

Interim Evaluation Report

Office of Inspector General

Montgomery County Government Disability Retirement Program

September 2008



Office of Inspector General
Montgomery County, Maryland



September 9, 2008

Hon. Mike Knapp, President, County Council
Hon. Isiah Leggett, County Executive

We are conducting a review of County government's disability retirement program that includes evaluating: policies and procedures relied upon to meet the needs of employees and protect financial resources; internal controls used to safeguard against potential abuse; and case file documentation used to support disability claims.

Recognizing that a service-connected disability retirement (SCDR) is an important benefit for employees who receive incapacitating injuries during County employment, our initial plan included focusing on SCDRs throughout County government. However, based on allegations of fraud, waste, and abuse received by the Office of Inspector General (OIG) and our preliminary analysis of County retirement data, our review to date has focused on police officers who represented approximately forty-nine percent (58 of 119) of all County employees approved by the Chief Administrative Officer (CAO) for SCDR benefits between July 1, 2004 and March 1, 2008. Our review disclosed that approximately sixty-two percent (58 of 93) of police officers who retired during this period were approved for SCDR benefits.

This interim report contains two findings and recommendations that have been discussed with the CAO. By formally communicating these matters now, corrective action can be taken, as deemed warranted, before all OIG work is completed and our final report is issued. The findings relate to the need for the Office of Human Resources (OHR) to improve internal controls and management oversight to ensure SCDR benefits are protected against abuse, and for the Department of Police to ensure compliance with medical examination program requirements and related standards regarding the health status and functional capabilities of police officers.

Our decision to issue an interim report is based, in part, on the receipt of additional allegations of fraud, waste, and abuse that appear to have been reported as a result of the Executive's August 11 press release and related media coverage regarding recommendations for reform to the County's SCDR process by an OHR work group started in late 2007. The OIG will apply additional procedures to determine if the allegations are significant to our objectives. An updated (September 8, 2008) CAO response is included as Appendix B of this report.

Respectfully submitted,

**Office of Inspector General
Interim Evaluation Report
MCG Disability Retirement Program
September 2008**

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Background Information

Primary goals of the Office of Inspector General (OIG) include: reviewing the effectiveness and efficiency of County government; preventing and detecting fraud, waste and abuse; and ensuring legal, fiscal, and ethical accountability by those responsible for managing resources and programs funded by Council appropriations. In this regard, our review of County government's disability retirement program was based on the receipt of fraud, waste, and abuse allegations as well as our preliminary review of program information provided to us by the Office of Human Resources (OHR). Our review did not evaluate medical information which normally falls outside the scope of OIG authority when performing audits and other formal reviews of County programs and activities.

County government's disability retirement program is managed by OHR and provides important and necessary benefits to County employees. The framework of the program, outlined in Montgomery County Code, Chapter 33, Section 33-43, Disability Retirement, distinguishes between a service-connected disability retirement (SCDR) and non-service connected disability retirement (NSCDR).

During the planning phase and initial field work of this review, we determined that a potential high risk area was management's process to approve SCDRs for County employees. Our initial plan included field work needed to review SCDRs for former employees of several County government departments. However, based on allegations received, preliminary analysis of OHR disability retirement data, and our interest to provide meaningful timely information to County officials regarding a program with no audit history, this report addresses our evaluation of County policies, procedures, and internal controls related to the County's handling of SCDR applications by police officers, as well as related activities regarding the Department of Police periodic medical examination program.

Generally, SCDRs are approved for individuals who are totally incapacitated or partially or permanently incapacitated for duty as a result of an accident while in the actual performance of duty. The key questionable practices identified during this review involve police officers who were in a full-duty work status with no work restrictions when they applied for a SCDR.

In fiscal year 2008, there were approximately 837 former County employees who received tax-exempt SCDR benefits totaling approximately \$32 million. There were approximately 573 former County employees (not in a police officer position) receiving SCDR benefits totaling approximately \$19 million and approximately 264 former police officers receiving SCDR benefits totaling approximately \$13 million.

Conclusions

MCG management is responsible for establishing and maintaining effective internal controls for the disability retirement program and related County activities. The results of our review to date include two findings and recommendations that address deficiencies in internal controls and management oversight as they relate to the disability retirement program and the Department of

Police periodic medical examination program. In this regard, our review of certain SCDRs approved by the Chief Administrative Officer (CAO) over approximately the past three years for police officers in a full-duty work status disclosed patterns, trends and behavior that we believe a prudent person would consider abusive.

In addition to the corrective action needed by management to address internal controls and oversight deficiencies identified in this report, we believe certain SCDRs approved over the past three years need to be re-examined under the existing authority granted to County officials. Such a re-examination is needed to determine if the status of any permanent SCDRs has changed. Management's corrective action will help protect the integrity of the disability retirement program for all County employees as well as the longer-term financial resources needed to provide the program's important benefits.

Corrective action by the Council, including possible amendments to the County's disability retirement law, may be needed to strengthen controls and provide effective oversight.

With regard to assessing the risk of possible fraud involving County government's disability retirement program, this is an ongoing process for the OIG. As stated in this report's transmittal letter, additional procedures will be applied during this review to address various allegations received before and during our field work.

Prior Audit or Review Activity

During the planning and field work phases of our review, we were advised by County management that to their knowledge the policies, procedures and internal controls related to the disability retirement program have never been audited.

On August 11, 2008, the County Executive publicly reported specific concerns and corrective actions needed to improve the disability retirement program, including methods used to determine an employee's eligibility to receive a SCDR. The Executive's report followed receipt of a seven-point program of recommendations made by a management work group. In this regard, the Executive and Council have the opportunity to consider the analysis and recommendations of the work group as well as the OIG to make needed improvements.

Management Comments

The CAO's response to this section of the report can be found on page 1 of Appendix B.

Findings and Recommendations

Finding 1

Internal controls and management oversight by the Office of Human Resources (OHR) are not sufficient to ensure service-connected disability retirements (SCDRs) approved for police officers in a full-duty work status are protected against abuse.

Analysis

A SCDR is an important and necessary benefit for police officers who receive incapacitating injuries during the course of County employment. However, our analysis of SCDRs recommended by OHR, reviewed by the Office of the County Attorney, and approved by the Chief Administrative Officer (CAO) for police officers over approximately the past three years disclosed individual cases and patterns that we believe a prudent person would consider abusive.

According to records provided by OHR, from July 1, 2004 through March 1, 2008, 58 police officers (approximately 49 percent of the 119 total SCDRs approved for all County employees) retired with a SCDR (either permanent or temporary) and 35 police officers retired under the County's normal retirement program (no disability benefits).

According to Police Department records, 11 of the 58 police officers were in a full-duty work status¹ when they applied for a SCDR. The CAO approved nine of the SCDR requests - six received a permanent SCDR and three received a temporary SCDR (temporary SCDRs are generally reassessed by management after 12 months and may be converted to a permanent SCDR). The two officers denied a SCDR have appealed the CAO's decision to the Disability Arbitration Board. We were advised by OHR and Police Department officials that the formal process used by OHR to make a recommendation to the CAO does not require the use of any information from the Police Department concerning an officer's current work status.

Appendix A is an overview of the nine police officers in a full-duty work status when they applied for a SCDR and the two officers (also in a full-duty work status at the time of application) who have been denied a SCDR, with their appeals pending. Of the nine officers approved, three had their police powers suspended and were under investigation for improper or illegal conduct when they applied for the SCDR. In addition, two of the nine officers (both in senior management level positions) were finalists or had already been selected for a second career position when the SCDR application was filed.

For the three officers who had their police powers suspended, and the two officers who were competing for jobs outside County government, the CAO's approval of the SCDR is questionable because the timing of each SCDR application appears to coincide with factors unrelated to incapacitation, such as pending criminal/disciplinary charges involving work-related misconduct or the imminent selection for another position upon retirement. For example, a police officer included in our testing (Officer J, Appendix A) was performing in a full-duty work status prior to having his police powers suspended on May 9, 2007. On October 4, 2007, his plea

¹ According to the Employee Health and Wellness Division, Police Department, a police officer in a full-duty work status has no work restrictions and can work the assignment without limitations.

agreement to a theft scheme over \$500 was filed in Circuit Court and on the following day, October 5, the officer submitted a SCDR application. The officer was notified by OHR on March 31, 2008 that the CAO approved a one-year temporary SCDR retroactive to November 2, 2007. This former officer's tax-exempt pension for part of FY 2008 (ending June 30, 2008) was approximately \$36,000. The temporary SCDR is subject to re-examination after one year.

We found that OHR procedures used to process SCDR applications frequently did not consider other relevant official County information. For example, the following two police officers, who are not included in Appendix A, were approved for SCDRs after they had been released by a doctor to return to full-duty work status following a workers' compensation injury:

- On October 16, 2007, an officer applied for a SCDR. On January 11, 2008, with the SCDR application pending, the claim's administrator for the County's worker's compensation program (administered by the Department of Finance) initiated an independent medical examination (IME) for this officer's workers' compensation claim. The same day, the doctor who performed the IME authorized the officer to return to a full-duty work status. The officer did not return to work after the IME. On January 28, 2008, the officer was notified by OHR that the County approved a temporary SCDR. This officer's tax-exempt SCDR pension for part of FY 2008 was approximately \$26,000. Our review of the disability retirement file disclosed that the results of the officer's IME related to the workers' compensation claim were not part of the information considered by the OHR Disability Review Panel that recommended the temporary SCDR.
- On October 23, 2007, an officer applied for a SCDR. On January 8, 2008, the claim's administrator initiated an IME for this officer's workers' compensation claim. The doctor who performed the IME released the officer for return to work on light duty the same day. On February 5, 2008, the doctor who conducted the IME reviewed additional information provided by the claim's administrator and reported that the officer could return to a full-duty work status about February 19, 2008. On March 17, 2008, OHR notified the officer that the County approved a temporary SCDR retroactive to February 29, 2008. This officer's tax-exempt SCDR pension for part of FY 2008 was approximately \$12,000. A review of the disability file disclosed the results of the IMEs were not part of the information considered by the OHR Disability Review Panel that recommended the temporary SCDR.

We were advised by the Office of Medical Services (OMS), the office in OHR that administers the disability retirement process, that recommendations by the Disability Review Panel are based on medical information. Our review found there is additional information maintained by OHR, Finance, or other County offices that is relevant in the SCDR decision-making process². For example, the department head for an applicant's current work unit can be required to provide information related to the employee's work status at the time of the application. Also, official records maintained by Finance's Office of Risk Management, the office responsible for

² According to Montgomery County Code Section 33-43, Disability Retirement, subsection (d),(3), "Subject to limitations in subsection (f),(4),(E), the Panel may consider any information or material submitted by the applicant, the certified representative or the County."

administering the County's workers' compensation program, can be included in the SCDR decision-making process. We believe policies and procedures used by OHR to make SCDR recommendations to the CAO should ensure the use of all appropriate information.

The authority of the CAO to approve a SCDR is outlined in Montgomery County Code Chapter 33, Section 33-43, Disability Retirement. In general terms, police officers and other employees submit an application for a SCDR with pertinent medical information. A Disability Review Panel, composed of three medical doctors under contract with OHR, reviews medical information compiled by OMS and makes a recommendation to approve or disapprove the application based on an analysis of the information provided and compared with the officer's job description (there are approximately nine police class specifications/job descriptions that range from Police Officer Candidate to Assistant Chief of Police). The Disability Review Panel has the option to request an IME prior to making a recommendation.

Prior to the CAO's decision, the Panel's recommendation is reviewed by the Director of OHR and County Attorney (or designee). County Code authorizes the CAO to grant a permanent SCDR when the Panel determines incapacitation is permanent or, in extenuating circumstances, a temporary SCDR for one or more one-year periods until the incapacitation is either removed or determined likely to be permanent. Both types of SCDR provide a tax-exempt pension of 66 2/3 percent of the employee's final earnings. A permanent SCDR provides a lifetime tax-exempt pension. SCDR pensions are adjusted annually based on changes in the consumer price index.

Under Montgomery County Code, Chapter 33, the CAO has the authority to require police officers and other employees receiving SCDR benefits to undergo a yearly physical examination during the five-year period following retirement and once every three-year period thereafter until age 55. The purpose of this provision is to protect the financial resources of the County by ensuring an individual's incapacitation has not changed. We were advised by OHR management that County leadership made the decision several years ago not to re-examine any former employees after they have been approved for a SCDR.

We believe the County's current decision-making process contributes to the potential for SCDR abuse. To illustrate our concern, we reviewed the SCDR application of a former police officer (Officer H, Appendix A) performing in a senior management level position when he left County employment under normal retirement on August 1, 2006 incident to his selection for another job. On October 19, 2006, the former officer was approved for a permanent SCDR retroactive to August 1, 2006. On September 22, 2007, according to public information, this individual competed in a physical fitness challenge associated with his new employer, finishing second place in his age group. The public information states this individual was able to complete a series of rigorous exercises that included push-ups, sit-ups, pull-ups, vertical jump, and a 1.5 mile run. Under current County practices used to administer the disability retirement program, the information relied upon by the CAO to approve this SCDR has not been updated or re-examined, even though County Code permits such a follow-up and there may be reason to believe the former employee's status has changed. The SCDR tax-exempt pension for this officer in FY 2008 was approximately \$95,000.

On March 1, 2004, an amendment to the County Code prohibited the CAO from reducing tax-exempt SCDR payments received by police officers by the amount of income received from sources other than County employment. However, although the effective date of this change appears to be more than four years old, according to the current collective bargaining agreement between the County and the Fraternal Order of Police, Lodge #35, the County agreed to submit (future) legislation to amend Section 33-43 (j) of the Code with the following language, “A Group F (police) member must not have the member’s service-connected disability pension payments reduced by other income received from sources other than County Government employment.” We were unable to determine the reason(s) for the current collective bargaining agreement language.

We were advised by OHR personnel that the County does not enforce earnings limitations for any former County employee approved for a SCDR, even though the County has the authority (except for former police officers) under County Code, Section 33-43 (j), Adjustment or Cessation of Disability Pension Payments. This includes approximately 573 former County employees with FY 2008 SCDR pensions totaling approximately \$19 million.

Recommendation

We recommend the Chief Administrative Officer revise the policies and procedures relied upon by the CAO’s office, Office of Human Resources, and their contractors to approve service-connected disability retirement applications to ensure internal controls and management oversight practices protect County government against abuse. We also recommend the CAO ensure that specific SCDR cases identified in this report and a sample of other cases from the estimated 119 SCDRs approved over the past three years are re-examined to determine whether the status of any permanent SCDRs has changed.

Management’s Response

The Chief Administrative Officer’s response to this finding and recommendation can be found beginning on page 5 in Appendix B of this report.

Finding 2

Policies and procedures used to implement the Police Department’s periodic medical examination program do not effectively assess the health status and functional capabilities of all police officers.

Analysis

The Police Department directive, Medical Examinations, dated March 18, 2001, outlines the policies and procedures used to administer the periodic medical examination program for employees. According to the directive, the purpose of the program is to ensure “each employee is physically able to perform the duties and responsibilities of the position assigned with the least possible risk to safety. As a preventive program, it is designed to detect early medical problems at no cost to the employee and provide management with a medical opinion when it appears an employee’s medical condition is adversely affecting job performance.” The directive states that for any questions about policy, the County’s collective bargaining agreement with the Fraternal Order of Police (FOP) Lodge #35, Inc. supersedes the directive.

The Department's medical examination program is based, in part, on recommended national standards by the Commission on Accreditation for Law Enforcement Agencies (CALEA). CALEA is a professional law enforcement association that recertified the Department of Police in 2007 for three years after determining the Department continued to comply with approximately 500 specific standards that cover all aspects of police service.

Periodic medical examinations³ of County police officers are conducted by the Employee Medical Examiner (EME), a physician under contract with the Office of Medical Services (OMS), Office of Human Resources (OHR). According to the collective bargaining agreement between the County and FOP, covering the period July 1, 2007 through June 30, 2010, OMS is responsible for sending the Department of Police a list of employees due for a periodic physical examination according to the age of the police officer (i.e. officers age 40 and over receive not less than one complete OMS physical every year; age 31-39 not less than one physical every two years; age 30 and under not less than one every three years)⁴. The Department is responsible for scheduling each examination with OMS, and notifying the employee of the scheduled appointment at least three weeks in advance, even if the appointment will occur during an employee's published work schedule.

From our field work during this review, we identified inconsistencies between the purpose of the periodic medical examination program and the manner in which the program is implemented. For example, our review of OMS medical examination reports disclosed that approximately 254 police officers were due for a periodic medical examination during the January to June 2008 period. During that period, 55 (22 percent) officers reported to OMS for the scheduled physical, four cancelled the appointment, 10 did not report for the physical, four rescheduled their physical, and 181 (71 percent) were not scheduled by the Department for the required medical examination.

In addition to the impact of these inconsistencies on the program's effectiveness, we believe they have the potential to adversely affect the ability of management to properly document and assess conditions related to an officer's work status and/or potential SCDR (see Finding 1). According to OMS records, in June 2008 there were 84 police officers who were due to have a periodic medical examination. For 22 of the 84, the date of their last OMS examination ranged from two to ten years. In addition, our review of OMS records identified a current officer that has not had an OMS periodic medical examination since November 1994, even though the officer continues to perform in a Police Department position classified in the Core I medical group.

A review of the Department of Police directive and the current collective bargaining agreement disclosed that neither document adequately addresses employee and management accountability

³ Montgomery County Personnel Regulation, Chapter 8, Medical Examinations and Reasonable Accommodation, Section 8-4, Medical standards and guidelines for medical examinations and pre-employment inquiries, subsection (a), (2) states, "Medical standards and guidelines for medical examinations and pre-employment inquiries must be: (A) job-related and used to determine if the applicant or employee can perform essential functions of the job with or without accommodations; and (B) applied uniformly and consistently to all applicants and employees who are offered employment or employed in the same job class or occupational class."

⁴ According to the Medical Examinations directive and current collective bargaining agreement, police officers are classified as a Core I medical group that requires an extraordinary degree of physical fitness and mental health and continued fitness for duty in a high risk occupation.

to ensure compliance with the periodic medical examination program and standards related to health standards and functional capabilities.

Our testing of SCDR cases identified at least two situations in the last two years in which a police officer rated fit for duty with no work restrictions as a result of a periodic medical examination by OMS⁵ applied for a SCDR several weeks later and was approved. In both cases described below, our review found that the full-duty work status of the officer did not change between the date of the OMS medical examination and the date of the SCDR application:

- On November 14, 2006, an officer (Officer B, Appendix A) performing in a full-duty work status completed a periodic medical exam at OMS and received a fit for duty rating with no work restrictions. On December 7, 2006, the officer applied for a SCDR and on April 4, 2007 was notified by OHR that the SCDR application was approved with an effective date of January 1, 2007. The FY 2008 tax-exempt pension for this officer was more than \$88,000.
- On July 26, 2007, an officer (Officer F, Appendix A) performing in a full-duty work status completed a periodic medical exam at OMS and received a fit for duty rating with no work restrictions. On August 22, 2007, the officer applied for a SCDR and on December 26, 2007 received notice that the SCDR was approved with an effective date of October 1, 2007. The tax-exempt pension for part of FY 2008 was approximately \$33,000.

Recommendation

We recommend the Police Chief, in consultation with the Chief Administrative Officer and Director, Office of Human Resources, revise and implement policies and procedures that ensure compliance with periodic medical examination program requirements and other police standards regarding the health status and functional capabilities of all police officers and other employees in the Core I medical group.

Management's Response

The Chief Administrative Officer's response to this finding and recommendation can be found beginning on page 9 in Appendix B of this report.

⁵ Montgomery County Personnel Regulations, Chapter 8, Medical Examinations and Reasonable Accommodation, Section 8-4, Medical standards and guidelines for medical examinations and pre-employment inquiries, subsection (a) (3) states, 'When performing medical examinations or inquiries, the EME must conduct an individualized assessment of an individual's current health status and functional capabilities: (A) in relation to the essential functions, physical and psychological demands, working conditions, and workplace hazards of a particular occupation or position; ...'

Ideas to Explore

As part of our benchmarking for best practices, we reviewed police officer disability retirement programs in other local governments. In this regard, a best practice that appears consistent across many local governments is the implementation of a disability retirement board whose members often represent a cross-section of backgrounds and skills to approve disability retirements for police officers. Montgomery County does not have a similar decision-making body; rather, the County's long-standing practice has been to rely on the recommendation of three medical doctors who perform their duties as the County's Disability Review Panel.

For Fairfax County, Virginia, we were advised the government uses a Police Officers' Board of Trustees that includes representatives from the public, active County employees, and elected representatives of County employees and retired employees. The Board makes a ruling based upon medical evidence whether the applicant is totally or partially disabled, and whether the injury or illness is job-related.

At the request of a County official, we researched King County, Washington, where there is a Disability Retirement Board for the State of Washington Law Enforcement Officers' and Fire Fighters' (LEOFF) Retirement System that consists of five members. The Board reviews and rules on claims for reimbursement of medical expenses and applications for disability leave and retirement benefits mandated under Washington State LEOFF retirement Plan 1. As part of the decision-making process, the Board uses medical, mental health, and legal consultants.

We recommend the Council and Executive review the best practices of disability retirement programs of Fairfax County, Virginia, Kings County, Washington, and other comparable local governments to identify best practices capable of assisting Montgomery County leaders with the corrective action needed to ensure disability retirement benefits are provided in a fair manner within the context of the legal boundaries of the County's program.

Scope, Objectives, and Methodology

Under the authority of Montgomery County Code §2-151, we conducted a review of the MCG disability retirement program for the period July 1, 2004 through March 1, 2008. We performed the review in accordance with the principles and standards for offices of inspectors general published by the Association of Inspectors General, and other professional organizations.

The objectives of our review were to: (1) determine if disability retirement policies and procedures are effectively managed to support the needs of County employees and protect the financial resources of the County; (2) evaluate the internal controls associated with the disability retirement program to safeguard against the potential for abuse; and (3) review case file documentation to determine if there is adequate justification to support disability claims.

To accomplish our objectives, we met with representatives of the Chief Administrative Officer (CAO), Office of Human Resources (OHR), Police Department, and Office of the County Attorney. Our methodology included: (1) review of policies and procedures applicable to the disability retirement program; (2) analysis of disability retirement management reports and costs; (3) evaluation of management reports used to document periodic employee medical examinations, workers' compensation claims, and other relevant County information; (4) interviews with personnel in MCG departments including program staff and the Employee Medical Examiner in the Office of Medical Services, Council staff, and other key stakeholders; and (5) benchmarking with other comparable governments. We also tested disability retirement applications and related County records for selected employees in the Police Department. In addition, we reviewed applicable collective bargaining agreements and sections of the County Code for practices and procedures regarding disability retirement benefits.

At the conclusion of our initial field work, we discussed preliminary findings and recommendations with appropriate County officials including Assistant Chief Administrative Officers, Department Directors, Chief of Police, and the County Attorney. Preliminary findings and recommendations were presented in writing on July 31, 2008 to the CAO, prior to issuing our draft report on August 21, 2008 to the CAO for review and a formal management response. Upon completion of all review work, a final report will be issued.

The data used to conduct our review were provided by the Executive Branch and are deemed reasonable but not independently verified.

Field Work and Management Response

We conducted our fieldwork from March to July 2008. The Chief Administrative Officer's September 8, 2008 response appears as Appendix B of this report.

**Police Officers who Applied for a Service-Connected Disability Retirement (SCDR)
While in a Full-Duty Work Status**

Files Reviewed	Date	Description of Events
Officer A	<ul style="list-style-type: none"> ▪ December 29, 2002 ▪ January 18, 2007 ▪ May 8, 2007 ▪ September 27, 2007 ▪ October 4, 2007 ▪ November 2, 2007 ▪ November 7, 2007 ▪ February 8, 2008 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OHR's Office of Medical Services (OMS) with a fit for duty rating and no work restrictions ▪ In a full-duty work status when placed on administrative leave with police powers suspended pending a criminal investigation related to conduct in office ▪ Applied for SCDR ▪ Entered a plea of guilty to misconduct in office (misdemeanor) in Circuit Court ▪ Resigned from County employment; effective date of temporary SCDR ▪ Sentenced to unsupervised probation for two years ▪ Notified CAO approved a temporary SCDR effective November 2, 2007 ▪ \$31,000
Officer B	<ul style="list-style-type: none"> ▪ November 21, 1987 ▪ October 2, 2002 ▪ November 14, 2006 ▪ December 7, 2006 ▪ April 4, 2007 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Applied for SCDR while in a full-duty work status with no work restrictions ▪ Notified CAO approved a permanent SCDR effective January 1, 2007 ▪ \$88,000
Officer C	<ul style="list-style-type: none"> ▪ January 24, 2001 ▪ October 3, 2002 ▪ December 3, 2002 ▪ January 9, 2006 ▪ April 25, 2006 ▪ May 8, 2007 ▪ October 2, 2007 ▪ October 4, 2007 ▪ November 21, 2007 ▪ November 21, 2007 ▪ December 26, 2007 ▪ February 21, 2008 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with an incomplete rating ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ In a full-duty work status when placed on administrative leave with police powers suspended pending a criminal investigation related to conduct in office ▪ Applied for SCDR ▪ Plea agreement to misconduct in office filed in Circuit Court ▪ Entered a plea of guilty to misconduct in office (misdemeanor) in Circuit Court ▪ Resigned from County employment ▪ Notified by OHR not recommended for disability retirement; decision appealed to Disability Arbitration Board ▪ Sentenced to 18 months unsupervised probation

Files Reviewed	Date	Description of Events
Officer D	<ul style="list-style-type: none"> ▪ July 15, 1999 ▪ February 1, 2005 ▪ October 10, 2005 ▪ February 1, 2006 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Applied for SCDR while in a full duty work status with no work restrictions ▪ Notified CAO approved a permanent SCDR effective February 1, 2006 ▪ \$68,000
Officer E	<ul style="list-style-type: none"> ▪ March 3, 1994 ▪ November 11, 1996 ▪ May 1, 2007 ▪ December 7, 2007 ▪ June 13, 2008 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Applied for SCDR while in a full-duty work status with no work restrictions ▪ CAO approved a permanent SCDR ▪ 66 2/3 percent based on final earnings of \$87,609 - final pension option not selected as of July 7, 2008
Officer F	<ul style="list-style-type: none"> ▪ February 1, 2006 ▪ July 26, 2007 ▪ August 22, 2007 ▪ December 26, 2007 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Applied for SCDR while in a full duty work status with no work restrictions ▪ Notified CAO approved a permanent SCDR effective October 1, 2007 ▪ \$33,000
Officer G	<ul style="list-style-type: none"> ▪ September 16, 1991 – June 1, 2005 ▪ November 4, 2005 ▪ March 30, 2007 ▪ April 25, 2007 ▪ May 9, 2007 ▪ June 1, 2007 ▪ January 9, 2008 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Multiple Workers' Compensation claims filed for various injuries sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Reported as one of six finalists for the position Chief of Police for a municipality in Maryland (source: Gazette.Net, March 30, 2007) ▪ Announced as Chief of Police for a municipality in Maryland (source: washingtonpost.com, April 25, 2007) ▪ Applied for SCDR while in a full-duty work status with no work restrictions ▪ Effective date of normal retirement from Montgomery County ▪ Notified CAO approved a permanent SCDR effective June 1, 2007 ▪ \$88,000

Files Reviewed	Date	Description of Events
Officer H	<ul style="list-style-type: none"> ▪ March 6, 1992 ▪ March 8, 1994 ▪ August 5, 2005 ▪ September 30, 2005 ▪ May 23-24, 2006 ▪ June 12, 2006 ▪ July 2006 (entire month) ▪ July 3, 2006 ▪ August 1, 2006 ▪ October 19, 2006 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Finalists interviewed for executive position with outside law enforcement agency (source: law enforcement agency web site) ▪ Applied for SCDR while in a full-duty work status with no work restrictions ▪ In a paid leave status with Montgomery County ▪ Started new executive position (source: law enforcement agency web site) ▪ Retired under normal retirement from Montgomery County ▪ Notified CAO approved a permanent SCDR effective August 1, 2006 ▪ \$95,000
Officer I	<ul style="list-style-type: none"> ▪ November 7, 2003 ▪ October 31, 2004 ▪ November 22, 2005 ▪ June 16, 2006 ▪ February 1, 2007 ▪ May 8, 2007 ▪ August 23, 2007 ▪ October 4, 2007 ▪ October 12, 2007 ▪ December 26, 2007 ▪ May 29, 2008 ▪ June 10, 2008 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ In a full-duty work status when placed on administrative leave with police powers suspended pending a criminal investigation related to conduct in office ▪ Applied for SCDR ▪ Indicted on one felony count and four misdemeanor counts related to conduct as a police officer ▪ Suspended without pay; effective date of SCDR ▪ Notified CAO approved a temporary SCDR effective October 12, 2007; decision appealed to Disability Arbitration Board ▪ Pled guilty to failure to obtain approval for other employment and misconduct in office (misdemeanors) ▪ Sentenced to three years unsupervised probation ▪ \$27,000

Files Reviewed	Date	Description of Events
Officer J	<ul style="list-style-type: none"> ▪ August 31, 1991 ▪ September 5, 1993 ▪ April 16, 1995 ▪ April 4, 1996 ▪ May 24, 1998 ▪ February 28, 2001 ▪ June 10, 2001 ▪ September 24, 2002 ▪ October 1, 2004 ▪ May 9, 2007 ▪ October 4, 2007 ▪ October 5, 2007 ▪ October 31, 2007 ▪ November 2, 2007 ▪ March 26, 2008 ▪ March 31, 2008 ▪ FY 2008 estimated tax-exempt pension 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Worker' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ In full-duty work status when placed on administrative leave with police powers suspended pending a criminal investigation related to conduct in office ▪ Plea agreement to theft scheme over \$500 filed in Circuit Court ▪ Applied for SCDR ▪ Entered plea agreement to theft scheme over \$500 (felony) ▪ Resigned from County employment; effective date of temporary SCDR ▪ Sentenced to 18 months unsupervised probation ▪ Notified CAO approved a temporary SCDR effective November 2, 2007; decision appealed to Disability Arbitration Panel ▪ \$36,000
Officer K	<ul style="list-style-type: none"> ▪ December 30, 1996 ▪ May 21, 2005 ▪ August 1, 2005 ▪ May 31, 2006 ▪ March 20, 2007 ▪ June 13, 2007 	<ul style="list-style-type: none"> ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Workers' Compensation claim filed due to injury sustained while employed as a police officer ▪ Last periodic exam by OMS with a fit for duty rating and no work restrictions ▪ Applied for SCDR ▪ Notified by OHR not recommended for disability retirement; decision appealed to Disability Arbitration Panel



OFFICES OF THE COUNTY EXECUTIVE

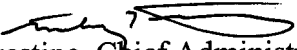
Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

September 8, 2008

TO: Thomas J. Dagley, Inspector General

FROM:  Timothy L. Firestine, Chief Administrative Officer

SUBJECT: Draft Report Regarding the County's Disability Retirement Program

This memorandum is a response to the draft report prepared by the Office of Inspector General (OIG) regarding the County's disability retirement program. Please include this memorandum as an Appendix in your final report.

As a preliminary comment, I note that the OIG's review parallels a portion of the work conducted by Executive staff during the past year, which was initiated because the Executive recognized that there are aspects of the disability retirement program that result in benefit payments that go above and beyond what a competitive disability retirement program should provide. In particular, the Executive was concerned about data that showed a greater frequency of service-connected disability retirements (SCDRs) granted to employees in the public safety ranks. While this is not an uncommon occurrence among public safety plans, the Executive directed that we evaluate how the County's program could be improved.

To address that issue, the Director of the Office of Human Resources (OHR) established a Work Group in late 2007 that included representatives of the Police Department, Fire Department, OHR, and the Office of the County Attorney. The Executive charged the Work Group with reviewing the disability retirement program and making recommendations to improve administration of the program, while preserving an appropriate disability benefit for employees injured in the line of duty. The Work Group met on multiple occasions and issued a series of recommendations on June 30, 2008.

On August 11, 2008, the Executive announced receipt of the Work Group's seven-point plan (a copy of the Press Release is attached as Appendix 1) to address issues relating to the disability retirement program. That plan recommends significant changes to the current disability retirement program. The OIG's draft report mainly supports the conclusions and recommendations of the Work Group. Nevertheless, we are concerned that the draft report does not adequately reflect the legal and collective bargaining components of the disability retirement program, and overlooks some important challenges and difficulties associated with administering the program.

BACKGROUND INFORMATION

1. Conclusion Regarding "Abuse"

OIG Draft Report

The draft report (page 2) states that "The key questionable practices identified during this review involve police officers who were in full-duty work status with no work restrictions when they applied for a SCDR." The draft report (page 3) also notes that the OIG focused on "certain SCDRs approved by the Office of the Chief Administrative Officer (CAO) over approximately the past three years for police officers in full-duty status" and that the OIG's review "disclosed patterns, trends or behavior that we believe a prudent person would consider abusive."

Executive Staff Comments

We are very troubled by the number of simplistic conclusory statements that appear in the draft report and the report's ambiguous use of the term "abuse". We also believe that the value of the draft report is questionable because the OIG did not discuss its findings and recommendations with the Disability Review Panel (DRP) or adequately explain the extent to which much, if not most, of the SCDR decision-making process is governed by County law.

The County's disability retirement program, including the service-connected disability component, is a complex program established and governed by County law. The following individuals and entities participate in administering the program: the Office of Human Resources (OHR), the County Attorney's Office, the CAO, the DRP, the Disability Arbitration Board, the Police Disability Arbitration Board, the Finance Department's Division of Risk Management (Risk Management), employees and retirees, physicians hired by employees and retirees, and physicians hired by the County. The roles and responsibilities of all these individuals and entities (except Risk Management), as well as SCDR eligibility criteria, are established by County law. We believe the draft report fails to adequately explore those roles, responsibilities, and eligibility criteria.

The draft report fixates on the duty status of 11 police officers who applied for SCDRs. Of those 11 officers, the draft report noted that 6 received permanent SCDRs, 3 received temporary SCDRs, and 2 were denied SCDR benefits. We are puzzled as to why the OIG chose not to explore: (1) whether the DRP, the panel of physicians that is responsible under County law for determining eligibility for SCDR benefits, knew about the duty status of those 11 police officers; and (2) the relevance of duty status to the DRP when it evaluated eligibility for SCDR benefits based on the legal criteria set out in County law. We believe the draft report is fundamentally flawed because the OIG chose not to explore those questions.

The same flaw is evident in the parts of the draft report that discuss the existence of criminal/disciplinary charges filed against SCDR applicants and post-retirement job plans of SCDR applicants. We do not understand why the OIG chose not to explore: (1) whether the DRP knew about the specified criminal/disciplinary charges or post-retirement job plans; and (2) the relevance of that information to the DRP when it evaluated eligibility for SCDR benefits based on the legal criteria set out in County law.

As required by County law, the DRP is a panel of three physicians appointed by the CAO from a list of physicians agreed on by union and County representatives. The DRP is charged with evaluating disability applications and making recommendations to the CAO. The DRP evaluates medical data and other relevant information and makes a recommendation which is then reviewed for legal sufficiency by the County Attorney's Office and for procedural consistency by OHR. The CAO does not grant disability applications until established protocols are followed, within the limits imposed by County law.

We note that the chart that is included as Appendix A to the draft report purports to show a timeline for relevant steps in the SCDR application process for the 11 police officers that were the focus of the OIG's review. Inexplicably, that chart does not even list the DRP's recommendation as one step in the process.

The issue of whether an individual is eligible for a SCDR is, in essence, a medical decision. The draft report repeatedly notes that the CAO approved certain SCDRs but fails to note that in all of those cases: (1) the DRP recommended that the CAO approve the SCDRs; and (2) the County Attorney's Office reviewed the DRP's findings and recommendations for legal sufficiency. By repeatedly focusing on the CAO's final decision without acknowledging the role of the DRP or the County Attorney's Office, the draft report suggests that the CAO has authority to disregard the DRP's findings and recommendations. We are very troubled by that suggestion. We believe the CAO must have a sound legal basis for any decision regarding SCDR benefits and is prohibited from making arbitrary and capricious decisions.

2. Medical Records and the Role of the Disability Review Panel

OIG Draft Report

The draft report (page 2) states that “Our review did not evaluate medical information which normally falls outside the scope of OIG authority when performing audits and other formal reviews of County programs and activities.”

Executive Staff Comments

As discussed above, we believe the draft report is fundamentally flawed because the OIG did not explore its findings and conclusions with members of the DRP. The OIG’s hesitancy to “evaluate medical records” is not an acceptable justification for not talking to the members of the DRP about how they evaluated particular medical records.

3. Executive Staff’s Prior Review Activities

OIG Draft Report

The draft report (page 3) states that on August 11, 2008 “the County Executive publicly reported specific concerns and corrective actions needed to improve the disability retirement program, including methods used to determine an employee’s eligibility to receive a SCDR. The Executive’s report followed receipt of a seven-point program of recommendations made by a management work group.”

Executive Staff Comments

The draft report omits any acknowledgement that Executive staff began their own review of the disability retirement program before your office began its review of the same program. Executive staff expressly advised the OIG that, in the fall of 2007, the Executive directed OHR to establish a Work Group to review the disability retirement program. The workgroup’s initial recommendations were shared with the OIG during the course of its review.

FINDING 1

1. Duty Status of SCDR applicants

OIG Draft Report

The draft report (page 4) states that “[i]nternal controls and management oversight by the Office of Human Resources (OHR) are not sufficient to ensure service-connected disability retirement (SCDRs) approved for police officers in full-duty status are protected against abuse.” It notes that “58 police officers received SCDRs between July 1, 2004 and March 1, 2008” and that “11 of those 58 police officers were in a full-duty work status when they applied for a SCDR.”

Executive Staff Comments

We are puzzled by the draft report’s findings regarding the duty status of SCDR applicants. There is no prohibition in current law against approving a SCDR for an employee who is in full-duty status at the time the employee applies for a SCDR. Moreover, as discussed above, we believe that the OIG’s analysis of the duty status of SCDR applicants is flawed because the OIG chose not to explore the following questions: (1) whether the DRP knew about the duty status of specified SCDR applicants; and (2) the extent to which knowledge of an applicant’s duty status affected, or would have affected, the DRP’s findings that specified SCDR applicants met the legal eligibility criteria.

If the OIG had spoken with the DRP, we believe you would have learned that the DRP knew the duty status of 6 of the SCDR applicants referenced in your draft report (Officer A, Officer C, Officer F, Officer G, Officer I, and Officer J) because the Police Department provided that information directly to the DRP. After reviewing those 6 SCDR applications, the DRP granted 2 permanent SCDRs and 3 temporary SCDRs, and denied 1 application. We also believe that the DRP likely knew the duty status of 4 other SCDR applicants because that information was evident from the applications (Officer D, Officer E, and Officer H) and medical records (Officer B) submitted to the DRP. After reviewing those 4 SCDR applications, the DRP granted 4 permanent SCDRs. The DRP denied the SCDR application for the 11th applicant referenced in the draft report.

2. Pending Criminal/Disciplinary Charges

OIG Draft Report

The draft report (pages 4-5) states that approval of 3 SCDR applications is “questionable” because the timing of those applications “appears to coincide with . . . pending criminal/disciplinary charges involving work-related misconduct”.

Executive Staff Comments

When implementing County law governing SCDRs, the DRP, OHR, the County Attorney's Office, and the CAO are required to follow applicable provisions of the County Code. Except in one limited circumstance, which is inapplicable to the cases discussed in the draft report, there is no legal authority to adjudicate a disability claim differently when there is evidence of wrongdoing. One of the Work Group's recommendations was to change County law to allow denial of SCDR benefits if an employee is terminated as a result of intentional wrongdoing, such as felony, fraud, or recklessness. However, until County law is changed, there is no authority to deny benefits for those reasons.

If the OIG had spoken with the DRP, we believe you would have learned that the DRP knew that the police powers of the 3 applicants to which the draft report refers (Officer A, Officer C, and Officer I) had been suspended because of pending charges. Despite having that information, the DRP recommended that 2 applicants (Officer A and Officer I) receive temporary SCDR benefits and, for reasons not related to the pending charges, that 1 applicant (Officer C) be denied SCDR benefits.

3. Post-retirement Employment

OIG Draft Report

The draft report (page 1) states that approval of some SCDR applications is "questionable" because the timing of the applications "appears to coincide with . . . an officer's imminent selection for another position outside County government".

Executive Staff Comments

When implementing County law governing SCDRs, the DRP, OHR, the County Attorney's Office, and the CAO are required to follow applicable provisions of the County Code. Current law does not require an employee to disclose any information about post-retirement activities. Moreover, the fact that an employee is incapacitated for duty in their County job does not necessarily mean that the employee is incapacitated for another non-County job. Under Section 33-43(f) of the County Code an employee is eligible for a SCDR if the employee is unable to perform the duties of either: (1) the employee's present job; or (2) any other comparable job in the employee's department or office.

If the OIG had spoken with the DRP, we believe you would have learned that the DRP knew of at least one applicant's (Officer G) imminent selection for another position outside County government but still recommended that the employee receive a SCDR.

4. Independent Medical Examinations conducted for Worker's Compensation Cases

OIG Draft Report

The draft report (page 5) states that OHR "frequently" did not consider "relevant official County information" when processing SCDR applications. The draft report gives 2 examples of SCDR applications (neither of which were among the 11 SCDR applications on which the draft report focused) in which an Independent Medical Examination (IME) report prepared for a worker's compensation case was not included in the medical information reviewed by the DRP.

Executive Staff Comments

We agree that internal control and management oversight regarding sharing of information between Risk Management, which administers the workers compensation program, and OHR's Division of Occupational Medical Services (OMS), which administers the disability retirement program, need improvement, and we have already instituted changes to improve data sharing. The improvements include requiring OMS staff to contact Risk Management staff and the third party administrator to obtain last minute information prior to the DRP's deliberations.

We do not know whether the DRP would have reached different conclusions in the 2 cases cited in the draft report had the DRP reviewed the results of the 2 specified IMEs, but we believe that question should have been posed to the DRP. This is especially important because the standard for determining the existence of a disability under the State workers' compensation law is different from the existence of a disability under the County's disability retirement program.

5. Current Law and Collective Bargaining Agreements

OIG Draft Report

The draft report (page 6) states that the "County's current decision making process contributes to the potential for SCDR abuse."

Executive Staff Comments

We agree that the standards and procedures governing SCDRs need to be revised, and the Work Group's recommendations seek to address that need. However, we believe that the draft report does not adequately explain the extent to which much, if not most, of the SCDR

decision-making process is governed by County law. That law, in turn, is largely a product of collective bargaining agreements. For the legislative history of the County law governing disability retirements and its relationship to collective bargaining agreements, see the memorandum from Associate County Attorney David Stevenson attached as Appendix 2 to this memorandum.

6. Re-examination Authorized by Section 33-43(g)

OIG Draft Report

The draft report (page 6) states that current law authorizes the County to require employees who receive SCDR benefits to undergo a yearly physical examination during the 5-year period following retirement and once every 3 years thereafter until age 55, and notes that the County does not currently exercise that authority. The draft report (page 6) also states that the OIG was “advised by OHR management that County leadership made the decision several years ago not to re-examine any former employees after they have been approved for a SCDR.”

Executive Staff Comments

As recommended by the Work Group, the OHR Director is developing a plan to conduct re-examinations of retirees receiving disability benefits. We will also fast track this process so that we can review the maximum number of SCDR recipients before they reach the threshold where such examinations are no longer required. While the medical reviews are not complicated, establishing a manageable process for returning a retiree to work in the event the employee is found to be no longer disabled may require further deliberations.

We question the accuracy of the draft report’s statement that “County leadership made the decision several years ago not to re-examine any former employees after they have been approved for a SCDR.” We are unaware of any such decision. It is our understanding that the County stopped conducting re-examinations when the County began administering the disability retirement program “in-house” in the mid-1990s. We are unaware of the rationale for that decision.

7. Earnings Limitations

OIG Draft Report

The draft report (page 7) states that “the County does not enforce earnings limitations for any former County employee approved for a SCDR even though the County has

the authority (except for police) under the County Code”. The draft report notes that 573 former County employees (non-police personnel) received SCDR benefits totaling approximately \$19 million in FY08.

The report notes that police personnel are currently exempt from the earnings limitation in County law. The draft report also notes that the current collective bargaining agreement with the Fraternal Order of the Police (FOP) includes a provision indicating that the County will submit legislation to amend County law to exempt police personnel from the earnings limitation. The draft report (page 7) states that the OIG is “unable to determine the reason(s) for the current collective bargaining agreement language.”

Executive Staff Comments

We agree that the authority to enforce earnings limitations has not been exercised, and the Executive has directed OHR to explore the policy implications of conducting earnings reviews in the future. However, the draft report mischaracterizes County law because the County does not have authority to limit earnings for either police or fire personnel, who account for the majority of SCDR payments during the past eight years. Of the 573 former County employees (non-police personnel) who received SCDR benefits in FY08, 157 were former fire personnel who are exempt from the earnings limitation. Those retirees received approximately \$6.4 million of the total \$19 million that the County paid for SCDR benefits (non-police personnel) in FY08.

We note that the current collective bargaining agreement between the County and the FOP includes an obsolete provision calling for a change to County law to exempt police personnel from the earnings limitation. That provision remains in the collective bargaining agreement, as do many other obsolete provisions that have already been implemented, to reflect the history of the agreement. From time to time, the County and FOP agree to delete obsolete provisions. The County will seek to delete the provision referenced in the draft report from the next collective bargaining agreement.

FINDING 2

Periodic Medical Examinations

OIG Draft Report

The draft report (page 7) states that “Policies and procedures used to implement the Police Department’s periodic examination program do not effectively assess the health status and functional capabilities of all police officers.” The draft report (page 8) also states that only

Thomas J. Dagley
September 8, 2008
Page 10

22% of the 254 police officers who were due for periodic medical examinations between January 2008 and June 2008 reported to OMS for the examination.

Executive Staff Comments

We agree that there is a need for a comprehensive review of policies and procedures relating to the periodic medical examinations for Police Department employees and we are in the process of initiating that review. However, we question the value of analyzing the number of police officers who reported for examinations in one 6-month period. Statistics from other periods are significantly different. For example, in calendar year 2007, 561 of the 759 officers (74%) who were due for periodic medical examinations reported to OMS for the examination.

TLF:jgs

Enclosures: Appendix 1
Appendix 2

cc: Joseph Adler, Director, Office of Human Resources
Jennifer Barrett, Director, Department of Finance
Leon Rodriguez, County Attorney
Kathleen Boucher, Assistant Chief Administrative Officer



MONTGOMERY COUNTY, MARYLAND News Release

For Immediate Release: 8/11/2008

County Executive Receives Recommendations for Reforms to County Service-Connected Disability Retirements

County Executive Isiah Leggett today received a seven-point program of recommendations designed to clarify procedures and amend certain requirements with respect to determining an employee's eligibility to receive service-connected disability retirement benefits under the Montgomery County Employees Retirement System.

The recommendations are the product of a nine-month-long examination of the Disability Retirement Program by the County's Office of Human Resources, in conjunction with Montgomery County Fire & Rescue Service, the Montgomery County Police, and the County Attorney.

"I said from the start that I wanted to keep what's working and fix what isn't," said County Executive Isiah Leggett. "I'm concerned that our system for dealing with claims for service-connected disability retirements isn't working the way it should – and hasn't for some time.

"That's why I established a work group in December 2007 headed by our Director of the Office of Human Resources, Joe Adler."

"Of our seven recommendations for change, in some cases, the County Executive can simply change procedures," said Adler. "In others, the County Council would need to change the law. For still others, changes would be made through the collective bargaining process."

Over the past eight years, 2,141 County employees retired. Two hundred ninety-two of those received service connected disability benefits (13.5 percent). A total of 226 -- or 77.4 percent -- of those receiving service-connected disability retirement benefits were Public Safety employees (Fire & Rescue, Police, Sheriff, and Corrections), which represents 38.5 percent of the 587 Public Safety retirements over this time period.

By way of comparison, service-connected disability retirements for Public Safety as a percentage of retirements over the same eight years in Prince George's County were 25 percent (Police and Fire & Rescue), Howard County 4 percent (Police & Fire), Anne Arundel 23 percent (Police & Fire), and Fairfax County 3 percent (Police, Fire & Rescue, and Sheriff).

"We need to make sure that our Disability Retirement Program works in an objective and equitable manner, consistent with a wise use of public tax dollars," said Leggett.

"One of the reasons why I established this work group was to explore the differences that exist between Montgomery County and some of our neighboring jurisdictions."

A service-connected disability retiree receives a greater benefit than an employee retiring under normal retirement circumstances. Service-connected retirements can 1) occur before retirement age, allowing retirees to receive benefits earlier, 2) do not reduce when a

participant becomes eligible for Social Security benefits, and 3) are not subject to Federal Income Tax, consistent with an Internal Revenue Service Private Letter Ruling. Service-connected disability retirees receive two-thirds of their previous income.

The changes recommended by the Task Force include:

1. Change the Montgomery County Code to allow a denial of benefits if an employee is being terminated as a result of intentional wrongdoing, such as a felony, fraud, or recklessness.
2. Consider changing the current broad "disabled" qualification into two – "fully disabled" and "partially disabled" – each with their own criteria and different benefits (late recommendation from the Police Chief, who was represented on the work group).
3. Require a disability retiree to undergo a periodic physical examination during the five year period following retirement and periodically thereafter until age 55 and/or 60 to determine if the individual can return to work or continues to meet the criteria for disability retirement benefits.
4. Consider as a factor in deciding whether to award or reduce service connected disability retirement whether job-related injuries are not reported or not reported in a timely fashion.
5. Restrict retirees from being able to file for disability retirement after they retire, excepting claims for occupational disease such as those for heart and lung disease relating to police or fire-fighting activities.
6. Change the law to require that non-service connected disability beneficiaries and service-connected disability beneficiaries' benefits integrate with Social Security at normal retirement age – as is the case with normal retirement benefits.
7. Require that required periodic physical examinations be performed by the Office of Human Resources' Office of Medical Services.

"We value all of our employees – including our Public Safety employees who put their lives on the line to protect our families and our property," said County Executive Leggett. "We know that many of them continue to 'work hurt' because they are committed to serving the citizens of Montgomery County.

"I want to work closely with the County Council and with our employee organizations to take a hard look at this issue. We have to help those employees disabled to some degree in service to this County while ensuring that any such designation is just and proper and makes sense to County taxpayers."

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Isiah Leggett
County Executive

OFFICE OF THE COUNTY ATTORNEY

Leon Rodriguez
County Attorney

MEMORANDUM

TO: Ed Lattner

FROM: Dave Stevenson

DATE: September 2, 2008

RE: **Legislative History of Section 33-43 of the County Code (Disability Retirement)**

Section 33-43 of the County Code is the law that governs the process under which service-connected disability retirement applications by police officers are considered by the Disability Review Panel (“DRP”) and the CAO. The key provisions of Section 33-43 are: subsection (c), which directs the manner in which the three members of the DRP are selected; subsection (d), which describes the procedures followed by the DRP and the CAO when considering applications for disability retirement; subsection (g), which provides a framework for the medical reexamination of disability retirees, subsection (j), which allows for the adjustment of disability retirement benefits to account for post-retirement earnings; and subsection (l), which allows employees to appeal disability retirement decisions of the CAO with which they don’t agree.

The substantive content of the relevant provisions of all of these pertinent subsections of Section 33-43 of the County Code have remained essentially unchanged since Section 33-43 was originally enacted on February 7, 1995, as 1995 L.M.C., chapter 3 (Emergency Bill No. 36-94). Current Section 33-43 was originally enacted as Section 33-43A of the County Code, effective May 18, 1995. Section 33-43A of the County Code was renumbered Section 33-43 by 1999 L.M.C., chapter 26, § 1.

All of the pertinent provisions of current Section 33-43 (as originally enacted in 1995 as Section 33-43A) were new and different provisions for the processing of disability retirement applications that resulted from collective bargaining, with the exception of subsection (g), the medical reevaluation provision. The essential content of Section 33-43, subsection (g), dates back to subsection (d) of Section 33-43 of the 1972 County Code. The first Charter provision (Section 510) authorizing legislation to provide for collective bargaining (for the police officers

unit) did not become effective until 1982.

Except for subsection (g), all of the basic substantive provisions of the pertinent provisions of Section 33-43 (subsections (c), (d), and (l)) are the product of a collective bargaining agreement reached between then County Executive Potter and MCGEO, Local 400, during collective bargaining to arrive at a new term contract which was conducted during the winter of 1992-93. All of the basic substantive provisions of the pertinent provisions of current Section 33-43 (except for subsection (g)) are presented in Article 41 of the Collective Bargaining Agreement between MCGEO, Local 400, and the Montgomery County Government for the years July 1, 1993, through June 30, 1994. In Article 41, the parties agreed to submit proposed legislation to the County Council by July 15, 1993, to amend Section 33-43 of the County Code to provide for a new set of disability retirement procedures. The legislation that embodied the terms of Article 41 of the 1993 MCGEO Collective Bargaining Agreement was presented as Emergency Bill No. 36-94 (discussed above).

By the time that Emergency Bill No. 36-94 was submitted to the Council, the certified representative of the Firefighters' bargaining unit (the Montgomery County Career Firefighters Association, IAFF, Local 1664) had also agreed to the substantive provisions (for the new disability retirement procedures) that had been developed in bargaining between MCGEO and the County. Therefore, when Section 33-43A (current Section 33-43) of the County Code became effective on May 18, 1995, it applied to all applications for disability retirement submitted by County employees after that date, except for applications filed by members of the Police Bargaining Unit.

During collective bargaining conducted between the County and FOP, Lodge 35, Inc. during the winter of 1995-96, the bargaining representatives of the FOP and the County Executive agreed to Section E. of Article 57 of the FOP Contract for the years July 1, 1996, through June 30, 1998. In Section E. Of Article 57 of the FOP Contract, the parties agreed to meet to negotiate changes to Emergency Bill No. 36-94 (Section 33-43A of the County Code, as enacted in 1995), so that the new disability retirement procedures of Section 33-43A could be extended to cover FOP unit members. The substantive framework for negotiating the extension of the new disability retirement procedures to cover police officers, as presented in Article 57, Section E. of the 1996 FOP Contract indicated that most of the existing provisions of Section 33-43A of the County Code would apply to members of the FOP bargaining unit.

After several years of negotiations between representatives of the FOP and the Executive, the parties agreed to submit Bill No. 18-99 to the Council, which included provisions to renumber Section 33-43A to Section 33-43, to repeal Section number 33-43A, and to bring employees in the Police bargaining unit within the coverage of Section 33-43 of the County Code. Bill No. 18-99 was introduced on June 22, 1999, and was enacted on November 16, 1999. Bill No. 18-99 became effective on March 1, 2000. Therefore, all applications for disability

retirement filed by Police bargaining unit members on and after March 1, 2000, became subject to the general provisions of Section 33-43 of the County Code.

Section 33-43 (j) of the County Code allows the County to adjust the service-connected retirement benefits of a disability retiree, where the retiree's post-retirement earnings, when coupled with the retiree's disability retirement payments, exceed the current maximum earnings of the job class from which the person retired. The basic substantive provisions of current Section 33-43 (j) were included in the original version of Section 33-43A, subsection (j), as enacted in 1995. As originally enacted, subsection (j) applied to all service-connected disability retirees. When Section 33-43 became applicable to Police bargaining unit members in March, 2000, the original provision of subsection (j) applied to Police bargaining unit members receiving service-connected disability retirements. But Bill No. 18-99 included a provision exempting IAFF members from subsection (j).

When the representatives of County Executive Duncan and the representatives of the FOP bargained a new term collective bargaining agreement in the winter of 2002-03, the parties agreed to new Section M. of Article 57 of the FOP Contract for the years July 1, 2003, to June 30, 2004. Section M. of Article 57 included the parties' agreement that the Executive would submit legislation to the County Council to amend Section 33-43 (j) of the County Code so that members of the Police bargaining unit would be exempted from the provisions of subsection (j) which authorize the CAO to adjust the service-connected disability retirement benefits of retirees whose post-retirement earnings, when coupled with their retirement benefits, exceed the current maximum earnings of the job class from which the persons retired. Section M. of Article 57 also included the parties' agreement to allow Police bargaining unit members to join Firefighters' bargaining unit members as employees covered by subsection (j)(7) of Section 33-43. Under subsection (j)(7), which was enacted through 1999 L.M.C., chapter 26 (Bill No. 18-99), and which flowed from a Collective Bargaining Agreement reaches between the County and the Firefighters' Union in Article 51, Section A. 6. (d) of the Contract for the years July 1, 1999, through June 30, 2002, the service-connected disability retirement benefits of members of the Firefighters' bargaining unit could not be reduced because of any income received outside of County Government service.

As a result of Section M. of Article 57 of the 2003 FOP Contract, Bill No. 32-03 was submitted to the Council. Bill No. 32-03 was introduced on September 9, 2003, and enacted (as 2003 L.M.C., chapter 30) on November 18, 2003. This law, which became effective on March 1, 2004, amended Section 33-43 (j) as that subsection applied to members of the Police bargaining unit who received service-connected disability retirements.

DES

**Thomas J. Dagley
Inspector General
Office of Inspector General
Montgomery County, Maryland
51 Monroe Street, Suite 802
Rockville, Maryland 20850
240-777-8240**

Confidential OIG Fraud Hotline: 1-800-971-6059

Website: <http://www.montgomerycountymd.gov/> (Departments/Inspector General)