RECOMMENDED ACTION AND JUSTIFICATION:
Reject the proposed decision of the Administrative Law Judge in setting aside the disability retirement of Mr. Bryce Johnson and return the case back to the Administrative Law Judge, if reasonably available, otherwise to another Administrative Law Judge to take additional medical evidence regarding Mr. Johnson’s physical fitness for duty as it pertains to eligibility for disability retirement.

Please see the attached memorandum for additional information.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board adopted Resolution 07-119 on April 3, 2007, requesting a disability retirement of Mr. Bryce Johnson. The Board has received updates on Mr. Johnson’s appeal of the disability retirement in closed sessions.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not reject the proposed decision of the Administrative Law Judge on the disability retirement of Mr. Bryce Johnson. Mr. Johnson would return to work at the Probation Department. The job requirements may aggravate Mr. Johnson’s medical condition and the County may be liable.

Financial Impact? ( ) Yes  (X) No  Current FY Cost: $ 
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded
Amount in Budget: $ 
Additional Funding Needed: $ 

Source:
Internal Transfer
Unanticipated Revenue 4/5’s vote
Transfer Between Funds 4/5’s vote
Contingency 4/5’s vote
( ) General ( ) Other

List Attachments, number pages consecutively
Memorandum

CLERK’S USE ONLY:
Res. No. 53-265  Ord. No.  
Vote - Ayes:  Noes:  
Absent:  
Approved:  
Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date:  
Attest:  MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California
By:  Deputy

COUNTY ADMINISTRATIVE OFFICER:
Requested Action Recommended  
No Opinion
Comments:

CAO:  

Revised Dec. 2002
COUNTY of MARIPOSA
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222
LYLE TURPIN, CHAIR
DIANNE A. FRITZ, VICE CHAIR
BRAD ABORN
JANET BIBBY
BOB PICKARD
DISTRICT II
DISTRICT IV
DISTRICT I
DISTRICT III
DISTRICT V

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: RICHARD J. BENSON, CAO
FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: Reject the Proposed Decision of the Administrative Law judge in Setting Aside the Disability Retirement of Mr. Bryce Johnson and Return the Case Back to the Administrative Law Judge, if Reasonably Available, otherwise to Another Administrative Law Judge to Take Additional Medical Evidence Regarding Mr. Johnson’s Physical Fitness for Duty as it Pertains to Eligibility for Disability Retirement

RESOLUTION 08-365

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on August 5, 2008

ACTION AND VOTE:

Richard J. Benson, County Administrative Officer/Personnel/Risk Manager;
Reject the Proposed Decision of the Administrative Law judge in Setting Aside the Disability Retirement of Mr. Bryce Johnson and Return the Case Back to the Administrative Law Judge, if Reasonably Available, otherwise to Another Administrative Law Judge to Take Additional Medical Evidence Regarding Mr. Johnson’s Physical Fitness for Duty as it Pertains to Eligibility for Disability Retirement

BOARD ACTION: Rick Benson reviewed the recommended action.

Input from the public was provided by the following:

Paul Chapman stated he is tired of all of the money being spent on this matter and he feels that Mr. Johnson should be given his job back.

Discussion was held relative to the process for referring the matter back to the Administrative Law Judge. County Counsel provided input on the process and the timeframes. Rick Benson clarified that the Administrative Law Judge did not conduct a fitness for duty examination.

The public input portion was reopened at the request of Chris Johnson; and input was provided by the following:

Chris Johnson stated she was the previously elected District Attorney for the County and is the spouse to Bryce Johnson. She provided input on the Administrative Law Judge’s decision and the medical examinations, and she questioned what the new medical evidence is that the County has – if it is from an examination done in 2005 for a Workers’ Compensation case, then she feels it is far removed and she referred to that doctor’s recent deposition. She noted that Bryce is present today and has no disability and she requested that he be returned to work and that the payment of the taxpayer’s dollars for this matter be stopped as well as what she feels is a misuse of the PERS system. She feels that the rejection of the Administrative Law Judge’s decision is the wrong thing and is hurting a family.
Rick Benson advised that he would recommend a fitness for duty examination for any safety employee that has been away from work for the amount of time that Bryce Johnson has been away. Bryce Johnson stated he had a fitness for duty examination and questioned why he should be asked to repeat it. He stated he has been cleared by five different doctors, and he asked what information the Board has that he is unfit.

Rick Benson advised that the medical information is confidential. Bryce Johnson stated he is waiving the confidentiality for this matter to be discussed; and he stated he feels that the 2005 information is too remote to be admissible.

Chris Johnson asked if anyone else in the County has had to pass a physical in this situation. Chair Turpin advised that medical information is confidential and can not be discussed in open session. Rick Benson advised that the most recent signed medical report signed by a doctor said that Mr. Johnson may have a medical condition that keeps him from returning to his position and he can not recommend that he be returned to his position while there is that cloud hanging over this case.

Bryce Johnson asked when the referenced report was done and when it was made available to the County.

Chris Johnson advised of discussions with their attorney relative to the fitness for duty condition; and she does not feel a rehearing will happen as she does not feel that the County has any evidence.

Further discussion was held. Motion by Bibby to return Bryce Johnson back to work died for lack of a second. Further discussion was held. (M)Pickard, (S)Aborn, Res. 08-365 was adopted rejecting the proposed decision of the Administrative Law Judge in setting aside the disability retirement of Bryce Johnson and returning the case back to the Administrative Law Judge, if reasonably available, otherwise to another Administrative Law Judge to take additional medical evidence regarding Mr. Johnson’s physical fitness for duty as it pertains to eligibility for disability retirement/Ayes: Aborn, Turpin, Fritz, Pickard; Noes: Bibby.

Cc: Sandi Laird, Personnel  
    Chris Ebie, Auditor  
    File
TO: Board of Supervisors

FROM: Rick Benson, County Administrative Officer

SUBJECT: Bryce Johnson Disability Retirement

On April 3, 2007, the Board of Supervisors adopted Resolution 07-119 approving a disability retirement on behalf of Mr. Bryce Johnson, a Deputy Probation Officer III. The disability retirement was based on medical information from licensed psychologists which indicated that Mr. Johnson would not be able to return to his former position.

Mr. Johnson appealed this decision that he was incapacitated in performing his job duties and his appeal was heard by an Administrative Law Judge (ALJ) in the Office of Administrative Hearings. Based on the evidence presented at the appeal, the ALJ issued a proposed decision to set aside the disability retirement of Mr. Johnson.

After the conclusion of the appeal hearing, but before the decision was rendered, additional medical evidence was released by a physician that had been hired by Mr. Johnson’s attorneys to examine him. This evidence was not available to the Board of Supervisors, nor was it considered by the ALJ. This new evidence indicates Mr. Johnson may have a physical inability to perform the unusual and customary duties of his position that requires review, and it is also necessary to confirm Mr. Johnson’s ability to return to work pursuant to Government Code Section 1031(f).

It is therefore recommended that the Board of Supervisors reject the ALJ’s proposed decision and return the case to the ALJ, if reasonably available, otherwise to another ALJ, to take additional medical evidence regarding Mr. Johnson’s physical fitness for duty as it pertains to eligibility for disability retirement. As such, the County will have met its obligation to Mr. Johnson as an employee to retire him for disability if he is eligible, to ensure he does not further aggravate any medical conditions he may have, and to meet its obligations under Government Code Section 1031(f).

RB