

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, February 7, 2018 **

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

COMMITTEE MEMBERS:

William Pryor, Chair
John P. Harris, Vice Chair
Herman Santos
Marvin Adams
Gina Zapanta-Murphy, Alternate

- I. APPROVAL OF THE MINUTES
 - A. Approval of the minutes of the regular meeting of January 11, 2018.
- II. PUBLIC COMMENT
- III. ACTION ITEMS
- IV. FOR INFORMATION
 - A. Heart Presumption
Presentation by Frank Boyd, Senior Staff Counsel
- V. GOOD OF THE ORDER
(For information purposes only)
- VI. 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

Thursday, January 11, 2018 11:48 A.M. – 12:02 P.M.

COMMITTEE MEMBERS

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

ABSENT: NONE

ALSO ATTENDING:

BOARD MEMBERS AT LARGE

William Pryor
Joseph Kelly
Herman Santos
Les Robbins

STAFF, ADVISORS, PARTICIPANTS

JJ Popowich
Steven Rice
Vincent Lim
Eugenia Der
Mike Herrera
Allison Barrett
Frank Boyd
Angie Guererro
Maria Muro
Karla Sarni
Darren Huey

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

Maria Silva
Jason Waller
Tamara Caldwell
Ricardo Salinas
Maisha Coulter
Danny Hang
Russell Lurina
Amabelle Delin
Debbie Semnanian
Debra Martin

ATTORNEYS
Thomas J. Wicke

GUEST SPEAKER
None

The meeting was called to order by Chair Gray at 11:48 a.m.

I. APPROVAL OF THE MINUTES

A. Approval of minutes of the regular meeting of December 14, 2017

Mr. Bernstein made a motion, Mr. Adams seconded, to approve the minutes of the regular meeting of December 14, 2017. The motion passed unanimously.

II. PUBLIC COMMENT

III. ACTION ITEMS

IV. FOR INFORMATION

A. What Happens After the Board of Retirement Grants a Disability Retirement? Presentation by Frank Boyd, Senior Staff Counsel

Mr. Frank Boyd provided a PowerPoint presentation to the Committee members explaining what happens after the Board of Retirement grants a disability retirement. Mr. Boyd discussed the differences between Service-Connected (SCD) vs. Nonservice Connected (NSCD) disability retirement and briefly discussed the benefit processing, including reasons for potential delays.

Committee members asked how the Health Care Subsidy is affected for members granted an SCD who are members of the Retiree Healthcare Tier 1 or Tier 2 retiree healthcare plans. Mr. Boyd stated that he will research and report back to the Committee at a future time.

Mr. Boyd and Ms. Contreras were available for questions.

V. REPORT ON STAFF ACTION ITEMS

VI. GOOD OF THE ORDER

VII. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 12:02 p.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.

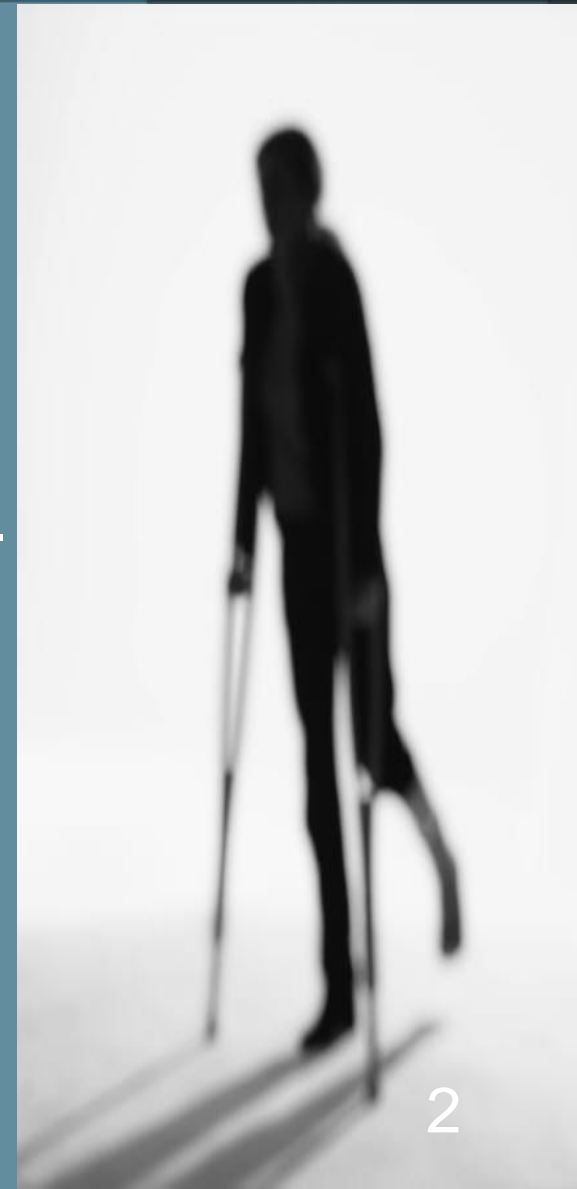
HEART PRESUMPTION



Government Code section 31720.5

SERVICE CONNECTION IN NON-PRESUMPTION CASES

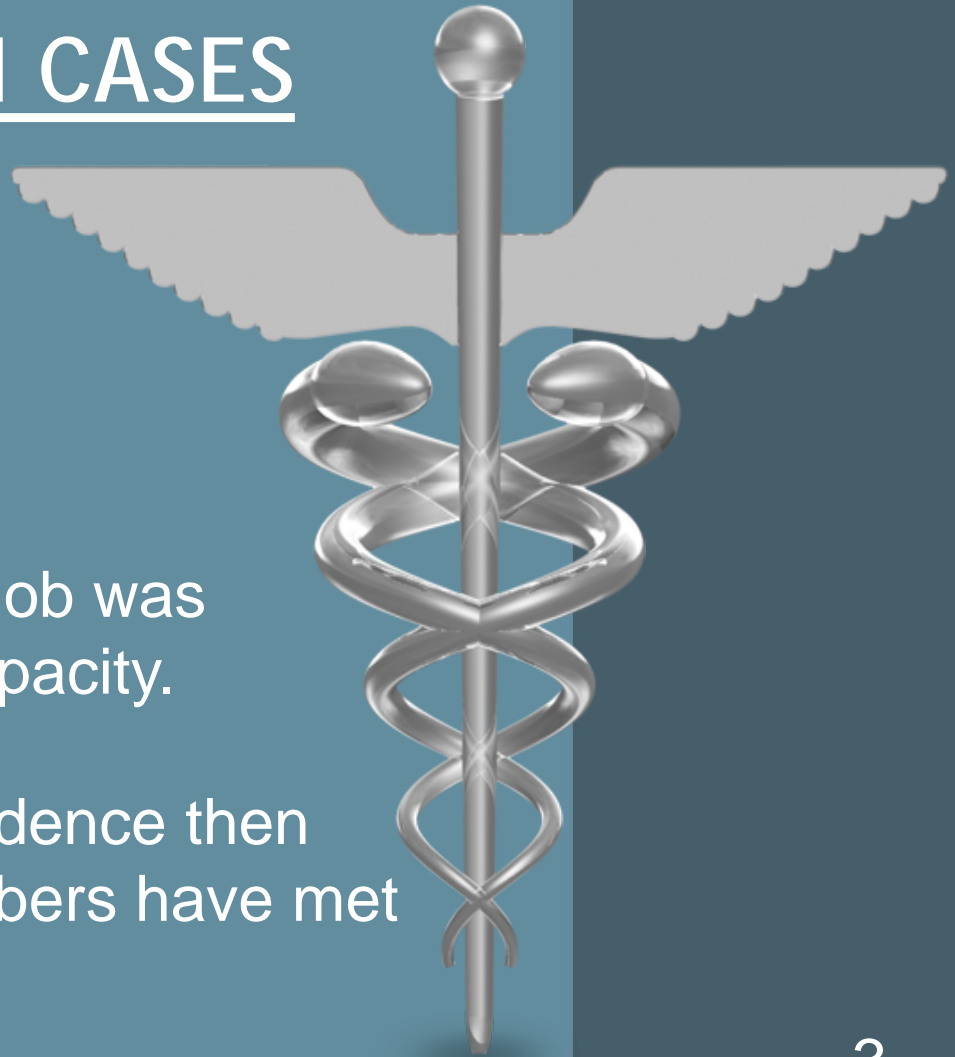
- After proving permanent incapacity, service connection will be established only if the member's incapacity arose out of and in the course of the member's employment, and such employment substantially contributed to the incapacity.
- Gov. Code section 31720
- Substantial contribution: There must be 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 causal factor in the incapacity.
- The Board weighs the evidence then determines whether members have met their burden of proof.



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.



WHAT IS A PRESUMPTION?

DEFINITION:

It 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.



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 sections 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.

See Evidence Code section 630 *et seq.*

HEART PRESUMPTION

Government Code section 31720.5:

(a) If a safety member, a fireman member, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200) or both under this retirement system or under the State Employees' Retirement System or under a retirement system established under this chapter in another county, and develops heart trouble, that heart trouble developing or manifesting itself in those cases shall be presumed to arise out of and in the course of employment. That heart trouble developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to such development or manifestation.

(b) The presumption described in subdivision (a) is rebuttable by other evidence. Unless so rebutted, the board is bound to find in accordance with the presumption.

(c) As used in this section, "fireman member" includes a member engaged in active fire suppression who is not classified as a safety member.

(d) As used in this section, "member in active law enforcement" includes a member engaged in active law enforcement who is not classified as a safety member.

HEART - G.C. §31720.5

REQUIREMENTS

1. Safety membership, active fire suppression, or active law enforcement
2. Five years of service
3. Heart trouble
4. Disease must manifest itself as required

CHECKLIST



HEART PREREQUISITES

1. Safety Membership; or

Active Fire Suppression

- “Fireman” includes “active fire suppression” even if not a safety member.
 - No CERL case law. Have to look to workers’ comp. cases for guidance.
 - Extinguishing flames and rescuing victims not required.
 - Proof of physically arduous duties not required.
 - Frequently engaged in active fire suppression not required.
 - **OR...**



HEART PREREQUISITES

Active Law Enforcement

- Member in “active law enforcement” even if not a safety member.
- *Ames v. Board of Retirement*:
 - Contact with prisoners on a regular basis
 - Exposure to hazards from prisoner conduct; and
 - Risk of injury from the necessity of being able to cope with potential dangers inherent in the handling of prisoners.

Ames v. Board of Retirement (1983) 147 Cal.App.3d 906, 916.



HEART PREREQUISITES

2. YEARS OF SERVICE REQUIRED

- 5 years
- Under specified system or systems



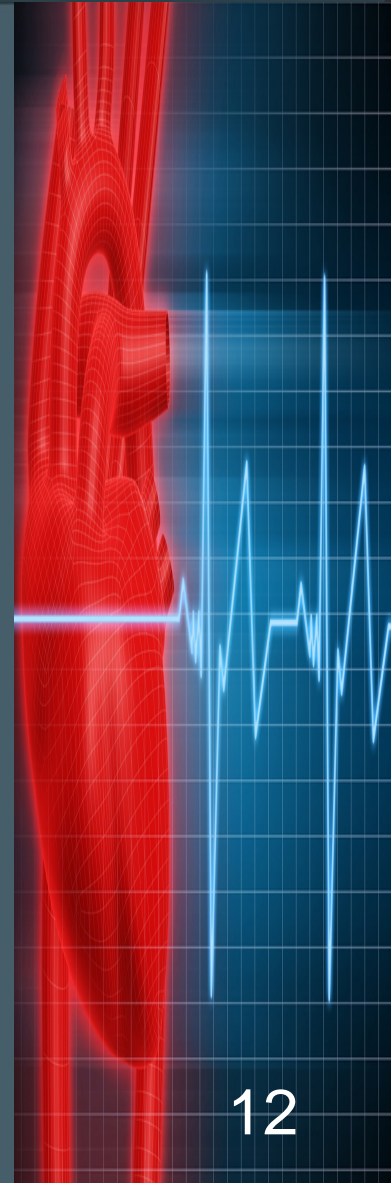
HEART PREREQUISITES

3. DEVELOPS HEART TROUBLE

Has the heart been placed in a **TROUBLED CONDITION**?

Heart trouble: “. . . encompass[es] 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 other afflicted areas of the body . . .”

Muznik v. Workmen's Comp. Appeals Bd. (1975) 51 Cal.App.3d 622, 635.

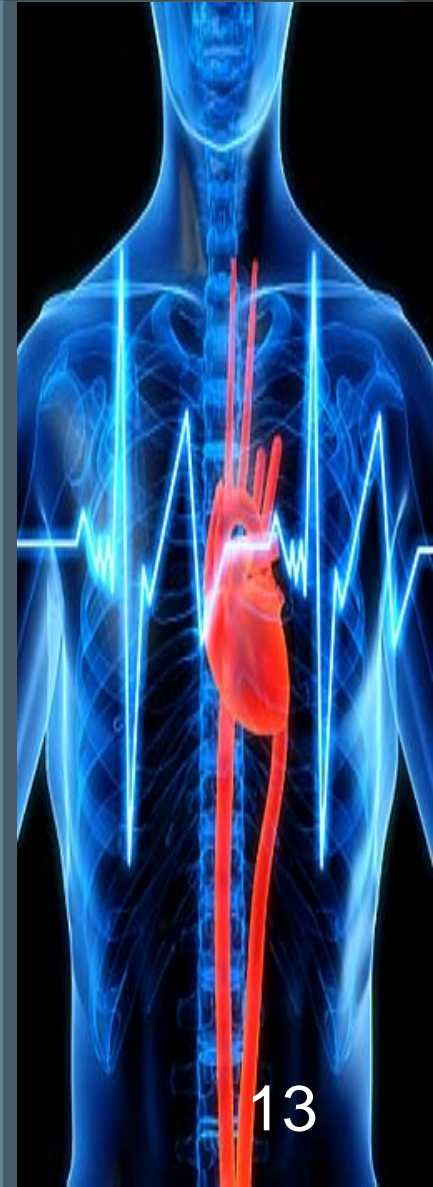


HEART PREREQUISITES

3. DEVELOPS HEART TROUBLE (cont.)

- If the heart is not placed in a troubled condition, there is no presumption.
- *There is no presumption that the member is incapacitated.*
- The presumption establishes that the heart trouble is work related provided the member meets the prerequisites.

4. Disease Must manifest itself as required.



HEART PRESUMPTION

CAN THE HEART PRESUMPTION BE REBUTTED?

Almost impossible

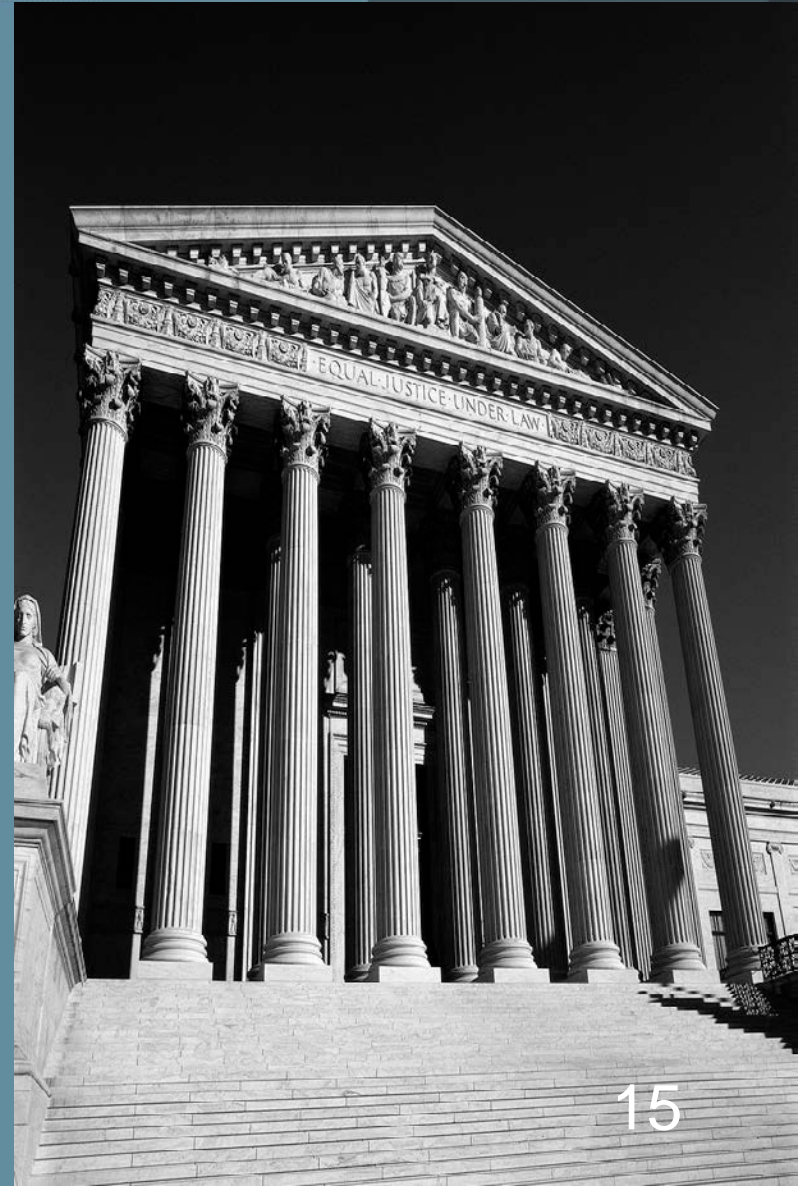
- Preexisting conditions cannot be used to rebut presumption.

Exceptions:

1. Nonindustrial exertion *may* rebut.
2. Concurrent employment *may* rebut.

PELLERIN CASE

- It was previously thought that the presumption could not be rebutted.
- *Pellerin* found that the presumption could be rebutted.
- *Pellerin v. Kern County Employees' Retirement Association* (2006) 145 Cal.App.4th 1099.



HEART PRESUMPTION

IS THERE AN EXTENSION
AFTER THE MEMBER RETIRES?

NO

Unlike the other presumptions, the “heart trouble” presumption is not extended for up to 60 months beyond termination of service as are the presumptions for cancer, most blood-borne infectious disease and illnesses from biochemical substance exposure.



QUESTIONS?

