


**ROSS VALLEY FIRE DEPARTMENT
STAFF REPORT**

For the meeting of: January 8, 2014

To: Board of Directors

From: Jim Hanson, Acting Fire Chief 

Subject: Resolution 14-02, Determining the Industrial Disability Retirement of
Battalion Chief Brian McCarthy

RECOMMENDATION:

That the Board adopt Resolution 14-02, a Resolution of the Board of Directors of the Ross Valley Fire Department making the finding and determination that Brian McCarthy is significantly incapacitated within the meaning of the Public Employees' Retirement Law for the performance of the duties of Battalion Chief and that such incapacity is the result of injury arising out of and in the course of his employment with Ross Valley Fire Department.

DISCUSSION:

Battalion Chief McCarthy has filed, with the Public Employee Retirement System (PERS), an application for disability retirement. The Public Employee's Retirement Law requires that the contracting agency determine whether the employee is disabled for the purposes of the Public Employees' Retirement Law and whether such disability is industrial within the meaning of the law.

The treating physician has determined that he is substantially incapacitated from performing his usual and customary duties as a Battalion Chief. In addition, there is supporting medical documentation from the Department's worker's compensation administrator to support this determination.

By adopting the resolution, the Board finds and determines that Brian McCarthy is incapacitated for the performance of his duties in the position of a Battalion Chief and that the disability is the result of an injury or disease arising out of or in the course of his employment. The resolution also includes several other declarations that the Public Employee Retirement Law requires the Department to make as part on an industrial disability finding. These include a statement of the effective date of the retirement and any pending leave issues; the possibility of third party liability; a statement as to whether advance disability pension payments will be made by the agency prior to commencement of regular pension payments by PERS; and, if the employee was hired after January 1980,

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statement regarding whether or not the disability is directly attributable to a particularly hazardous duty.

FISCAL IMPACT:

There is no direct fiscal impact resulting from determination an industrial disability retirement of Battalion Chief McCarthy. The Department is required to make Advance Disability Payments of 50% of regular wages while the application is being processed by CalPERS. The Department will be reimbursed for these payments once CalPERS approves the application.

CONCLUSION:

Staff recommends that the Board make a finding and determination that Brian McCarthy is substantially incapacitated from performing his usual and customary duties as a Battalion Chief and the cause of this incapacity is "industrial" within the meaning of the Public Employees' Retirement Law.

Attachment: Resolution 14-02, A Resolution of the Board of Directors of Ross Valley Fire Department determining the industrial disability of employee Brian McCarthy

ROSS VALLEY FIRE DEPARTMENT

RESOLUTION 14-02

RESOLUTION OF THE BOARD OF DIRECTORS OF ROSS VALLEY FIRE DEPARTMENT DETERMINING THE INDUSTRIAL DISABILITY OF EMPLOYEE BRIAN MCCARTHY

WHEREAS, the Ross Valley Fire Department (hereafter referred to as Agency) is a contracting agency of the Public Employee's Retirement System; and

WHEREAS, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he/she is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such Law; and

WHEREAS, an application for disability retirement of Brian McCarthy employed by the Agency in the position of Battalion Chief has been filed with the Public Employees' Retirement System; and

WHEREAS, the Ross Valley Fire Department has reviewed the medical and other evidence relevant to such alleged disability;

NOW THEREFORE, BE IT RESOLVED That the Board of Directors of the Ross Valley Fire Department finds and determines and it does hereby find and determine that Brian McCarthy is incapacitated within the meaning of the Public Employees' Retirement Law for performance of his duties in the position of Battalion Chief; and hereby finds and determines that Brian McCarthy is incapacitated for performance of the duties of the position for other California public agencies in CalPERS. Similar positions with reasonably comparable pay, benefits and promotional opportunities with other California public agencies are not available.

BE IT FURTHER RESOLVED that the Board of Directors does hereby find and determines and it does hereby find and determine that such disability is a result of injury or disease arising out of and in the course of employment.

Neither said employee Brian McCarthy nor the Ross Valley Fire Department has applied to the Workers' Compensation Appeals Board for a determination pursuant to Government Code Section 21166 whether such disability is industrial.

BE IT FURTHER RESOLVED that the member was, or will be, separated from his employment in the position of Battalion Chief after the expiration of his rights under section 21164, Government Code, effective December 28, 2013 and that no dispute as to the expiration of such leave rights is pending.

That there is not a possibility of third party liability.

Advanced Disability Pension payments will be made pursuant to the applicable CalPERS formula. The member is competent to act on his own behalf in legally binding retirement matters.

The primary disabling condition is cardiovascular.

I do hereby certify that the foregoing resolution was duly passed and adopted at a meeting of the Ross Valley Fire Department Board of Directors held on the 8th day of January, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Board President

ATTEST:

JoAnne Lewis, Administrative Assistant