



AD HOC COMMITTEE ON DISABILITY PENSIONS

AGENDA

Board of Fire and Police Pension Commissioners

Garrett Zimmon, Chair
Brian Pendleton, Vice Chair
Ruben Navarro
Paul Weber

July 2, 2020

**10:00 a.m. or as soon thereafter as the
Board adjourns its regular meeting**

Sam Diannitto Boardroom
Los Angeles Fire and Police Pensions Building
701 East 3rd Street, Suite 400
Los Angeles, CA 90013

Important Message to the Public:

In conformity with the Governor's Executive Order N-29-20 (March 17, 2020) and due to the public health concerns over COVID-19, this meeting of the Board of Fire and Police Pension Commissioners will be conducted telephonically.

PLEASE NOTE: The Board Room will be closed during this meeting.

To provide public comment telephonically, please call (213) 204-8320 and enter Meeting ID 252682762#

If you do not want to make a public comment, you may stream the meeting from the website (www.lafpp.com) or call any of the following numbers to access the Council Phone system and listen to live coverage: (213) 621-CITY (Downtown), (818) 904-9450 (Valley), (310) 471-CITY (Westside), and (310) 547-CITY (San Pedro Area).

Please refer to www.lafpp.com for more information.

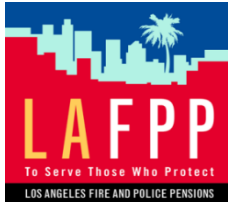
An opportunity for the public to address the Board or Committee about any item on today's agenda for which there has been no previous opportunity for public comment will be provided before or during consideration of the item. Members of the public who wish to speak on any item on today's agenda are requested to use the telephone number provided above.

Notice to Paid Representatives: If you are compensated to monitor, attend, or speak at this meeting, City law may require you to register as a lobbyist and report your activity. See Los Angeles Municipal Code §§ 48.01 *et seq.* More information is available at ethics.lacity.org/lobbying. For assistance, please contact the Ethics Commission at (213) 978-1960 or ethics.commission@lacity.org

In compliance with Government Code Section 54957.5, non-exempt writings that are distributed to a majority or all of the Board or applicable Committee of the Board in advance of their meetings may be viewed by clicking on LAFPP's website at www.lafpp.com. In addition, if you would like a copy of any record related to an item on the agenda, please contact the commission executive assistant, at (213) 279-3038 or by e-mail at rhonda.ketay@lafpp.com.

Sign language interpreters, communication access real-time transcription, assistive listening devices, Telecommunication Relay Services (TRS) or other auxiliary aids and/or services may be provided upon request. To ensure availability, you are advised to make your request at least 72 hours prior to the meeting you wish to attend. Due to difficulties in securing sign language interpreters, five or more business days notice is strongly recommended. For additional information, please contact the Department of Fire and Police Pensions, (213) 279-3000 voice or (213) 628-7713 TDD.

1. GENERAL PUBLIC COMMENTS ON MATTERS WITHIN THE COMMITTEE'S JURISDICTION
2. [ADDITION OF NONSERVICE-CONNECTED DISABILITY RATING SCALE TO THE DISABILITY RATING WORKSHEET AND POSSIBLE COMMITTEE ACTION](#)
3. [RESPONSES TO REQUEST FOR PROPOSAL FOR INDEPENDENT MEDICAL EXAM AND RECORD REVIEW SERVICES AND POSSIBLE COMMITTEE ACTION](#)
4. [DISCUSSION ON DISABILITY PENSION APPLICATIONS BASED UPON CARDIAC CLAIMS AND POSSIBLE COMMITTEE ACTION](#)



SPECIAL MEETING

AGENDA

Board of Fire and Police Pension Commissioners

July 2, 2020

**10:00 a.m. or as soon thereafter as the
Board adjourns its regular meeting**

Sam Diannitto Boardroom
Los Angeles Fire and Police Pensions Building
701 East 3rd Street, Suite 400
Los Angeles, CA 90013

Important Message to the Public:

In conformity with the Governor's Executive Order N-29-20 (March 17, 2020) and due to the public health concerns over COVID-19, this meeting of the Board of Fire and Police Pension Commissioners will be conducted telephonically.

PLEASE NOTE: The Board Room will be closed during this meeting.

To provide public comment telephonically, please call (213) 204-8320 and enter Meeting ID 252682762#

If you do not want to make a public comment, you may stream the meeting from the website (www.lafpp.com) or call any of the following numbers to access the Council Phone system and listen to live coverage: (213) 621-CITY (Downtown), (818) 904-9450 (Valley), (310) 471-CITY (Westside), and (310) 547-CITY (San Pedro Area).

Please refer to www.lafpp.com for more information.

An opportunity for the public to address the Board or Committee about any item on today's agenda for which there has been no previous opportunity for public comment will be provided before or during consideration of the item. Members of the public who wish to speak on any item on today's agenda are requested to use the telephone number provided above.

Notice to Paid Representatives: If you are compensated to monitor, attend, or speak at this meeting, City law may require you to register as a lobbyist and report your activity. See Los Angeles Municipal Code §§ 48.01 *et seq.* More information is available at ethics.lacity.org/lobbying. For assistance, please contact the Ethics Commission at (213) 978-1960 or ethics.commission@lacity.org

In compliance with Government Code Section 54957.5, non-exempt writings that are distributed to a majority or all of the Board or applicable Committee of the Board in advance of their meetings may be viewed by clicking on LAFPP's website at www.lafpp.com. In addition, if you would like a copy of any record related to an item on the agenda, please contact the commission executive assistant, at (213) 279-3038 or by e-mail at rhonda.ketay@lafpp.com.

Sign language interpreters, communication access real-time transcription, assistive listening devices, Telecommunication Relay Services (TRS) or other auxiliary aids and/or services may be provided upon request. To ensure availability, you are advised to make your request at least 72 hours prior to the meeting you wish to attend. Due to difficulties in securing sign language interpreters, five or more business days notice is strongly recommended. For additional information, please contact the Department of Fire and Police Pensions, (213) 279-3000 voice or (213) 628-7713 TDD.

1. GENERAL PUBLIC COMMENTS ON MATTERS WITHIN THE COMMITTEE'S JURISDICTION
2. [ADDITION OF NONSERVICE-CONNECTED DISABILITY RATING SCALE TO THE DISABILITY RATING WORKSHEET AND POSSIBLE COMMITTEE ACTION](#)
3. [RESPONSES TO REQUEST FOR PROPOSAL FOR INDEPENDENT MEDICAL EXAM AND RECORD REVIEW SERVICES AND POSSIBLE COMMITTEE ACTION](#)
4. [DISCUSSION ON DISABILITY PENSION APPLICATIONS BASED UPON CARDIAC CLAIMS AND POSSIBLE COMMITTEE ACTION](#)



DEPARTMENT OF FIRE AND POLICE PENSIONS

701 E. 3rd Street, Suite 200
Los Angeles, CA 90013
(213) 279-3000

REPORT TO THE AD HOC COMMITTEE ON DISABILITY PENSIONS

DATE: JUNE 4, 2020 JULY 2, 2020

ITEM: 2

FROM: RAYMOND P. CIRANNA, GENERAL MANAGER

SUBJECT: ADDITION OF NONSERVICE-CONNECTED DISABILITY RATING SCALE TO THE DISABILITY RATING WORKSHEET AND POSSIBLE COMMITTEE ACTION

RECOMMENDATION

That the Committee recommend that the Board approve the attached change to the Disability Rating Worksheet to add a nonservice-connected disability rating scale.

BACKGROUND

On December 8, 1980, Tier 3 was put into effect by the voters of Los Angeles. With the creation of Tier 3 came the requirement under Charter Section 1506 (c) that, "The Board shall adopt by rule, within a reasonable time, a disability rating schedule to assist in standardizing disability pension awards."¹ Prior plan tiers did not contain a requirement that the Board utilize a standard rating schedule.

The first disability rating schedule was drafted in 1981, and later modified by Deputy City Attorney Mary Jo Curwen after she determined that the rating sheet had serious defects. Ms. Curwen was tasked with developing an alternative to address deficiencies identified in the first rating schedule. Ms. Curwen's version of the rating schedule was adopted in September 1983 and contained two separate categories for rating disabilities: one based on working restrictions and one based on living restrictions. This rating system was intended to emphasize the whole person by focusing on the member's ability to handle the activities of daily living and the ability to work at other occupations.

A third version of the disability rating worksheet was adopted by the Board on May 1, 1986. This version adjusted the values to eliminate overlap and skewed final results.

The fourth version of the disability rating worksheet, which is currently in use, was adopted by the Board in May 1995 (see Attachment 1). The one-page rating sheet was developed to address minor inconsistencies and redundancies present within the two-page rating system, and was developed with input from both the United Firefighters of Los Angeles City (UFLAC) and the Los Angeles Police Protective League (LAPPL). On February 4, 2016, the Board again reviewed the current disability rating worksheet but did not make any changes to the rating sheet at that time.

¹ Tier 4 Charter language includes this same rating schedule requirement. Tier 5 Administrative Code language states that, "The Board shall use the disability rating schedule adopted for Tier 3 to assist in standardizing disability pension awards," whereas Tier 6 Charter language states, "The Board shall use the disability rating schedule adopted for Tier 3 to assist in standardizing disability pension awards or such other disability rating schedule as the Board may thereafter by rule adopt to assist in standardizing disability pension awards."

DISCUSSION

At the November 7, 2019 meeting, the Ad Hoc Committee heard input from stakeholders involved in the disability pension process and one topic of the discussion centered on possible revisions to the Board's Disability Rating Worksheet. At the December 19, 2019 meeting, the Ad Hoc Committee directed staff to meet with the active member bargaining units to discuss the addition of a nonservice-connected ("NSC") disability rating scale to the Disability Rating Worksheet.

The Disability Rating Worksheet was developed as a guideline or tool for the Board to standardize disability awards when assigning a degree of disability and focuses on disability percentages awarded for service-connected ("SC") disability pensions. The current worksheet is designed such that applicants' physical/psychiatric limitations and activities of daily living are considered under each of four rating strata: Minimal, Moderate, Serious, and Severe. This rating structure categorizes the applicant's physical and/or psychological level of disability based upon their ability to perform certain tasks or functions, as well as continuing care and prescription drug needs. Staff believes this type of structure, which focuses on an applicant's ability to perform tasks/activities rather than the ability to use specific police or fire equipment is preferred, as the equipment utilized by the departments is likely to change over time with evolving technology and policies.

Previous versions of the Disability Rating Worksheet have not included NSC disability rating percentages. NSC disability percentages can range from 30% - 50% for members of Tiers 3-6, whereas the rating categories on the current worksheet range from 1% to 90% for SC disability percentages. Despite the Rating Worksheet's focus on SC disability percentages, staff has relied on the rating categories in this worksheet as a guideline to recommend NSC disability percentages by dividing the allowable percentage range (30%-50%) into 5% intervals for each category (i.e., Minimal, Moderate, Serious, Severe).

The wide range of numerical possibilities with the four categories of Minimal, Moderate, Serious, and Severe Limitations allows the Board the ability to adjust the disability percentage within each category (excluding Total Disability) for both nonservice-connected and service-connected disability pensions. Staff conferred with all the employee organizations and the City Attorney to revise the Disability Rating Worksheet by adding a new column for NSC percentage ranges to be used for determining nonservice-connected disability pension awards (Attachment 2).

BUDGET

No impact at this time.

POLICY

If approved by the full Board, the revised Disability Rating Worksheet will be utilized to assist in standardizing all future service-connected and nonservice-connected disability pension awards.

CONTRACTOR DISCLOSURE INFORMATION

There is no contractor disclosure information required with this report.

This report was prepared by:

Kristen M. Rosauer, Manager
Disability Pensions Section

RPC:JS:GM:KR

Attachments: 1. Disability Rating Worksheet (current)
 2. Revised Disability Rating Worksheet (proposed)

DISABILITY RATING WORKSHEET

Applicant / Pensioner:

Based upon objective evidence, assign a number within a category that most closely reflects the individual's medical limitations.

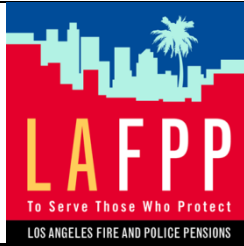
<i>No Limitations</i>	0
<p><i>Minimal Limitations</i></p> <p>GENERAL Can perform most activities with minor limitations. Pain is an annoyance but does not significantly limit the activity causing the pain.</p> <p>ORTHO / NEURO (Back, Neck, Upper & Lower Extremities) Can perform ordinary, normal jobs not requiring extreme levels of physical activity. Can lift, carry, push or pull 26 or more lbs. Must use caution when walking on uneven surfaces. Can hold position, sit, stand, walk or drive as needed up to 60 minutes without a break. Can use stairs or climb ladders.</p> <p>INTERNAL (Cardio, Gastro, Pulm, Oncol) Symptoms can be controlled with modified diet or lifestyle, OTC medication or exercise program. Can handle normal physical / emotional occupational stress. Can control bowel & bladder functions. No end organ damage present.</p> <p>PSYCHIATRIC Can follow directions, perform normal tasks & assignments, capable of self-initiating, planning & decision-making activities. Therapy required on an as-need basis. Does not require psychotropic medication. Can meet the public, work alone or with others. Requires normal supervision. Can handle normal personal or occupational stress.</p>	01-35
<p><i>Moderate Limitations</i></p> <p>GENERAL Can perform most activities with some limitation of endurance or physical ability. Pain is tolerated but causes some diminished levels of performance of the activity that causes the pain.</p> <p>ORTHO / NEURO Can perform semi sedentary jobs not requiring prolonged physical activity. Can lift, carry, push or pull 21 – 25 lbs. Should avoid walking on uneven surfaces. Can hold position, sit, stand, walk or drive as needed up to 45 minutes without a break. Limited use of stairs or climbing ladders. No altercations. Can squat, kneel, crawl or work above shoulder level for limited periods of time.</p> <p>INTERNAL Symptoms can be controlled with prescriptions medication. Limit exposure to environmental irritants i.e. dust or fumes. No unusual or prolonged physical / emotional occupational stress. Requires restroom to be readily available. Avoid abdominal constricting activities. Early stages of end organ damage present.</p> <p>PSYCHIATRIC Can follow directions, perform simple tasks & assignments. No planning or decision-making responsibility. Therapy required at least twice per month. Requires psychotropic medication on an as-needed basis. No public contact. Requires close supervision. Has difficulty handling normal personal or occupational stress.</p>	36-53
<p><i>Serious Limitations</i></p> <p>GENERAL Can perform most activities, but may require occasional assistance. Pain is tolerated but causes significantly reduced performance levels in the activity causing the pain.</p> <p>ORTHO / NEURO Can perform semi sedentary jobs with limited physical activity. Can lift, carry, push or pull 11 – 20 lbs. No walking on uneven surfaces. Can hold position, sit, stand, walk or drive as needed up to 30 minutes without a break. No climbing stairs or ladders. Can work with a telephone or computer. No above shoulder work.</p> <p>INTERNAL Symptoms only partially controllable with prescription medication. No sudden demands for physical / emotional occupational stress. Requires restrooms in close proximity to workstation. No environmental irritants i.e. dust or fumes. Significant end organ damage present.</p> <p>PSYCHIATRIC Can follow only simple directions, performing one task at a time. Therapy required weekly. Requires psychotropic medication daily. Can handle very low levels of personal or occupational stress. Requires constant supervision.</p>	54-71
<p><i>Severe Limitations</i></p> <p>GENERAL Cannot perform most activities without assistance. Extremely limited endurance and physical ability. Pain precludes the activity causing the pain.</p> <p>ORTHO / NEURO Can perform sedentary jobs requiring very limited physical activity. No lifting, carrying, pushing or pulling more than 10 lbs. Can hold position, sit, stand, walk or drive as needed up to 15 minutes without a break.</p> <p>INTERNAL Symptoms uncontrollable. No physical / emotional occupational stress. Immediate access to restroom required. Extensive end organ damage present.</p> <p>PSYCHIATRIC Requires daily therapy or institutionalization. Is a danger to self and others.</p>	72-89
<i>Total Disability</i>	90
	RATING

DISABILITY RATING WORKSHEET

Applicant / Pensioner:

Based upon objective evidence, assign a number within a category that most closely reflects the individual's medical limitations.

<i>No Limitations</i>	NSC 0	SC 0
<p>Minimal Limitations</p> <p>GENERAL Can perform most activities with minor limitations. Pain is an annoyance but does not significantly limit the activity causing the pain.</p> <p>ORTHO / NEURO (Back, Neck, Upper & Lower Extremities) Can perform ordinary, normal jobs not requiring extreme levels of physical activity. Can lift, carry, push or pull 26 or more lbs. Must use caution when walking on uneven surfaces. Can hold position, sit, stand, walk or drive as needed up to 60 minutes without a break. Can use stairs or climb ladders.</p> <p>INTERNAL (Cardio, Gastro, Pulm, Oncol) Symptoms can be controlled with modified diet or lifestyle, OTC medication or exercise program. Can handle normal physical / emotional occupational stress. Can control bowel & bladder functions. No end organ damage present.</p> <p>PSYCHIATRIC Can follow directions, perform normal tasks & assignments, capable of self-initiating, planning & decision-making activities. Therapy required on an as-need basis. Does not require psychotropic medication. Can meet the public, work alone or with others. Requires normal supervision. Can handle normal personal or occupational stress.</p>	30-34	01-35
<p>Moderate Limitations</p> <p>GENERAL Can perform most activities with some limitation of endurance or physical ability. Pain is tolerated but causes some diminished levels of performance of the activity that causes the pain.</p> <p>ORTHO / NEURO Can perform semi sedentary jobs not requiring prolonged physical activity. Can lift, carry, push or pull 21 – 25 lbs. Should avoid walking on uneven surfaces. Can hold position, sit, stand, walk or drive as needed up to 45 minutes without a break. Limited use of stairs or climbing ladders. No altercations. Can squat, kneel, crawl or work above shoulder level for limited periods of time.</p> <p>INTERNAL Symptoms can be controlled with prescriptions medication. Limit exposure to environmental irritants i.e. dust or fumes. No unusual or prolonged physical / emotional occupational stress. Requires restroom to be readily available. Avoid abdominal constricting activities. Early stages of end organ damage present.</p> <p>PSYCHIATRIC Can follow directions, perform simple tasks & assignments. No planning or decision-making responsibility. Therapy required at least twice per month. Requires psychotropic medication on an as-needed basis. No public contact. Requires close supervision. Has difficulty handling normal personal or occupational stress.</p>	35-39	36-53
<p>Serious Limitations</p> <p>GENERAL Can perform most activities, but may require occasional assistance. Pain is tolerated but causes significantly reduced performance levels in the activity causing the pain.</p> <p>ORTHO / NEURO Can perform semi sedentary jobs with limited physical activity. Can lift, carry, push or pull 11 – 20 lbs. No walking on uneven surfaces. Can hold position, sit, stand, walk or drive as needed up to 30 minutes without a break. No climbing stairs or ladders. Can work with a telephone or computer. No above shoulder work.</p> <p>INTERNAL Symptoms only partially controllable with prescription medication. No sudden demands for physical / emotional occupational stress. Requires restrooms in close proximity to workstation. No environmental irritants i.e. dust or fumes. Significant end organ damage present.</p> <p>PSYCHIATRIC Can follow only simple directions, performing one task at a time. Therapy required weekly. Requires psychotropic medication daily. Can handle very low levels of personal or occupational stress. Requires constant supervision.</p>	40-44	54-71
<p>Severe Limitations</p> <p>GENERAL Cannot perform most activities without assistance. Extremely limited endurance and physical ability. Pain precludes the activity causing the pain.</p> <p>ORTHO / NEURO Can perform sedentary jobs requiring very limited physical activity. No lifting, carrying, pushing or pulling more than 10 lbs. Can hold position, sit, stand, walk or drive as needed up to 15 minutes without a break.</p> <p>INTERNAL Symptoms uncontrollable. No physical / emotional occupational stress. Immediate access to restroom required. Extensive end organ damage present.</p> <p>PSYCHIATRIC Requires daily therapy or institutionalization. Is a danger to self and others.</p>	45-49	72-89
<p>Total Disability</p>	50	90
	RATING	



DEPARTMENT OF FIRE AND POLICE PENSIONS

701 E. 3rd Street, Suite 200
Los Angeles, CA 90013
(213) 279-3000

REPORT TO THE AD HOC COMMITTEE ON DISABILITY PENSIONS

DATE: ~~JUNE 4, 2020~~ JULY 2, 2020

ITEM: 3

FROM: RAYMOND P. CIRANNA, GENERAL MANAGER

SUBJECT: RESPONSES TO REQUEST FOR PROPOSAL FOR INDEPENDENT MEDICAL EXAM AND RECORD REVIEW SERVICES AND POSSIBLE COMMITTEE ACTION

RECOMMENDATION

That the Committee recommend to the Board to direct staff to negotiate the terms and conditions for new contracts with the two existing independent medical exam/records review services providers.

BACKGROUND

On November 7, 2019, the Ad Hoc Committee on Disability Pensions recommended for Board approval the issuance of a new Request for Proposal (RFP) for independent medical exam and records review services. At the November 21, 2019 meeting, the Board approved the release of the RFP. On December 20, 2019, the RFP was published on the LAFPP website as well as the City's contracting opportunities website (Business Assistance Virtual Network – BAVN). The RFP had a published closure date of January 24, 2020; however, this date was extended to February 28, 2020, due to lack of responses.

DISCUSSION

Disability Pensions Staff currently utilizes two third-party service providers for independent medical exam services and record reviews: ExamWorks, LLC and QTC Medical Group, Inc. Staff relies on the findings of the pension physicians' reports provided by these contractors as the basis of disability pension recommendations to the Board. The Ad Hoc Committee discussed in length concerns regarding the overall quality and content of recent pension physician reports, and considered comments submitted by staff and stakeholders. These concerns range from the pension physician rendering an unclear conclusion regarding injury/illness causation, to providing insufficient information as to applicants' work restrictions. Staff has had to repeatedly return reports for not only clarification of the applicant's condition(s), but also for the correction of dates or vitals incorrectly referenced by the physician.

The new RFP emphasized the lessons learned from the previous RFP and incorporated any related Ad Hoc Committee recommendations. Emphasis was placed on measures to ensure the confidentiality of member information, appropriate data security practices, customer service, and contractor performance metrics. When the RFP closed on February 28, 2020, staff had received a total of two (2) submissions, both from our current vendors. Due to the lack of submissions, staff recommends closing out the RFP and engaging in negotiations with the existing vendors to discuss new contract parameters. The contract negotiations will focus on the overall content and quality of

the pension physician reports. Since the release of the RFP, Staff has continued to work with the two existing vendors to ensure the written physician reports meet our requirements by providing clear conclusions regarding injury/illness causation and providing sufficient information as to applicants' work restrictions. Focus will also be placed on consistent service delivery metrics and fee structure.

BUDGET

The 2020-2021 budget includes a total of \$320,000 for disability medical exam and record review services.

POLICY

No policy changes at this time.

CONTRACTOR DISCLOSURE INFORMATION

There is no contractor disclosure information required with this report.

This report was prepared by:

Kristen M. Rosauer, Manager
Disability Pensions Section

RPC:JS:GM:KR



DEPARTMENT OF FIRE AND POLICE PENSIONS

701 E. 3rd Street, Suite 200
Los Angeles, CA 90013
(213) 279-3000

REPORT TO THE AD HOC COMMITTEE ON DISABILITY PENSIONS

DATE: ~~JUNE 4, 2020~~ JULY 2, 2020

ITEM: 4

FROM: RAYMOND P. CIRANNA, GENERAL MANAGER

SUBJECT: DISCUSSION ON DISABILITY PENSION APPLICATIONS BASED UPON
CARDIAC CLAIMS AND POSSIBLE COMMITTEE ACTION

DISCUSSION

Applications Based Upon Cardiac Claims

The Disability Pensions Section regularly receives disability pension applications for cardiac claims. These claims are processed in the same manner as disability applications for other medical reasons. After an initial interview with the member, all medical and personnel records pertaining to the claimed illness or injury will be collected. These records include the pre-employment physical from the City's Medical Services Division, as well as any medical records from the third-party administrator handling the member's Workers' Compensation claim(s). If the member has received treatment outside of the Workers' Compensation system, then records pertaining to illness or injury will be collected from the treatment provider. All records addressing the claim will be included in the administrative case file and forwarded to the pension physicians for review in conjunction with the independent medical exam. Findings will be included in the report to the Board supporting staff's recommendation.

In the case of cardiac claims, staff will obtain from the received medical reports whether the member has a family history or predisposition for cardiac issues, as well as reflect any discussion of whether the member has been complying with any previous doctors' recommendations about treating a diagnosed cardiac condition. This information is usually contained in the medical history section of the received reports. Treating physicians routinely include this information in medical reports submitted to the Workers' Compensation third-party administrators. When Disability staff encounters such information, the details are included in the Board report to create a holistic picture of the member's claimed impairment.

Workers' Compensation Presumptions Do Not Apply to Disability Pension Determinations

Workers' Compensation presumptions are a legislative determination that, for Workers' Compensation purposes only, certain medical conditions are to be treated as work-related without requiring any explicit evidence that links the claimed injury to the member's actual performance of job duties. These presumptions require a finding that certain injuries are sustained "in the course and scope of employment." This is different than the statutory language that governs what evidence a member must present for the Board to award a service-connected disability pension.

The City Charter and Administrative Code do not include any presumptions concerning service-connectedness of a claimed impairment, and the Charter and Administrative Code provide a more

stringent legal standard for approving a member's application for a service-connected disability pension than what is required for a member to receive a Workers' Compensation award. In other words, relying on a presumption does not satisfy the legal requirement that a service-connected disability pension must be supported by "clear and convincing" evidence that performance of duties is the predominant cause of the member's claimed impairment.

In addition, case law clearly states that, for members of Tiers 3 – 6, the Board is not bound by *any* findings or determinations made in a member's Workers' Compensation proceeding, even where those determinations are based on Workers' Compensation presumptions. For these reasons, Workers' Compensation presumptions should not be factored into the Board's determination of disability retirements.*

Payment of Workers' Compensation benefits is not necessarily an admission of liability. Workers' Compensation is required to pay for treatment of an injury unless or until it can be determined that the injury was not work-related. When the Board is told that "the City" has paid for physician visits or treatment, it does not automatically mean that "the City" has accepted the injury as work-related. The Board should not draw any inferences from evidence that the City has merely paid for certain Workers' Compensation expenses.

Workers' Compensation presumptions are not evidence. Accordingly, presumptions that support a Workers' Compensation award cannot be the basis for any findings regarding service-connection for pension purposes. However, the Board may rely on opinions and conclusions of physicians in the medical reports issued in Workers' Compensation matters to the extent these opinions and conclusions are not based upon a presumption and instead are based on an objective evaluation of the medical evidence as it relates to the member's actual performance of his or her duties.

BUDGET

No impact at this time.

POLICY

No policy changes at this time.

CONTRACTOR DISCLOSURE INFORMATION

There is no contractor disclosure information required with this report.

This report was prepared by:

Kristen M. Rosauer, Manager
Disability Pensions Section

RPC:JS:GM:KR

* If the Board determines that a Tier 2 member is incapacitated and there is a Workers' Compensation award for the same underlying disability, the Board is bound by law (the *Dakins* decision) to award a service-connected disability retirement.