

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., THURSDAY, March 15, 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
James P. Harris, Vice Chair
Herman Santos
Gina Zapanta-Murphy
Marvin Adams, Alternate

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of February 7, 2018.

II. PUBLIC COMMENT

III. ACTION ITEMS

IV. FOR INFORMATION

A. Cancer 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

Wednesday, February 7, 2018 9:49 A.M. – 10:19 A.M.

COMMITTEE MEMBERS

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

ABSENT: NONE

ALSO ATTENDING:

BOARD MEMBERS AT LARGE

Shawn Kehoe
Joseph Kelly
Vivian H. Gray
Les Robbins

STAFF, ADVISORS, PARTICIPANTS

JJ Popowich
Steven Rice
Vincent Lim
Eugenia Der
Mike Herrera
Allison Barrett
Frank Boyd
Angie Guerrero
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 Pryor at 9:49 a.m.

I. APPROVAL OF THE MINUTES

A. Approval of minutes of the regular meeting of January 11, 2018

Mr. Adams made a motion, Mr. Santos seconded, to approve the minutes of the regular meeting of January 11, 2018. The motion passed unanimously.

II. PUBLIC COMMENT

III. ACTION ITEMS

IV. FOR INFORMATION

A. Heart Presumption
Presentation by Frank Boyd, Senior Staff Counsel

Mr. Frank Boyd delivered a PowerPoint presentation to the Committee members explaining the Heart Presumption.

Committee members asked that if a member began as a safety member but then became a general member, will the heart presumption apply? Mr. Boyd stated that the heart presumption will not apply because the eligibility relies partly on the fact that a member is a safety member when they stopped working and the incapacitation occurred and previous employment is not taken in to account.

Mr. Boyd explained that if a member who began as a safety member but then became a general member becomes incapacitated from the heart, they will need to prove that the incapacity is service connected vs. getting the heart presumption.

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 10:19 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.

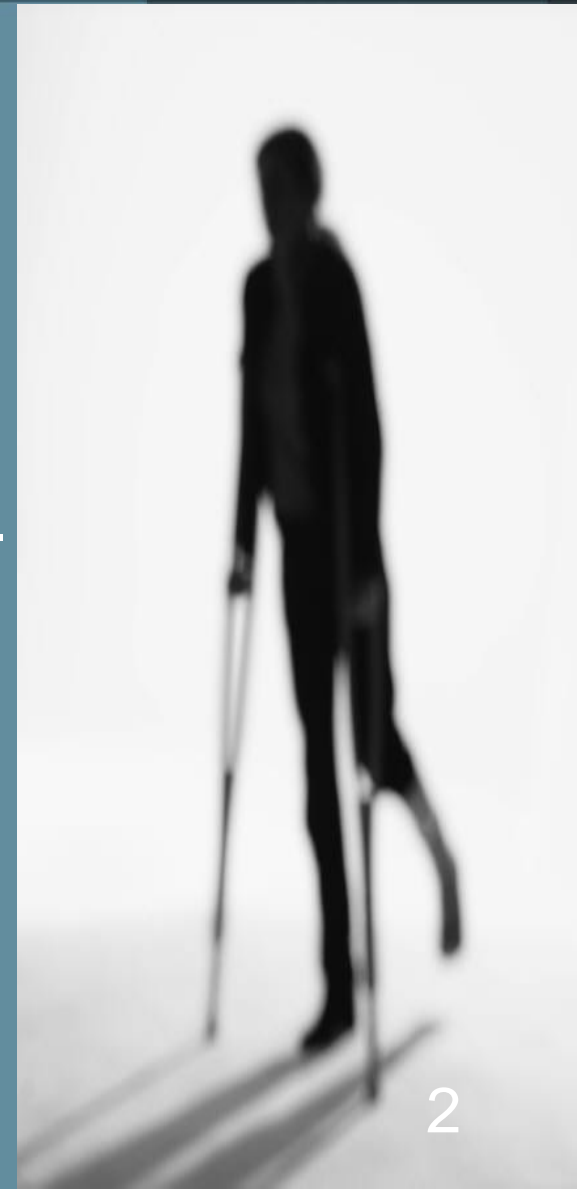
CANCER PRESUMPTION



Government Code section 31720.6

SERVICE CONNECTION IN NON-PRESUMPTION CASES

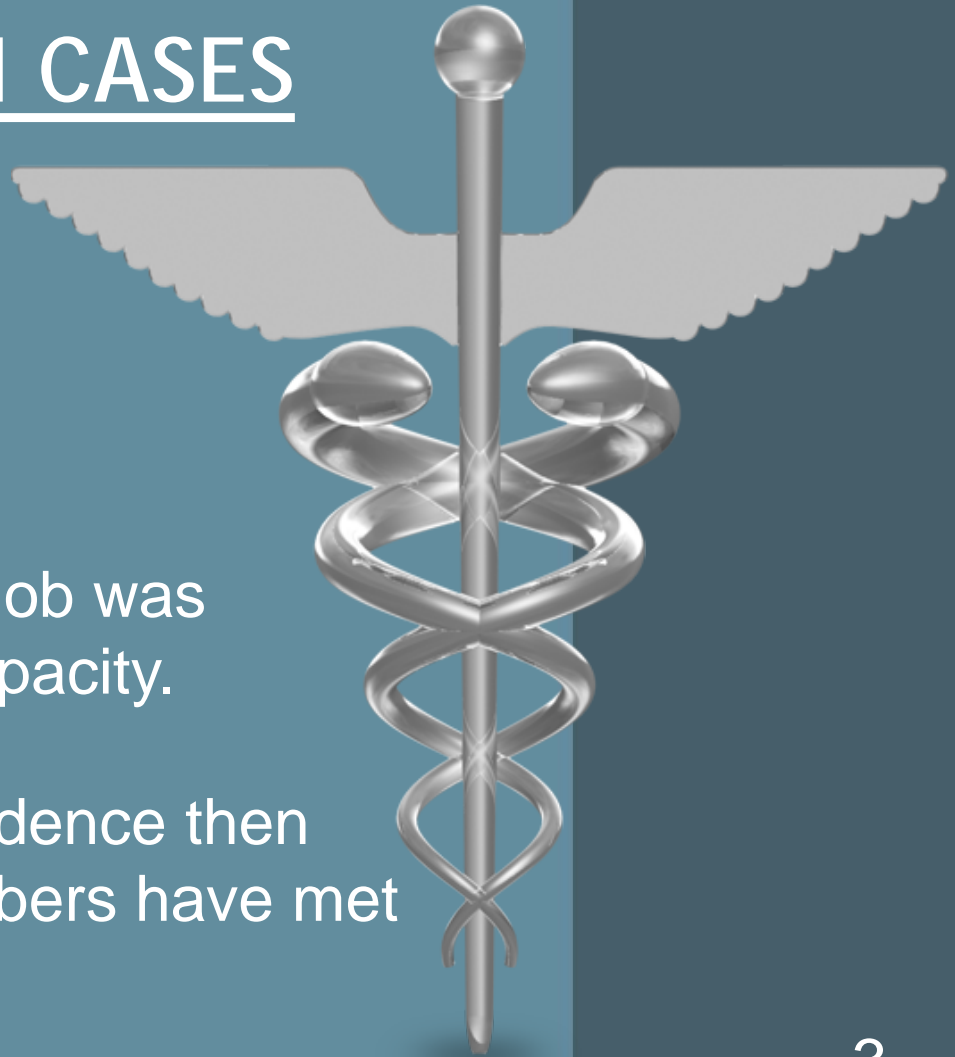
- After proving permanent incapacity, service connection will be established only if the member's incapacity arose out of and in the course of the member's employment, and such employment substantially contributed to the incapacity.
- Gov. Code section 31720
- Substantial contribution: There must be 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.*

CANCER PRESUMPTION

Government Code section 31720.6:

(a) If a safety member, a firefighter, 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 Public Employees' Retirement System or under a retirement system established under this chapter in another county, **and develops cancer, the cancer, so developing or manifesting itself** in those cases shall be presumed to arise out of and in the course of employment. The cancer **so developing or manifesting** itself in those cases shall in no case be attributed to any disease existing prior to that **development or manifestation**.

(b) Notwithstanding the existence of nonindustrial predisposing or contributing factors, any safety member, firefighter member, or member active in law enforcement described in subdivision (a) permanently incapacitated for the performance of duty as a result of cancer shall receive a service-connected disability retirement if the member demonstrates that he or she was exposed to a known carcinogen as a result of performance of job duties. "Known carcinogen" for purposes of this section means those carcinogenic agents recognized by the International Agency for Research on Cancer, or the Director of the Department of Industrial Relations.

CANCER PRESUMPTION

(c) The presumption is disputable and may be controverted by evidence, that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer, provided that the primary site of the cancer has been established. Unless so controverted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) “Firefighter,” for purposes of this section, includes a member engaged in active fire suppression who is not classified as a safety member.

(e) “Member in active law enforcement,” for purposes of this section, includes a member engaged in active law enforcement who is not classified as a safety member. (Emphasis added.)

CANCER - G.C. §31720.6

Requirements:

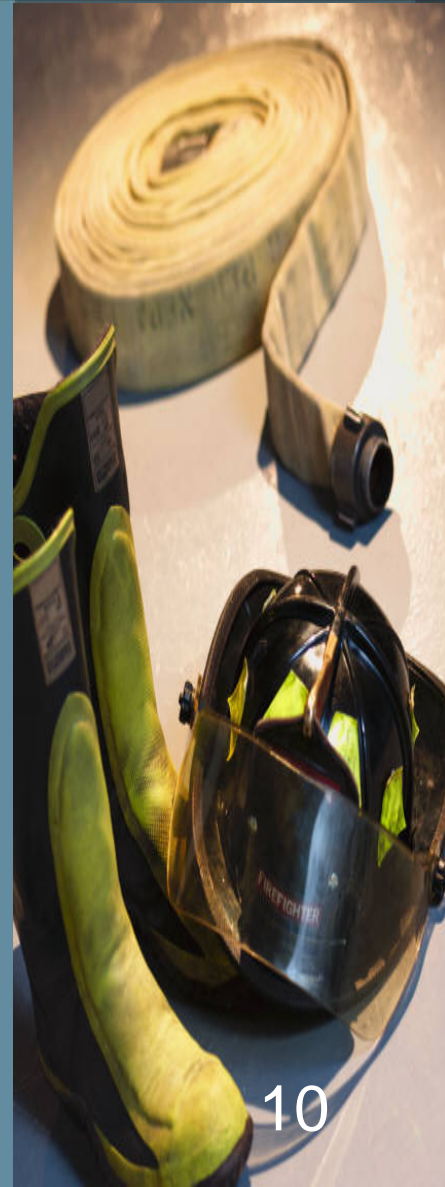
1. **Cancer causes incapacity.**
2. Safety member, firefighter or active law enforcement.
3. Five years of service.
4. Develops cancer while in service. Time extension (up to five years after last day worked).
5. Exposure to known carcinogen on job.



CANCER PREREQUISITES

1. MEMBER MUST BE PERMANENTLY INCAPACITATED BY CANCER.

The presumption only addresses **causation**, it does not establish incapacity.



CANCER PREREQUISITES

2. SAFETY MEMBERSHIP; OR

Firefighter

- “Firefighter” 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...**



CANCER 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.



CANCER PREREQUISITES

3. YEARS OF SERVICE REQUIRED

- 5 years
- Under specified system or systems



CANCER PREREQUISITES

4. DEVELOPS CANCER

Cancer must develop or manifest itself in the applicant.

Extension: “. . . This presumption shall be extended to a member following termination of services for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstances, commencing with the last day actually worked in the specified capacity. “

§31722. Time for application

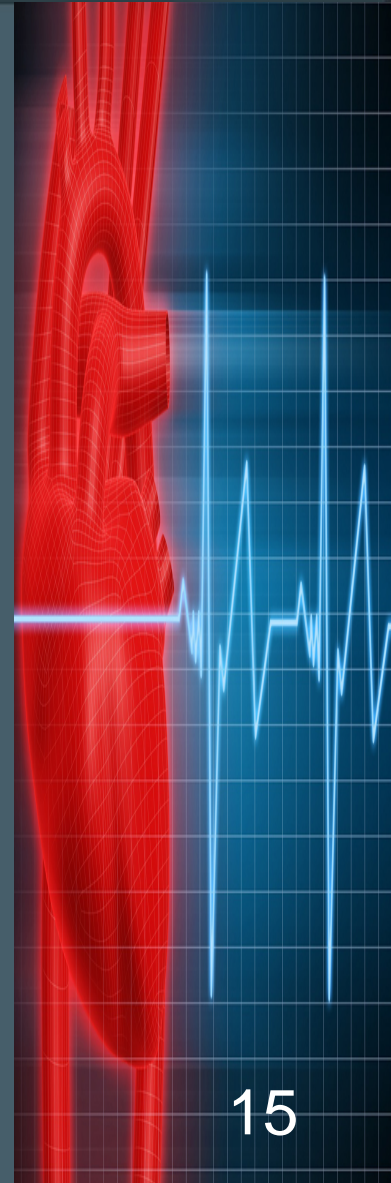
The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, from the date of discontinuance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

CANCER PREREQUISITES

5. EXPOSURE TO A KNOWN CARCINOGEN ON THE JOB

The applicant must demonstrate that he or she was exposed to a “**known carcinogen**” as a result of performance of job duties.

Known Carcinogen: “those carcinogenic agents recognized by the International Agency for Research on Cancer or, or the Director of the Department of Industrial Relations.”



REBUTTING THE CANCER PRESUMPTION

The Presumption cannot be attributed to any disease existing prior to that development or manifestation. But . . .

The presumption may be rebutted if:

1. The primary site of the cancer has been established; **and**
 - a) The carcinogen to which the member was exposed is not reasonably linked to the disabling cancer; **or**
 - b) The period between the exposure and the manifestation is not within the cancer's latency period as established by medical evidence. *Sameyah v LACERA* (2010) 190 Cal.App.4th 199.



QUESTIONS?

