

PENSION FUNDAmentals®

Trustee Development Seminar III

Benefits Administration

MAPERS

Spring 2015 Conference

Michael J. VanOverbeke, Esq.

VanOverbeke, Michaud & Timmony, P.C.

79 Alfred Street

Detroit, Michigan 48201

Phone 313-578-1200

Fax 313-578-1201

www.vmtlaw.com

Objective for Trustee Development Seminar III



To provide retirement system trustees and plan professionals a general overview regarding the administration of service and disability pension benefits.

Fiduciary Responsibilities of the Retirement Board

- **Legal Duty – Board must act in the BEST INTEREST OF THE FUND.**
 - **The Board of Trustees is vested with the administration, management and operation of the Retirement System.**
 - **Trustees must “act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims.”**

Fiduciary Responsibilities of the Retirement Board

- **Balancing Act – Ensure members receive all entitled benefits:** *No More, No Less.*
- **Autonomy**
 - **Board has specific duties, responsibilities, and authority.**
 - **Board's ability to act independently (fair and impartial) is paramount.**
 - **Board's responsibilities may not always align with objectives of: employer, union, or individuals.**

Regular Service Retirement

- **Service Retirement Procedures**
 - Detail the people, process and timing
- **Application for Service Retirement**
- **Acknowledgement of Retirement Application**
- **Retirement Allowance Form**
- **Approval of Service Retirement**

Other Service Related Issues

- **402 Notice – Plan administrators must furnish written explanation of rollover rules to distributees.**
- **Eligible Domestic Relations Orders**
- **Verifying Information**
- **Re-Employment of Retirees**
- **Death Records Search**
- **Basis Recovery – Tax Reporting / Withholding**

Disability Retirement

Standardizing the Disability Claim Process

- **Time is Money**
 - **Efficient administration reduces cost**
 - **Reduces member questions: mutual benefit**
- **Establish written guidelines**
 - **Consistency of administration**
 - **Promotes effective / efficient processing of benefits**
 - **Supports proper payment of benefits**
 - **Ensures due process**
 - **Protection against arbitrary / capricious action**

Disability Retirement

Standardizing the Disability Claim Process

- **Document each step or phase**
 - **Board Resolutions**
 - **Proof of Notice**
 - **Legal Protection**

- **Protection Against Fraud / Bad Publicity**

Disability Retirement

WHEN DOES THE DISABILITY PROCESS START?

- **Establish a “pro-active” policy on Retirement System membership.**
- **Board may request prior medical / employment records and may require pre-membership examinations**
 - **Ensures that medical review process is consistent**
 - **Establishes baseline of medical condition (pre-existing injuries)**

Disability Retirement

WHEN DOES THE DISABILITY PROCESS START?

- **Board may wish to incorporate pre-employment medical reports.**
- **Cost savings**
- **Applicant's time and privacy**

Effectively Processing Disability Claims

- **Policies, Procedures and Forms**
 - **Disability Retirement Procedure**
 - **Disability Retirement Re-Examination Procedure**
- **Comprehensive Application**
- **Authorization to Obtain Medical Records**
- **Obtain Relevant Records / Information**
 - **Medical and Employment Files;
Interrogatories**

Effectively Processing Disability Claims

- **Fact Finding – Independent Investigation**
 - ❑ **Witness Interviews**
 - ❑ **Incident Reports**
 - ❑ **Medical Reports**
 - ❑ **Background Checks**
 - ❑ **Video Tapes**

Effectively Processing Disability Claims

- **Appoint Examining Physician or Medical Review Board**
 - ❑ **Independent Medical Examinations (IME)**
 - ❑ **Specialist / expert in field of claimed disability**
 - ❑ **Responsibility of Medical Advisor / Committee**
 - **Duty is to the Board**
 - **Shall arrange for and pass upon all medical examinations**
 - **Investigate all essential matters of a medical nature**
 - **Report in writing conclusions, recommendations and opinions**

Effectively Processing Disability Claims

- **Review of Medical Report and Presentation of Testimony**
 - **Formal / Informal hearing**
 - **Board to receive copies of all medical & incident reports**

- **Frequency and / or Waiver of Re-Examinations**

Disability Standards of Review

- **Burden of Proof**
 - **Burden of proving entitlement to disability benefits is ON THE APPLICANT**
 - **Standard is “Preponderance of the Evidence” – More Likely than Not**
- **Eligibility requirements are those established in the plan document**
- **Courts review Board decisions using an “arbitrary and capricious” standard**
- **Employment Standard: “... for duty in ...”**

Disability Standards of Review

- **Employment Standard: “. . . totally and permanently incapacitated for duty in the employ of. . . ”**
 - Department Standard**
 - Job Classification Standard**
 - Municipal-wide Standard**

Disability Standards of Review

- **Permanent vs. Temporary**
 - **What is permanent?**
 - **Ability of Board to require reasonable medical treatment / therapy**
 - **Re-examination period**

- **Total vs. Partial**
 - **Collective bargaining provisions re: light duty**
 - **Reasonable Accommodations: Americans with Disabilities Act (ADA)**

Disability Standards of Review

- **Duty vs. Non-duty**
 - **Determination vested in the Board**
 - **“In the performance of duty” or “Natural and proximate result of causes arising out of and in the course of employment”**
 - **Prior medical history and reports**
 - **Worker’s Compensation Presumptions – Heart and Lung Act**

Disability Benefit Offset

- **Worker's Compensation Offset**
- **Worker's Compensation Offset Policy / Procedure**
- **General Offset for Gainful Employment**
- **Monitoring Policy**

Confidentiality / Privacy

- **Board recognition of Member's Right to Privacy**
 - **Health Insurance Portability and Accountability Act (HIPPA)**
- **Open Meetings Act / Freedom of Information Act**
 - **No specific exemption: Board may consider material exempt from discussion in open meeting or disclosure on the basis of individual privacy rights under state and federal law**

Taxation of Disability Benefits

- **BOARD SHOULD NOT RENDER TAX ADVICE**
- **Disability Benefit Taxation is specific to Calculation of / Entitlement to Benefits**
 - **If “In the Nature of Worker’s Compensation Benefit”: Non-Taxable**

Question / Comments

Michael J. VanOverbeke, Esq.

VanOverbeke, Michaud & Timmony, P.C.

313 / 578-1200

mvanoverbeke@vmtlaw.com