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THE UMBRELLA OF PROTECTION SHOULD EXTEND TO ALL SAFETY OFFICERS WHO RISK THEIR LIVES TO PROTECT AND SERVE US

BY: SCOTT A. O'MARA

Within the state of California, there is a segment of workers who are safety officers. These individuals provide unique protection and service to the residents of California. The uniqueness of their assignments places them in life-threatening and potentially deadly situations throughout their career.

The agencies which recognize the protection and service provided by safety officers also provide protection and services to their safety members. The CalPERS retirement system — as used by such local agencies as the cities of Oceanside, Carlsbad, Escondido, National City, Chula Vista, La Mesa and El Cajon, and such state agencies as the Department of Justice, the California Highway Patrol and other participants — provides an umbrella to protect safety officers and their families when harms occurs to these officers because of the nature of their employment. The counties of San Diego, Imperial and Riverside, as well as the State of California, also provide this larger umbrella of protection for their safety members than the City of San Diego does.

CalPERS makes determinations as to whether conditions are job-related based on decisions made by the Workers' Compensation Appeals Board (WCAB). Causation for retirement by the WCAB involves the same procedures as used in Workers' Compensation matters.

The County Employees Retirement Law (CERL) of 1937 has an impact on decisions made by the San Diego County Employees Retirement Association (SDCERA) as to whether safety member injuries are job-related. The City of San Diego determines whether such injuries are job-related through the San Diego City Employees' Retirement System (SDCERS).

CalPERS and CERL recognize the unique presumptions which exist for certain safety members. These presumptions are based on the concept that certain types of unique injuries are presumed to be job-related for specified safety members because of the unique and extraordinary hazards associated with their law enforcement duties — duties which are unlike those in virtually every other occupation. The presumptions associated with retirement causation determinations mirror many of the same presumptions which exist for Workers' Compensation safety officer injuries. While the presumptions lessen the burden of proof that injuries are job-related, there still must be evidence showing industrial causation.

The situation for City of San Diego safety officers is very different. While the City is mandated to accept presumption determinations made in a safety member's Workers' Compensation case, there are no presumptions applicable to retirement cases. This fact reflects a substantial point of differentiation between this particular group of safety officers — the City of San Diego Police Department — and other peace officers in the state of California.

The distinguishable lack of coverage in retirement matters lessens the umbrella of protection needed by City of San Diego police officers and their families now and in the future. Well educated safety members who compare the different retirement systems will recognize the greater value associated with working for any of the governmental entities noted above instead of the City of San Diego because of the greater protection the other agencies would afford for their family and themselves.

Section 24.0501 of the San Diego Municipal Code is specific as to the discriminatory conduct which the City continues to engage in relative to eligibility for retirement. This section simply states that safety members will be granted an industrial disability retirement allowance if certain basic standards are met and "the Member's incapacity did not arise from . . . a pre-existing medical condition or a nervous or mental disorder". None of the other safety groups have a prohibition against granting a disability retirement because of such exclusions.

If an officer's incapacity arose to some degree from a pre-existing condition or a nervous or mental disorder — even though the contribution of such pre-existing condition or disorder was minimal — that factor is used repetitively by the City of San Diego as a basis for denying deserving safety officers' access to an industrial disability retirement.

Numerous situations transpire where workers have received care or treatment for a condition incurred prior to their date of hire in a law enforcement capacity — and in some cases even have a degree of residual impairment as a result of that condition — yet that factor does not impede them from passing the physical required to become a safety officer, completing the Academy, and subsequently working in law enforcement. Despite these facts, however, the City of San Diego, on a regular and continuing basis, denies industrial disability retirements to deserving officers because of a pre-existing condition, regardless of the fact that this condition did not prevent these individuals from working as a peace officer in the first place, and its overall impact on their disability is minimal.

As noted, this approach taken by the City of San Diego relative to industrial disability retirements is not consistent with that taken by other agencies in California. This barrier used by the City to deny disability retirements is a very strong reason for its police officers to consider working for other agencies to obtain protection for themselves and their families in the event they should develop a major work-related condition while on the job.

The City of San Diego attempts to articulate that nervous and mental disorders could be covered under San Diego Municipal Code §24.0501 in certain situations. However, those situations are extremely narrow, as applicants for disability retirement must fulfill all of the following requirements:

1. The member must have been “a victim of a violent attack involving the use of deadly force”.
2. The attack must have occurred after June 30, 2000.
3. The attack must have occurred before July 1, 2010, for Police Officers’ Association bargaining unit members, and before July 1, 2005, for all other members.
4. The attack must have occurred while the member was “performing his or her duties as a City employee”.
5. The attack must have caused the member “great bodily harm”.
6. The attack must have caused the member “to suffer a nervous or mental disorder”.
7. The Board has determined that “based upon the medical evidence . . . the Member has become psychologically or mentally incapable of performing his or her normal and customary duties, as a result of the attack”.

This attempt by the San Diego Municipal Code to provide City of San Diego police officers protection in the event they develop nervous or mental disorders resulting from all the emotionally demanding aspects of their job — especially the dangerous and life-threatening events they often experience — is very weak, to say the least. ***Again, no other law enforcement agency has such limitations and preclusions.***

During their career, law enforcement officers also have extraordinary exposures to situations where they are not the victim, but an observer to events which are horrifying and tragic. Such exposures include homicides, suicides, rapes, domestic violence, decapitations in vehicle accidents, etc. This plethora of emotionally-burdening events cannot be overemphasized. Once again, the unreasonable threshold for obtaining an industrial disability retirement used by the City of San Diego — and no other retirement systems — provides a vehicle for the City to deny many injured safety officers the protection they need and deserve for themselves and their families.

The San Diego City Employees’ Retirement System (SDCERS) also uses participation in the Deferred Retirement Option Program (DROP) as a basis for denying applications for industrial disability retirement, even when substantial medical evidence supports a safety officer’s work related disability. SDCERS claims that members nearing the end of their DROP participation must retire due to their DROP contract; therefore, their retirement cannot be “rendered necessary” to their industrial disability.

The barriers which exist for City of San Diego police officers seeking an industrial disability retirement will continue to force well-educated individuals to look to other law enforcement agencies for employment because of the umbrella of protection those agencies offer for safety officers and their families. A very unfortunate aspect of this problem is that the barriers to disability retirement created by SDCERS are for the simple purpose of reducing costs.

The irony of this situation is that this approach used by the City of San Diego does NOT really reduce costs. In fact, it INCREASES costs. The increased costs result from more litigation, and from the educated member’s awareness of SDCERS’ failure to adequately adopt and embrace the presumptions of industrial disability recognized by other retirement systems; their failure to grant

disability retirements based on pre-existing conditions; and their failure to acknowledge the psychological component of safety officer injuries unless bodily harm occurs.

All these factors can force knowledgeable City of San Diego police officers to seek other law enforcement employment which offers a greater umbrella of protection for themselves and their families. As a result, the turnover rate in the City of San Diego Police Department is high, resulting in increased costs. *The idea that SDCERS' retirement program will save money is without substance.* Beyond that, however, and more significant, is the fact that this program is contrary to the concept of protecting and serving those who protect and serve all of us — an obligation which should always be honored in view of the incredible job our law enforcement officers do to protect American citizens in the face of countless risks to their own health.



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