

COUNTY OF SHASTA		Number
ADMINISTRATIVE MANUAL		7-140
SECTION:	Employment	Procedures for the Conduct of Safety Member Disability Retirement Hearings
INITIAL ISSUE DATE:	February 13, 1990	
LATEST REVISION DATE:	July 13, 2012	
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PURPOSE

The purpose of this policy is to grant authority to the Director of Support Services or his or her designee, as the County’s Risk Manager, to act on behalf of the Board of Supervisors, with regard to the determination of disability or industrial disability retirement for safety members, and to describe the process related to the determination.

BACKGROUND

The County of Shasta is a contracting agency of the Public Employees Retirement System (PERS). PERS law requires that a contracting agency determine whether an employee of such agency, in employment in which he or she is classified as a local safety member, is disabled for the purposes of the Public Employees Retirement Law. In 1991, the Board of Supervisors delegated that authority to the Risk Manager. Since that time, the duties of Risk Manager have been incorporated into those of the Director of Support Services, and case law has further refined the due process and appeal processes related to such determinations.

POLICY

Authority is granted to the Director of Support Services or his or her designee, as the County’s Risk Manager, to act on behalf of the Board of Supervisors, with regard to the determination of disability or industrial disability retirement for safety members, and to implement all of the various process and procedures related to the determination.

A. Authority Granted to the Risk Manager:

1. The Risk Manager is authorized to make determinations regarding the Disability or Industrial Disability status of a local safety member for the purposes of retirement benefits and to notify the employee of the finding.
2. The Risk Manager is authorized to make applications to PERS on behalf of the County of Shasta for disability retirement or industrial disability retirement of local safety employees.

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3. The Risk Manager is authorized, upon application by or on behalf of a local safety member, to set a date for an appeal hearing on the determination of Disability Retirement or Industrial Disability Retirement before an Administrative Law Judge.
4. The Risk Manager is authorized to initiate and respond to requests for reinstatement of such employees who are retired for disability.

B. Determination of Disability Retirement or Industrial Disability Retirement for a Local Safety Officer in Response to Employee's application to the Public Employees Retirement System:

1. An initial determination will be made by the Risk Manager based on medical and other available evidence offered by either the employee or the County to determine whether the employee is incapacitated from the performance of duty in response to notice from PERS that the employee or employee's representative has filed an application for disability retirement or industrial disability retirement.
 - a. The Risk Manager may find that the employee is incapacitated, and the incapacity is industrial.
 - b. The Risk Manager may find that the employee is incapacitated, and the incapacity is non-industrial.
 - (1) If it is determined that the employee is incapacitated, and a dispute exists as to whether the cause of the disability is industrial, either party may petition the Workers' Compensation Appeals Board (WCAB) for a finding. Upon notice of the finding from the WCAB, the Risk Manager will notify PERS. PERS, according to its regulations, may convert the disability retirement to industrial disability retirement.
 - c. The Risk Manager may determine that the employee is not incapacitated from the performance of duty and so notify PERS.

C. The Risk Manager Is Authorized to Make Application on Behalf of the County of Shasta for Disability Retirement or Industrial Disability Retirement for Local Safety Employees:

1. An initial determination will be made by the Risk Manager based on medical and other available evidence offered by either the employee or the County to determine whether the employee is incapacitated from the performance of duty.

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2. The Risk Manager will notify the employee, in writing, prior to making the determination final.
 - a. The notice will include a statement that the County of Shasta intends to make an application for the employee to PERS for disability or industrial disability retirement and that the employee will be separated from County service.
 - b. The grounds for the action and a copy of the related materials upon which the proposed action is based will be provided to the employee. If the employee or the employee's representative has possession of the related materials (such as doctor's reports) a reference will be made to the appropriate section of the documents.
 - c. The employee will be noticed that he or she will have five calendar days (date to be stated in notice) to respond, either orally or in writing. The employee will have the right to be accompanied by a personal representative of the employee's choice during an oral response.
 - d. The Risk Manager will consider the written or oral response and make a final determination.
 - e. If no written or oral response is received, the Risk Manager will proceed to make a final determination.

D. Appeal of Determination of The Risk Manager by Local Safety Employee:

1. In all cases, the Risk Manager will notify the employee that he or she may, within 15 days after the notice is mailed, make a written request for an appeal hearing in accordance with the Administrative Procedures Act (APA).
 - a. If the employee requests an appeal hearing, the hearing shall be scheduled with an Administrative Law Judge (ALJ) pursuant to the APA.
 - b. The ALJ will conduct the hearing pursuant to the Administrative Procedures Act and submit a proposed decision to the Board of Supervisors within 30 days after the case is submitted to the ALJ. The proposed decisions that can be made by the ALJ are:

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- (1) The employee is not incapacitated physically or mentally from the performance of his/her present duties;
 - (2) The injury is industrially related and the employee is now incapacitated;
 - (3) The employee is incapacitated and the incapacity is not industrially related. If a dispute exists as to whether the cause of the disability is industrial, the WCAB will make that determination.
- c. Pursuant to the procedures set forth in the APA, the Board of Supervisors will review the proposed decision and may choose to adopt it, reject it, modify it, decide the matter itself on the record, or require additional evidence.
2. If the employee is found by the Board of Supervisors to be incapacitated, the Risk Manager shall so certify to PERS. The employee will be advised that he or she may seek reconsideration of the Board's decision and or judicial review pursuant to the procedures in the APA.

RESPONSIBLE DEPARTMENTS

Support Services -- Risk Management

REFERENCES

Administrative Update--07/13/2012
 BOS Policy Resolution No. 2008-02--3/4/08 (Renumbered to 7-140 from 3-405; amended)
 BOS Policy Resolution No. 2001-16--8/14/01
 BOS Policy Resolution No. 95-10--8/1/95 (Amended)
 BOS Policy Resolution No. 91-2 and 91-3
 BOS Policy Resolution No. 42--7/10/84 (Valid)