

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, JANUARY 9, 2020 **

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

COMMITTEE TRUSTEES:

James P. Harris, Chair
Herman B. Santos, Vice Chair
Ronald A. Okum
Gina Zapanta-Murphy
William Pryor, Alternate

I. CALL TO ORDER

II. APPROVAL OF THE MINUTES

- A. Approval of the minutes of the regular meeting of October 10, 2019
- B. Approval of the minutes of the regular meeting of December 12, 2019

III. PUBLIC COMMENT

IV. FOR INFORMATION ONLY

- A. Albertson's Inc. v. Workers' Comp. Appeals Bd. (Memo dated 12/19/19)

V. ITEMS FOR STAFF REVIEW

VI. GOOD OF THE ORDER
(For information purposes only)

VII. ADJOURNMENT

***The Board of Retirement has adopted a policy permitting any trustee of the Board to attend a standing committee meeting open to the public. In the event five (5) or more trustees of the Board of Retirement (including trustees appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Trustees of the Board of Retirement who are not trustees of the Committee may attend and participate in a meeting of a Board Committee but may not vote, make a motion, or second 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.**

Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to trustees 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 Board Offices at (626) 564-6000, Ext. 4401/4402 from 8:30 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. 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.

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, OCTOBER 10, 2019

COMMITTEE TRUSTEES

PRESENT: Herman B. Santos, Vice Chair
Ronald A. Okum
Gina Zapanta-Murphy
William Pryor, Alternate

ABSENT: James P. Harris, Chair

ALSO ATTENDING:

BOARD TRUSTEES AT LARGE

Thomas Walsh
Shawn Kehoe
Les Robbins
Alan Bernstein
Keith Knox
Vivian Gray

STAFF, ADVISORS, PARTICIPANTS

Ricki Contreras, Disability Retirement Services Manager
Francis J. Boyd, Senior Staff Counsel

The Meeting was called to order by Vice Chair Santos at 9:44 a.m., in the Board Room of Gateway Plaza.

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of August 15, 2019.

Mr. Pryor made a motion, Mr. Santos seconded, to approve the minutes of the regular meeting of August 15, 2019. The motion passed unanimously.

II. PUBLIC COMMENT

There were no requests from the public to speak.

III. FOR INFORMATION ONLY

A. Disability Procedures & Services Committee (memo dated 9/27/19)

Ms. Contreras and Mr. Boyd were present to answer any questions from the Board or Committee trustees.

IV. ITEMS FOR STAFF REVIEW

V. GOOD OF THE ORDER

VI. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 9:52 a.m.

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, DECEMBER 12, 2019

COMMITTEE TRUSTEES

PRESENT: James P. Harris, Chair
Ronald A. Okum

ABSENT: Herman B. Santos, Vice Chair
Gina Zapanta-Murphy
William Pryor, Alternate

ALSO IN ATTENDANCE:

BOARD TRUSTEES AT LARGE

Thomas Walsh
Les Robbins
Alan Bernstein
Shawn Kehoe

STAFF, ADVISORS, PARTICIPANTS

Ricki Contreras, Disability Retirement Services Manager
Francis J. Boyd, Senior Staff Counsel

The Meeting was called to order by Chair Harris at 11:12 a.m., in the Board Room of Gateway Plaza.

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of October 10, 2019.

Due to a lack of quorum, the minutes will be placed on the next Disability Procedures and Services Committee agenda for approval.

II. PUBLIC COMMENT

There were no requests from the public to speak.

III. FOR INFORMATION ONLY

A. Educational Opportunities
(Memo dated November 27, 2019)

Ms. Contreras and Mr. Boyd were present to answer questions from the Trustees.

IV. ITEMS FOR STAFF REVIEW

The Disability Procedures and Services Committee instructed staff to include the following topics for future educational training: Albertson's Inc. v. Worker's Compensation Appeals Board, medical terminology, and additional discussion regarding psychiatric/psychological reports.

V. GOOD OF THE ORDER

There were no comments during Good of the Order.

VI. ADJOURNMENT

With no further business to come before the Disability Procedures and Services

Committee, the meeting was adjourned at 11:17 a.m.

**FOR INFORMATION ONLY**

December 19, 2019

To: Disability Procedures & Services Committee
J.P. Harris, Chair
Herman Santos, Vice Chair
Ronald A. Okum
Gina Zapanta-Murphy
William Pryor, Alternate

FROM: Francis J. Boyd 
Senior Staff Counsel

FOR: January 9, 2020, Disability Procedures & Services Committee

SUBJECT: *Albertson's Inc. v. Workers' Comp. Appeals Bd.*

INTRODUCTION

At the December 12, 2019, Disability Procedures and Services Committee meeting, the Committee requested a brief summary of the case *Albertson's v. Workers' Comp. Appeals Bd.* and asked whether it is still good law. The purpose of this memo is to provide a summary and analysis of the *Albertson's* case.

Albertson's Inc. v. Workers' Comp. Appeals Bd.

In *Albertson's Inc. v. Workers' Comp. Appeals Bd.*,¹ the employee, Judith Bradley, was a cake decorator who was hyper-sensitized to stress due to a pre-existing, non-work-related, mild obsessive-compulsive psychiatric disorder. She became disabled after alleged conflicts with her supervisor at work. The evidence showed that Bradley's assertions that she was subjected to harassment by her supervisor were, in fact, untrue, although the evidence also showed that, through the prism of her pre-existing psychiatric disorder, she perceived events at work as harassment.

The *Albertson's* court applied a *subjective test* in determining whether or not the employee's perceived stress played an active role in the development of the psychological condition.² But the court went to some lengths to draw a line between what will be considered work-related and what will not. The *Albertson's* court referred to and adopted the Michigan Supreme Court "honest perception" rule stated in *Deziel v. Difco Laboratories, Inc.*³ wherein it was determined that "a claimant is entitled to compensation for mental injuries if it is factually established that claimant *honestly perceives* some personal injury occurred during the

¹ *Albertson's Inc. v. Workers' Comp. Appeal Bd.* (1982) 131 Cal.App.3d 308.

² *Id.* at 313.

³ *Deziel v. Difco Laboratories, Inc.* (1978) 403 Mich. 1 [268 N.W..2d 1, 97 A.L.R.3d 121].

ordinary work of his employment 'caused' his disability."⁴ The *Albertson's* court also stated that an injury is not compensable when the employment is only a passive factor and/or the relationship of injury and work is based on an after-the-fact rationalization.⁵

The *Albertson's* decision was applied in *Traub v. Board of Retirement*,⁶ a CERL case.

***Albertson's* honest perception, subjective test is still applicable in disability retirement law.**

Beginning in 1989, the Legislature enacted Labor Code section 3208.3, a workers' compensation law intended to restrict the compensability of workers' compensation psychiatric claims. This "reform" legislation included the following pertinent provision:

(b)(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that *actual events of employment were predominant as to all causes combined of the psychiatric injury.* [Italics added.]

The above-quoted Labor Code section was meant to supersede the *Albertson's* decision so that the honest perception, subjective test is no longer applicable in workers' compensation law.⁷ However, in *Pearl v. Workers' Comp. Appeals Bd.*, the California Supreme Court stated that California Labor Code section 3208.3, amending the workers' compensation law, does not apply to public employee disability retirement law "absent a clear indication from the Legislature" otherwise.⁸ So with respect to CERL, the law remains as announced in *Albertson's*. However, the *Albertson's* decision addresses the issue of causation and is not applicable in a disability retirement case until the medical evidence establishes that the member is permanently incapacitated.

Reviewed and approved.



Steven P. Rice, Chief Counsel

FJB: jm

⁴ *Albertson's Inc. v. Workers' Comp. Appeals Bd.*, *supra*, 131 Cal.App.3d 308, 315. [Emphasis added.]

⁵ *Id.* at 316.

⁶ *Traub v. Board of Retirement* (1978) 87 Cal.App.3d 392, 399.

⁷ *Verga v. Workers' Comp. Appeals Bd.* (2008) 159 Cal.App.4th, 174, 186-187.

⁸ *Pearl v. Workers' Comp. Appeals Bd.* (2001) 26 Cal.4th 189, 195-197.