SAN JOAQUIN COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION

DISABILITY RETIREMENT HEARING

To request this material in an alternate format, call 209.468.2163.

When you apply for a disability retirement benefit, you have the burden of proof to prove, by the preponderance of evidence, three things: incapacity, permanency, and service connection.

SJCERA will consider all evidence that it has received (from you and other sources) as well as the report from SJCERA's independent medical examination (IME). If SJCERA's evidence agrees with the evidence you provided, SJCERA staff will submit your application to the Board of Retirement for decision—no hearing is necessary.

However, if SJCERA's evidence conflicts with the evidence you provided on any of items you are required to prove (incapacity, permanency or service-connection), you will need to decide whether to proceed to a hearing before an independent Administrative Law Judge (ALJ), or withdraw your application. SJCERA will issue a notice informing you of your choices.

In the event that you have met your burden of proof on permanent incapacity, but not on service-connection, you may elect to begin receiving a non-service connected disability retirement benefit. You will still have the option of going to hearing on the issue of service-connection.

3 DISABILITY RETIREMENT REQUIREMENTS

Incapacity: You are unable to perform your usual and customary job duties, even with any reasonable accommodation offered by your employer.

Permanency: Your incapacity is permanent.

Service-Connection: If you are applying for a service-connected disability retirement, you must also prove your incapacity was caused by performing the duties of your job. (See Prove Service-Connection, on next page.) You do not have to prove service-connection if you are applying for a nonserviceconnected disability retirement.

DECIDE WHETHER TO REQUEST A HEARING

A hearing is your opportunity to submit all the evidence you believe supports your application, including medical reports and records, documents, and witness testimony. The ALJ will receive the written evidence and testimony presented by you and SJCERA, evaluate the merits of the evidence, decide any questions of law, and issue a recommended decision to the Board of Retirement.

Reasons for deciding to withdraw your application or request a hearing are personal and individual. If you choose to withdraw, you will not be able to reapply for the same condition at a later date without new evidence. You must respond in writing within 30 days from the date SJCERA issues its notice. If you do not respond by the deadline,SJCERA will recommend that the Board of Retirement dismiss your application at its next available regularly scheduled Board meeting. Generally, those members who decide to request a hearing have reviewed the medical evidence, including SJCERA's IME report, and determined there is adequate evidence to support granting a disability retirement. If you choose to request a hearing, it is generally advisable (but not required) to retain an attorney to represent you. Only you or your attorney may present your case at the hearing. SJCERA will be represented by its attorney.

PREPARE FOR YOUR HEARING

1. Consider hiring an attorney.
2. Determine which issue (incapacity, permanency, and/or service-connection) is the basis for the conflict in evidence. The letter you receive from SJCERA's Disability Attorney will outline the issues to be resolved at the hearing. Review SJCERA's IME report.

To have a conflict in the evidence, the doctor's report will indicate at least one of the following:

- You are not incapacitated from performing your usual and customary duties;
- Your incapacity is not permanent, and/or
- Your incapacity is not service-connected.

PROVE INCAPACITY

To prove incapacity, you must provide persuasive evidence that shows:

1. You are substantially unable to perform the usual and customary duties of your position, i.e., the duties you normally perform. Being incapacitated from duties that occur only rarely is typically insufficient.
2. Your employer is not able to accommodate the permanent work restrictions identified in the IME report.

PROVE PERMANENCY

To prove that your incapacity is permanent, you must provide evidence demonstrating that there is a reasonable medical probability your incapacity is likely to persist indefinitely. The ALJ may consider whether there is a well-accepted treatment that would likely cure or improve your condition enough to enable you to return to work when determining the permanency.

PROVE SERVICE-CONNECTION

To prove your incapacity is service-connected, you must demonstrate that it arose out of and in the course of your employment, and that performing your work duties contributed substantially to your incapacity.

If your work duties permanently aggravate or accelerate a previously non-disabling condition, your condition may be considered service-connected if there is a material and traceable connection that shows your worsening condition was caused by your job. If you would have been incapacitated by your underlying condition even if you hadn't held your job, then it may not be considered service-connected. (This is sometimes referred to as the "but for" test: but for the job, would you be incapacitated?)

DETERMINE WHAT EVIDENCE TO USE TO PROVE YOUR CASE

Carefully evaluate how each medical record/report, document or witness will be persuasive in overcoming the conflict that exists about incapacity, permanency or service-connection. Hearings are generally completed within one day and are rarely continued to a second day. More evidence is not always better; credible evidence that strongly supports your case can help the ALJ focus on what's most important.

You are not required to call witnesses; many cases can be argued on the existing reports. However, if you choose to call a witness (such as a doctor, a witness of the accident, or others) and that person is unable to attend the hearing, it may be possible for them to provide a written statement (an affidavit) instead. If you do not have an attorney, and you need a subpoena to compel the production of a document or a witness to testify at the hearing, SJCERA's attorney can assist you in obtaining a subpoena. However, you are responsible for ensuring that the subpoena is properly served and paying any witness fees, including medical expert fees.

COORDINATE HEARING DETAILS IN PRE-HEARING CONFERENCES

SJCERA's attorney will contact you or your attorney early in the hearing process to request proposed hearing dates and to discuss prehearing procedures and deadlines, such as the exchange of document and witness lists. In many cases, SJCERA's counsel will request a prehearing procedures and deadlines, such as the exchange of document and witness lists. In many cases, SJCERA's counsel will request a prehearing conference with the ALJ, so that the ALJ can explain the hearing process, ensure that all prehearing requirements are met, and resolve any prehearing disputes. Once the hearing date is set, you will receive notice of the time, date and location of the hearing.

WHAT TO EXPECT AT THE HEARING

Hearings typically take place during our monthly board meeting at our downtown Stockton office location: 220 E. Channel Street, Stockton, CA 95202

MAKE AN OPENING STATEMENT

Each party may make an opening statement. The opening statement is a short summary of your case and what you believe your evidence will demonstrate. Your opening statement is not evidence—you will have the opportunity during the hearing to present evidence to support your opening statement.

PRESENT YOUR EVIDENCE

Following opening statements, you will present the evidence supporting your case. After each witness you examine or document you refer to as evidence, SJCERA's attorney will have the opportunity to cross-examine the witness or object to admission of the document. If your witness is cross-examined, you will have the opportunity to ask follow-up questions to clarify any issues that came up in cross-examination.

After you complete your presentation of evidence, the roles reverse: SJCERA's attorney will present evidence that supports SJCERA's position, and you will have the opportunity to cross-examine witnesses or object to evidence, followed by SJCERA's opportunity to ask follow-up questions.

MAKE A CLOSING ARGUMENT

The closing argument is a summary of the case and an explanation as to why the evidence you presented during the hearing supports granting your disability retirement application.

REVIEW THE ALJ'S RECOMMENDED DECISION

After reviewing all the evidence, the ALJ will issue a recommended decision, generally within 60 days of the hearing. Read the recommended decision carefully. Either party (you or SJCERA's attorney) may submit written objections to the ALJ's recommended decision within 10 calendar days from the date the notice is distributed to all parties. The written objections will be incorporated into the record that is submitted to the Board of Retirement for its consideration.

AWAIT THE BOARD'S DECISION; DETERMINE NEXT STEPS

The Board of Retirement will consider the ALJ's recommended decision and any objections that were filed, and take action at a regularly scheduled Board meeting. The Board may:

1. Approve and adopt the ALJ's recommended decision;
2. Refer the application back to the ALJ for further hearing and/or consideration; or
3. Obtain a written transcript or a summary of all testimony and evidence received by the ALJ and take action based upon its own review of the evidence. You will be notified of the meeting date at which the Board of Retirement will consider your case. You may attend the meeting and address the Board if you wish.

APPLICATION GRANTED: APPLY TO START BENEFIT

If the Board grants your disability retirement application, SJCERA will notify you of that decision and next steps. Respond to the notice and submit the requested paperwork so that you can begin receiving your benefit payments as quickly as possible. Your benefit will be retroactive to the effective date of your disability retirement.

APPLICATION GRANTED: APPLY TO START BENEFIT

If the Board of Retirement denies your disability retirement application, you have a number of options.

1. You may initiate a service retirement benefit when you meet the age and service eligibility requirements.
2. You may be entitled to reinstatement by your employer unless you retired, voluntarily resigned, or were fired for cause other than disability. If your employer asserts they cannot accommodate your work limitations, consider consulting with an attorney to assess whether this affects your rights to reinstatement.
3. You may appeal the Board's decision to the San Joaquin County Superior Court within ninety (90) days of the notice of the Board's decision.

This fact sheet is intended to help SJCERA disability retirement applicants determine whether to proceed to hearing and how to prepare. It should be read in conjunction with SJCERA's "Disability Retirement Policy and Procedure", "Disability Retirement" and "Disability Retirement Process" fact sheets, and "Article 10: Disability Retirement" of the County Employees Retirement Law of 1937, all of which are available on www.sjcera.org. This fact sheet is intended only to provide you with information as simply and accurately as possible. It is not legal advice. The law governing disability retirement is complex. If a conflict arises between the applicable law or SJCERA policies or procedures and any statement in this fact sheet, the law or applicable policy or procedure will govern.