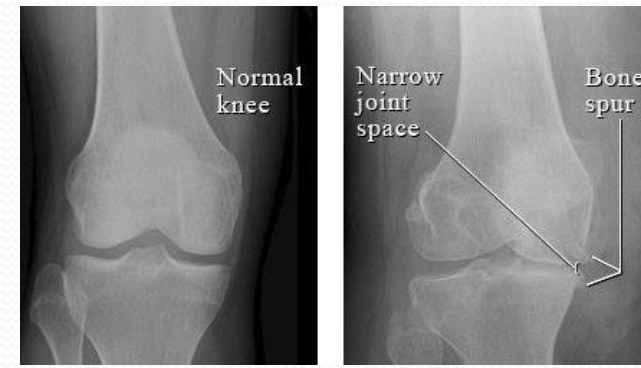
# Case II

- 62 year old Fire Captain (Arduous Work) Lumbar/knees
  - Worked for 30 years
  - No Documentation of significant Injury and minimal documentation of treatment over the years
  - Retired 4 years ago from LAC, but now Volunteers as a fire Captain in Kern County 7 days a month (Essentially same job)
  - Lumbar Xray shows some mild Facet Degeneration and Disc Space narrowing. MRI Shows 2mm disc bulges
  - Knee Xrays shows some mild arthritic change. MRI Shows a degenerative meniscus tear, not treated

**Examples of Disc Problems**



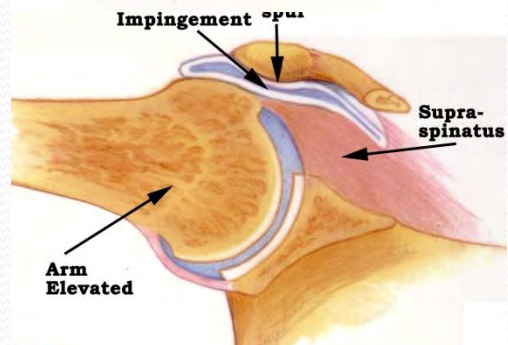
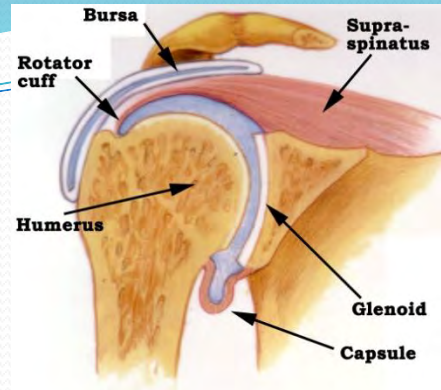
Top views of vertebrae



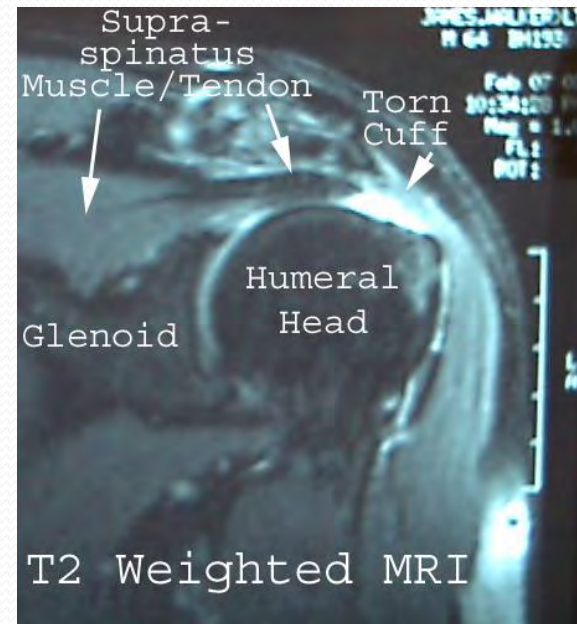
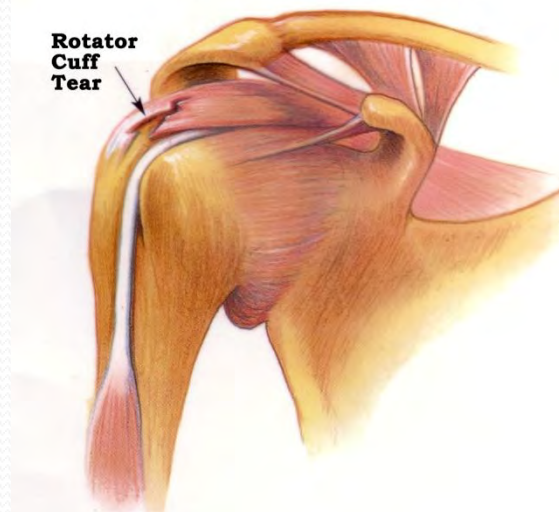


# Case III

- 38 year old Fire Fighter (Arduous) (Back and Shoulder)
  - 14 years of service with Multiple documented Back injury/strains/sprains and shoulder complaints, but no one precipitating cause
  - Started treatment 4 years ago
  - Initial MRI showed 3mm disc bulge at L4-L5 and L5-S1 and shoulder impingement, but returned to full duty
  - Follow up MRI shows 5mm disc herniation at L4-L5 and 6mm at L5-S1 with nerve root compromise and Shoulder Rotator cuff tear
  - Pain despite 2 level Lumbar spine surgery
  - Shoulder surgery with documented weakness of the rotator cuff after surgery and follow up MRI showing partial tear remaining



**Rotator Cuff Tear**



T2 Weighted MRI



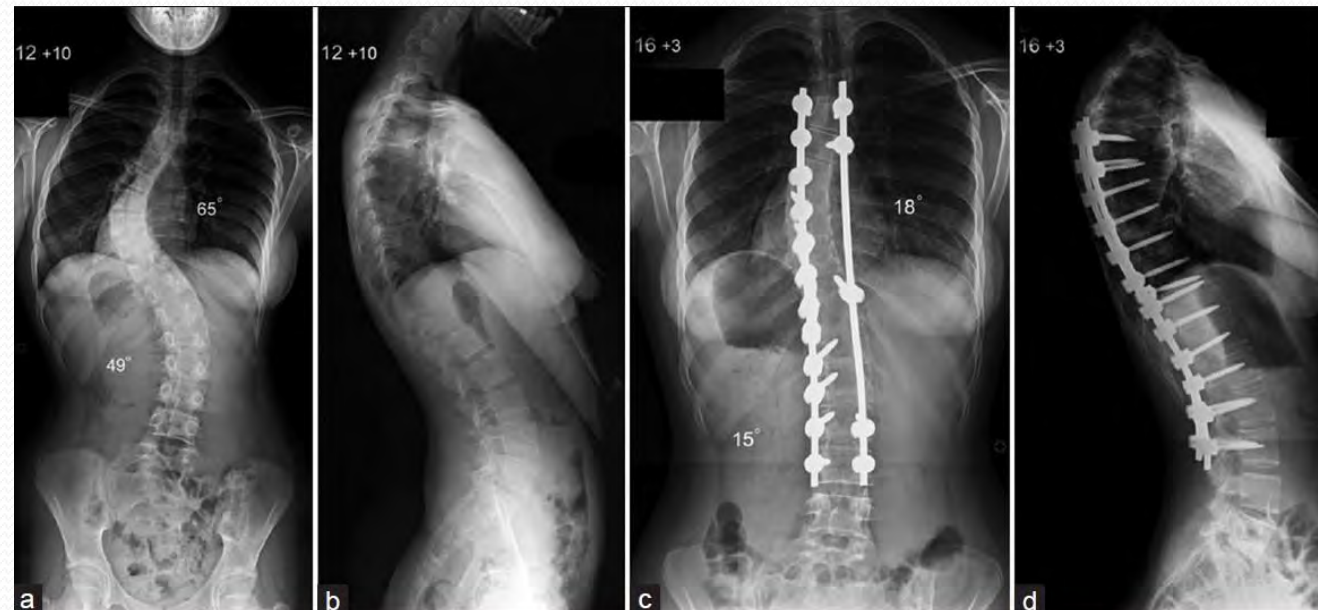


# Case IV

- 48 yo Clinic Nurse (Moderate Work) (Thoracic and Lumbar)
  - 8 years of service mostly working in clinics, carrying charts, drawing blood, walking, standing
  - Prior congenital scoliosis with history of fusion from T2-L4
  - Prior work at private hospital doing med-surg (lifting patients, etc) with history WC complaining of back pain with work restrictions of max lifting of 20lb, no repetitive bending and twisting at waist level
  - Claim of uncomfortable chair in clinic and prolonged standing and walking and carrying 15-20 lb charts has caused her disabilities and current incapacities

# Case IV

- Xrays shows Fused Spine from T2-L4 with Degeneration of T1-T2 and L4-S1
- MRI shows Disc Degeneration of lumbar spine with 4-5 mm disc herniation at L4-L5



# Thank you



Mark Ganjianpour M.D.

Orthopaedic Surgery & Sports Medicine