

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701**

**DISABILITY COMMITTEE MEETING
August 15, 2022
8:30 a.m.**

Members of the Committee

Adele Tagaloa, Chair
Wayne Lindholm
Jeremy Vallone

Pursuant to Assembly Bill 361, signed into law on September 16, 2021 as urgency legislation; Governor Newsom’s Proclamation of a State of Emergency on March 4, 2020, which Proclamation is still in effect; and Board of Retirement Resolution 2022-07, this meeting will be conducted by video/teleconference, in compliance with Government Code section 54953 as amended by Assembly Bill 361. In addition, members of the Committee and the public are welcome to participate in the meeting via Zoom or from the OCERS Boardroom located at 2223 E. Wellington Ave., Santa Ana, CA. However, none of the other locations from which the Committee members participate by teleconference will be open to the public.

Members of the public who wish to observe and/or participate in the meeting may do so (1) from the OCERS Boardroom or (2) via the Zoom app or telephone from any location. Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. Members of the public who participate in the meeting from the OCERS Boardroom and who wish to provide comment during the meeting may do so from the podium located in the OCERS Boardroom.

OCERS Zoom Video/Teleconference information	
Topic: Disability Committee Meeting Time: August 15, 2022 08:30 AM Pacific Time (US and Canada) Join Zoom Meeting https://ocers.zoom.us/j/87243077763 Meeting ID: 872 4307 7763 Passcode: 120806 One tap mobile +16699006833,,87243077763#,,,,*120806# US (San Jose) +13462487799,,87243077763#,,,,*120806# US (Houston)	Dial by your location +1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US (Tacoma) +1 301 715 8592 US (Washington DC) +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York) Meeting ID: 872 4307 7763 Passcode: 120806 Find your local number: https://ocers.zoom.us/u/kbZYxr2C8

AGENDA

This agenda contains a brief general description of each item to be considered. The Committee may take action on any item listed on this Agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the Agenda. The Committee may consider matters included on the agenda in any order, and not necessarily in the order listed.

OPEN SESSION

CALL MEETING TO ORDER AND ROLL CALL

PUBLIC COMMENT

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda. Members of the public who wish to provide comment at this time may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

CONSENT ITEMS

All matters on the Consent Agenda are to be approved by one action unless a Committee member requests separate action on a specific item.

DC-1: DONESHIA CHATMAN
Coach Operator, Orange County Transportation Authority (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.
- Set the effective date as January 3, 2021.

DC-2: PRESTON KNOWLES
Deputy Sheriff I, Orange County Sheriff's Department (Safety Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.

- Set the effective date as February 2, 2022.

DC-3: JARRETT KURIMAY
Commander, Orange County Sheriff's Department (Safety Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.
- Set the effective date as January 14, 2022.

DC-4: ANA LA PYRNE
Deputy Sheriff I, Orange County Sheriff's Department (Safety Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.
- Set the effective date as March 11, 2022.

DC-5: BRAD ALLEN PHOENIX
Battalion Chief, Orange County Fire Authority (Safety Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.
- Set the effective date as December 21, 2021.

DC-6: BAO VINH
Senior Social Worker, Orange County Social Services Agency (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.
- Set the effective date as March 31, 2017.

CLOSED SESSION
Government Code section 54957

Adjourn to Closed Session under Government Code section 54957 to consider disability applications and to discuss member medical records submitted in connection therewith. The member may waive confidentiality and request his or her disability application to be considered in Open Session.

ACTION ITEMS:

NOTE: Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee's discussion of the item. **Persons attending the meeting in person and wishing to provide comment on a matter listed on the agenda should fill out a speaker card located at the back of the Boardroom and deposit it in the Recording Secretary's box located near the back counter.**

DA-1: INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA

DA-2: GLENN STITZ
Court Collection Officer I, Orange County Superior Court (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant non-service connected disability retirement.
- Set the effective date as August 6, 2021.
- Deny service connected disability retirement due to insufficient evidence of job causation.

DA-3: MICHAEL TIVENAN
Fire Apparatus Engineer, Orange County Fire Authority (Safety Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.
- Set the effective date as February 3, 2015.

OPEN SESSION

- A. **REPORT OF ACTIONS TAKEN IN CLOSED SESSION**
- B. **MINUTES FROM THE JULY 18, 2022 DISABILITY COMMITTEE MEETING**

Recommendation: Approve the Minutes.

- C. **REVIEW OF NEW OCERS ADMINISTRATIVE PROCEDURE (OAP) PERFORMANCE OF USUAL DUTY DETERMINATION**

Recommendation: Approve, and recommend that the Board adopt, a new OCERS Administrative Procedure for Disability Performance of Usual Duty Determinations.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

NOTICE OF NEXT MEETINGS

REGULAR BOARD MEETING

August 15, 2022

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

INVESTMENT COMMITTEE MEETING

August 24, 2022

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

DISABILITY COMMITTEE MEETING

Orange County Employees Retirement System
August 15, 2022
Disability Committee Meeting

September 19, 2022
8:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701

AVAILABILITY OF AGENDA MATERIALS - Documents and other materials that are non-exempt public records distributed to all or a majority of the members of the OCERS Board or Committee of the Board in connection with a matter subject to discussion or consideration at an open meeting of the Board or Committee of the Board are available at the OCERS' website: <https://www.ocers.org/board-committee-meetings>. If such materials are distributed to members of the Board or Committee of the Board less than 72 hours prior to the meeting, they will be made available on the OCERS' website at the same time as they are distributed to the Board or Committee members. Non-exempt materials distributed during an open meeting of the Board or Committee of the Board will be made available on the OCERS' website as soon as practicable and will be available promptly upon request.

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at adminsupport@ocers.org or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible.

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701**

**DISABILITY COMMITTEE MEETING
Monday, July 18, 2022
8:30 a.m.
MINUTES**

OPEN SESSION

The Chair called the meeting to order at 8:32 a.m.

Recording Secretary administered roll call.

Attendance was as follows:

Present via Zoom Video
conference pursuant to
Government Code § 54953, as

amended by AB 361: Adele Tagaloa, Chair; Wayne Lindholm, Jeremy Vallone

Also Present: Steve Delaney, Chief Executive Officer; Gina Ratto, General
Counsel; Suzanne Jenike, Assistant CEO, External Operations;
Megan Cortez, Disability Manager; David Acuna, Disability
Investigator, Anthony Beltran, Audio Visual Technician; Bill
Singleton, Recording Secretary

PUBLIC COMMENTS

None.

CONSENT ITEMS

MOTION by Vallone, **seconded** by Lindholm to approve staff's recommendation on all of the following items, DC-1 through DC-6, with DC-7 pulled, on the Consent Agenda:

The motion passed **unanimously**.

DC-1: JEFFREY ANDERSON
Sergeant, Orange County Sheriff's Department (Safety Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.

- Set the effective date as the day after the last date of regular compensation.

DC-2: YVETTE CLANTON
Coach Operator, Orange County Transportation Authority (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service and non-service connected disability retirement without prejudice due to the member's failure to cooperate.

DC-3: MARILYN GORRIN
Sheriff's Records Supervisor, Orange County Sheriff's Department (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service and non-service connected disability retirement without prejudice due to the member's failure to cooperate.

DC-4: TERRY JOHNSON
Office Supervisor B, Orange County Probation Department (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service and non-service connected disability retirement without prejudice due to the member's failure to cooperate.

DC-5: ANTHONY LIM
Deputy Sheriff II, Orange County Sheriff's Department (Safety Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.
- Set the effective date as the day after the last date of regular compensation.

DC-6: ANTHONY McCOLLOUGH
Coach Operator, Orange County Transportation Authority (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Grant service connected disability retirement.
- Set the effective date as May 24, 2020.

DC-7: ROBERT STAMMERJOHAN - PULLED
Sheriff's Special Officer II, Orange County Sheriff's Department (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service and non-service connected disability retirement without prejudice due to the member's failure to cooperate.

DC-7 was pulled from the agenda.

CLOSED SESSION

The Committee recessed into Closed Session at 8:37 a.m.

DA-2: BRANDY HARRIS
Office Technician, Orange County Social Services Agency (General Member)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service and non-service connected disability retirement due to insufficient evidence of permanent incapacity.

The Committee meeting resumed in Open Session at 8:42 a.m.

OPEN SESSION

A. REPORT OF ACTIONS TAKEN IN CLOSED SESSION

Ms. Jenike reported that the Committee met in Closed Session on DA-2 (BRANDY HARRIS), and the Committee voted unanimously, with Lindholm abstaining, to adopt staff's recommendation as presented.

ACTION ITEMS

DA-1: INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA
N/A

B. MINUTES FROM THE JUNE 20, 2022 DISABILITY COMMITTEE MEETING

Recommendation: Approve the Minutes.

MOTION by Vallone, **seconded** by Tagaloa, to approve the minutes from the June 20, 2022 Disability Committee Meeting.

The motion passed **unanimously, with Lindholm abstaining.**

COMMITTEE MEMBER COMMENTS

N/A

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

Ms. Jenike reported that the Committee meetings for the remainder of the 2022 calendar year have been assigned to the Appointed Board members. In addition, staff has completed an OCERS Administrative Procedure (OAP) related to disability retirement and intends on presenting it to the Committee on August 15, 2022.

COUNSEL COMMENTS

N/A

ADJOURNMENT

The meeting adjourned at 8:45 a.m.

Submitted by:

Approved by:

Steve Delaney

Adele Tagaloa

Memorandum

DATE: August 15, 2022
TO: Members of the Disability Committee
FROM: Suzanne Jenike, Assistant CEO, External Operations
SUBJECT: NEW OCERS ADMINISTRATIVE PROCEDURE (OAP) DISABILITY FROM PERFORMANCE OF USUAL DUTY DETERMINATIONS

Recommendation

Approve, and recommend that the Board adopt, a new OCERS Administrative Procedure for Disability Performance of Usual Duty Determinations.

Background/Discussion

For a member to qualify for a disability retirement, the Board must find that the member is incapacitated for the performance of duty. OCERS will look to the member's usual and customary duties when evaluating incapacity. OCERS will consider whether the member's disability renders them incapable of performing the usual and customary duties of the job the member held at the time they became incapacitated. And by job, we mean any permanent position or assignment within the member's job classification.

To be incapacitated for the performance of duty, the member must be unable to substantially perform the usual and customary duties of any permanent position or assignment within the job classification they held at the time they became incapacitated, and that inability must be considered permanent.

The term "duty" is not defined in the Government Code, but OCERS is guided by the various court decisions that have interpreted what duty means in certain contexts. OCERS Team created this administrative procedure to help clarify the laws that govern disability from the performance of usual duty determinations.

Staff recommends that the Disability Committee approve the OCERS Administrative Procedure (OAP) and forward it to the Board with a recommendation that the Board adopt the OAP.

Submitted by:



SJ-Approved

Suzanne Jenike
Assistant Chief Executive Officer, External
Operations



OCERS Administrative Procedure (OAP) Disability – Performance of Duty

I. Purpose

The purpose of this OCERS administrative procedure (OAP) is to describe how OCERS' Board of Retirement (Board) and the Board's Disability Committee evaluate incapacity for the performance of duty when determining eligibility for disability retirement. More specifically, how the member's "duty" is defined when assessing whether they are incapable of performing their job.

II. Authority

This OAP is established pursuant to the Chief Executive Officer (CEO) Charter, section 8.f., which directs the CEO to develop staff policies and procedures to ensure effective and efficient administration of member benefits. The OAP is in conformance with Board Policy, the County Employees Retirement Law (California Government Code section 31450, et seq.) (CERL), and the Public Employees' Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA).

III. Overview

A member of OCERS may be eligible for a disability retirement allowance if they become permanently incapacitated for the performance of duty.¹ If the member is incapacitated for duty due to an injury or illness arising out of and in the course of their employment, the disability is service-connected. If the member is incapacitated because of an injury or illness that did not arise

¹ Gov. Code, § 31720:

Permanent incapacity

Any member permanently incapacitated for the performance of duty shall be retired for disability regardless of age if, and only if:

- (a) The member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity, or
- (b) The member has completed five years of service, and
- (c) The member has not waived retirement in respect to the particular incapacity or aggravation thereof as provided by Section 31009.



OCERS Administrative Procedure (OAP)

Disability – Performance of Duty

out of their employment, the disability is non-service connected. There are differences between service-connected and non-service-connected disability, including differences in the amount of the disability allowance, but those differences are not the topic of this OAP. The question of whether the member is permanently incapacitated from performing their usual and customary duties is the same for both.

The determination process for disability retirement is started once a member (or their employer) files an application for disability retirement with OCERS. The application must be filed while the member is still in service (still employed with the member employer), within four months of discontinuing from that service, within four months after the expiration of any period during which a presumption is extended beyond the discontinuance of service, or while, from the date of discontinuance to the time of application, the medical evidence shows they have been continuously unable to perform their regular job duties.²

It is the Board that must decide whether a member is permanently incapacitated for the performance of duty.³ This factual issue is determined from the available information, including a medical examination.⁴ If the proof received shows to the satisfaction of the Board that the member is permanently incapacitated, physically or mentally, for the performance of their duties, the Board will retire the member for disability. Usually, the disability retirement allowance is effective as of the date the application was filed.⁵

Finding permanent incapacity involves a two-step determination:

1. Is the member substantially incapacitated from performing their usual duties; and, if so,
2. Is the incapacity permanent?

² Gov. Code, §31722

³ Gov. Code, § 31725

⁴ Gov. Code, § 31723

⁵ But not earlier than the day following the last day for which they received regular compensation (Gov. Code, § 31724).



OCERS Administrative Procedure (OAP)

Disability – Performance of Duty

The focus of this OAP is on what constitutes the member's "usual duties." A "permanent incapacity" is a disability that is either permanent or of extended and uncertain duration, as established by the medical evidence and determined by the Board.

IV. Evaluation of the Performance of Duty

Again, for a member to qualify for a disability retirement, the Board must find that the member is incapacitated for the performance of duty. The term "duty" is not defined in the Government Code, but OCERS is guided by the various court decisions that have interpreted what duty means in certain contexts.

OCERS will look to the member's usual and customary duties when evaluating incapacity. OCERS will consider whether the member's disability renders them incapable of performing the usual and customary duties of the job the member held at the time they became incapacitated. And by job, we mean any permanent position or assignment within the member's job classification.

In sum:

To be incapacitated for the performance of duty, the member must be unable to substantially perform the usual and customary duties of any permanent position or assignment within the job classification they held at the time they became incapacitated, and that inability must be considered permanent.

Furthermore, to establish disability, the member need not be incapable of performing *every single duty or task* that might arise within their job classification. Instead, the member's medical condition must result in a substantial inability to perform their usual duties.⁶ A usual duty is a task regularly involved in the work, not one that is an unusual or uncommon occurrence.

Thus, an inability to perform a job task that is a rare event does not demonstrate an incapacity for the performance of duty, unless the employer establishes that it is are unable to accommodate the inability to perform that task.

⁶ See *Mansperger vs. CalPERS* (1970) 6 Cal. App. 3d 873



OCERS Administrative Procedure (OAP)

Disability – Performance of Duty

For example, consider a member whose job constitutes light work most of the time, but on rare occasions, they may have to lift heavy equipment without assistance from a co-worker. A medical limitation to avoid heaving lifting would not prove incapacitating because the medical limitation would not substantially interfere with performance of their usual duties.

It is also the case that an inability to perform a field assignment, which requires sustained standing and walking, does not necessarily establish incapacity when the employer offers an office assignment within the same job classification that does not include those physical requirements. The test is the ability to perform the job's usual duties, not whether the member can perform all the duties to which they might be assigned.⁷ The member need not be able to perform any and all duties of the job.

OCERS first looks to the employer's official job classification or job description document to detail what those usual duties are. This information may be supplemented by other documentation provided by the employer and the member.

Alternate Work

An employer may accommodate the employee's medical limitations within the member's existing job classification. If so, the member is not incapacitated if they can perform modified duties in their current assignment. In other words, OCERS will not consider the employee incapacitated even though they are unable to perform the "full range" of duties of a given job classification. The accommodation through modified duties, however, would have to be for an ongoing basis and not considered temporary.

For example, consider a member limited to light work due to their physical impairments, but heavy lifting is a usual duty of their job. As such, they could not perform the usual duties of their work. Their employer has a light-duty position within the member's job classification that the member can perform, but it is only temporary. Because it is a short-term assignment, the availability of that light-duty position would render the member eligible for disability retirement. On the other hand, if the employer permanently assigned them to that light job, the member would be denied disability retirement. By "permanent," we mean the position or assignment is not

⁷ See *Schrier v. San Mateo County Employees' Retirement Association* (1983) 142 Cal.App.3d 957, 963



OCERS Administrative Procedure (OAP)

Disability – Performance of Duty

limited to a specific duration. For example, a position would not be permanent if it would only continue until the employer hires the disabled member's replacement or will last only to the end of the current fiscal year.

Hence, a member is not entitled to disability retirement if they are capable of modified work of ongoing and indeterminate duration within their job classification that is offered by their employer.

The standard for disability is whether the member has lost the capacity to do the job they were performing when they became incapacitated. Their ability to work for their employer in a different job classification would not disqualify them for disability retirement. OCERS considers a member incapacitated for the performance of duty if their impairments preclude them from doing the job they were performing, regardless of whether there may be other positions in different job classifications with their employer they could still do. For example, an agency's general manager cannot be denied a disability retirement by proof that the duties of a caseworker remain within their capacity.

Therefore, the usual duties of the member's position constitute the standard against which their incapacity is judged, not the functions of some other job to which they could be assigned.

Time Period Measured

An issue may arise as to what time period the Board will use to measure whether a member became incapacitated for the performance of duty. In circumstances where the member is an active on-leave employee, OCERS first measures their capacity at the point they were last performing their usual duties.⁸ That is also the case where the member takes a regular retirement pending the resolution of their disability application.⁹ There may be unusual circumstances where a member alleges that their disability began at some point after they were last on the job. If so, the latest time OCERS may measure to determine when the disability began is when the employer-

⁸ See *Meyers v. Board of Administration etc.* (2014) 224 Cal.App.4th 250

⁹ Per Gov. Code, § 31725.7, a disability applicant who retires for service pending the disability determination and who is found not to be entitled to disability retirement waives the right to be returned to duty.



OCERS Administrative Procedure (OAP)

Disability – Performance of Duty

employee relationship last existed, i.e., the last point where the member still had a right to return to the job if they had not become disabled.

It is important to note that there is a distinction between the availability of a member's job and their capacity to perform it. That is to say, the elimination of a member's job does not necessarily extinguish the member's right to a disability retirement. In that case, the member must establish that they became permanently incapacitated for the performance of duty at a time before the employer eliminated the position.

For example, a member would still be eligible for disability if they suffered a permanently incapacitating injury, filed a disability application, and then, at some point later, the agency eliminated their position. However, if their injury occurred *after* the position was eliminated, they would be ineligible because they could not show they were disabled when the job existed.

The Americans with Disabilities Act (ADA) and Workers' Compensation

A member who files for disability retirement with OCERS may also have filed claims under the ADA or Workers' Compensation law. The rules that govern OCERS disability determinations are different than those of the ADA and Workers' Compensation. However, the terminology used may be similar and this could lead to confusion. OCERS disability determinations are governed by the CERL. The ADA is a federal law that requires covered employers to provide reasonable accommodations to employees with disabilities. The Board has no authority to enforce the ADA or to force an employer to provide reasonable accommodations to a member. However, in determining whether a member is permanently incapacitated for the performance of duty, the Board will consider those accommodations that have been or should be offered by the employer so that the member can continue to work in their position.

Also, the employer may find that the member is unable to perform an "essential job function," a standard under the ADA, and conclude that the employee is unable to continue working. The Board may determine, however, that the member is able to substantially perform their usual duties, even if they are unable to perform a duty the employer considers an essential job function.

In addition, the legal standards for disability retirement and those used in the Workers' Compensation context are different. A member's status or receipt of benefits in the Workers' Compensation system is not binding upon OCERS. For example, in Workers' Compensation, a "permanent and stationary" rating means the point in time when the employee has reached maximum medical improvement, in that their condition is unlikely to change substantially in the next year with or without medical treatment. It does not necessarily mean they are "permanently incapacitated" or even that they have any limitations at all, as they may have fully recovered.



OCERS Administrative Procedure (OAP)

Disability – Performance of Duty

Disability retirement with OCERS is under an entirely different regulatory scheme than the ADA and Workers' Compensation and thus uses distinct terminology and legal standards.

Where the employer accommodates or reemploys the employee by placing them in a different position, that member will still be considered incapacitated for the performance of duty for disability retirement purposes with OCERS. Should that different position have a lower rate of pay than the position for which the member was incapacitated, OCERS will pay a "supplemental disability allowance" in an amount equal to the difference in salary between the two positions rather than a disability retirement allowance.¹⁰ However, that allowance will not be greater than the disability retirement allowance to which the member would otherwise be entitled.

¹⁰ Gov. Code, § 31725.65