

RESOLUTION NO. 2021-0001

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SCHELL - VISTA PROTECTION DISTRICT
DETERMINING THE INDUSTRIAL DISABILITY OF EMPLOYEE
ANTHONY ANDERSEN**

WHEREAS, the Schell - Vista Fire District is a contracting agency of the California Public Employees' Retirement System; and

WHEREAS, the California Public Employees' Retirement Law requires that a contracting agency determine whether an employee of the agency, in which he 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 industrial disability retirement of Anthony Andersen, employed by the Schell - Vista Fire Protection District in the position of Captain, has been filed with the California Public Employees' Retirement System; and

WHEREAS, the Schell - Vista Fire District's Board of Directors has received and reviewed competent medical and other evidence bearing on the claimed industrial disability;

NOW THEREFORE, BE IT RESOLVED that the Schell - Vista Fire District's Board of Directors finds and determines the following, and attests to the same under penalty of perjury:

That Anthony Andersen is incapacitated within the meaning of the Public Employees' Retirement Law for performance of his usual duties in the position of Captain, in that Anthony Andersen is actually and presently unable to perform the usual and customary job duties of Captain with the Schell - Vista Fire Protection District;

That this determination was made on the basis of competent medical opinion;

BE IT FURTHER RESOLVED that this determination was not used as a substitute for the disciplinary process in accordance with Government Code section 21156(a)(2);

That, there was no disciplinary process underway before Anthony Andersen's separation from employment;

That Anthony Andersen was not terminated for cause;

That Anthony Andersen did not resign in lieu of termination;

That Anthony Andersen did not agree (whether in writing or otherwise) to waive his right to reinstatement as part of a legal settlement; and

That Anthony Andersen has neither been investigated for nor convicted of a work-related felony;

BE IT FURTHER RESOLVED that all relevant personnel documents were forwarded to CalPERS for determination of Anthony Andersen's eligibility for disability retirement;

That CalPERS's determination that Anthony Andersen is eligible to apply for disability retirement was obtained prior to starting the process of determination; and

That in addition to being incapacitated within the meaning of the Public Employees' Retirement Law for performance of his usual duties in the position of Captain for the Schell - Vista Fire Protection District, Anthony Andersen is also incapacitated within the meaning of the Public Employees' Retirement Law for performance of the usual duties of the position of Captain, or similar positions; for other California public agencies in CalPERS; and.

That similar positions with reasonably comparable pay, benefits and promotional opportunities with other California public agencies are not available;

BE IT FURTHER RESOLVED that Anthony Andersen filed a Workers' Compensation claim for his disabling condition;

That the Workers' Compensation claim filed by Anthony Andersen was accepted; and

That there is no dispute as to the causation of the disability; therefore, neither Anthony Andersen nor the Schell - Vista Fire District 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 Schell - Vista Fire Protection District's Board of Directors recognizes that Anthony Andersen has accumulated 3.98 years of credited service.

BE IT FURTHER RESOLVED that the Schell - Vista Fire District's Board of Directors finds and determines that Anthony Andersen's disability is a result of injury arising out of and in the course of employment.

BE IT FURTHER RESOLVED that Anthony Andersen shall be separated from the position of Captain effective September 21, 2020 after expiration of his leave rights under Government Code Section 21164;

That no dispute as to the expiration of such rights is pending; and

That because no such dispute is pending, no request for a Finding of Fact in that regard has been filed with the Workers' Compensation Appeals Board.

BE IT FURTHER RESOLVED that Anthony Andersen's last day on the payroll of the Schell - Vista Fire Protection District shall be October 5, 2020.

BE IT FURTHER RESOLVED that there is not a possibility of third-party liability; and

That the Schell - Vista Fire Protection District is unaware of any claim made by Anthony Andersen against any person or entity for the same injuries that also entitle Anthony Andersen to a disability retirement from CalPERS.

BE IT FURTHER RESOLVED that primary disabling condition is: Lower Back Injury.

BE IT FURTHER RESOLVED that the duration of the disabling condition is expected to be permanent; and

That this determination of expected duration of the disabling condition is certified by competent medical opinion, and was determined based on that competent medical opinion.

BE IT FURTHER RESOLVED that Advanced Disability Pension Payments (ADPP) will be paid pursuant to the applicable CalPERS formula should it be awarded.

PASSED AND ADOPTED at a meeting of the Schell - Vista Fire District Board of Directors held on the 6 day of January of 2021 by the following roll call vote:

AYES: 5

NOES: 0

ABSENT: 0



Kenneth Finn, Chairman

Attest:



Robin Woods, Secretary