

DEPARTMENT: Personnel

BY: Richard J. Benson

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a Resolution certifying the ^{April} disability retirement of Bryce R. Johnson, a Deputy Probation Officer III, effective ~~March~~ 1, 2007. A determination has been made that Deputy Probation Officer Johnson is incapacitated within the meaning of PERS law for performance of his duties. It has been further determined that the disability does not arise out of and in the scope of his employment.

As a safety employee, PERS requires that the governing board, i.e., the Board of Supervisors, adopt a Resolution relative to the approval or denial of a disability or industrial disability retirement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has previously adopted Resolutions approving disability retirement for employees.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

N/A

Financial Impact? () Yes () No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		_____
Source:		Resolution
Internal Transfer		_____
Unanticipated Revenue	_____ 4/5's vote	_____
Transfer Between Funds	_____ 4/5's vote	_____
Contingency	_____ 4/5's vote	_____
() General () Other		_____

CLERK'S USE ONLY:

4/3 Res. No.: 02-119 Ord. No. _____
 Vote - Ayes: 4 Noes: Bibby
 Absent: _____
 () Approved
 4/3, 2/27 () Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
 Comments: _____

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

CAO: *RJB*

RESOLUTION NO. 07-119

**RESOLUTION OF THE BOARD OF SUPERVISORS
COUNTY OF MARIPOSA**

Government Code Section 21156

WHEREAS, the County of Mariposa (hereinafter referred to as Agency) is a contracting agency of the Public Employees' Retirement System;

WHEREAS, the Public Employee's Retirement Law requires that a contracting agency determine whether an employee of such agency in employment 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 disability retirement of Bryce R. Johnson employed by the Agency in the position of Deputy Probation Officer III has been filed with the Public Employees' Retirement System; and

WHEREAS, the Board of Supervisors has reviewed the medical and other evidence relevant to such alleged disability; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors finds and determines and it does hereby find and determine that Bryce R. Johnson is incapacitated within the meaning of the Public Employees' Retirement Law for performance of his duties in the position of Deputy Probation Officer III, and

BE IT FURTHER RESOLVED that the Board of Supervisors finds and determines and it does hereby find and determine that such disability is not a result of injury or disease arising out of and in the course of employment. Neither said Bryce R. Johnson nor the Agency has applied to the Workers' Compensation Appeals Board for a determination pursuant to Section 21166, whether such disability is industrial.

BE IT FURTHER RESOLVED that the member will be separated from his employment in the position of Deputy Probation Officer III after expiration of his leave rights under Government Code Section 21164 effective March 31, 2007 and that no dispute as to the expiration of such leave rights is pending. His last day on pay status will be March 31, 2007.

There is not a possibility of third party liability.

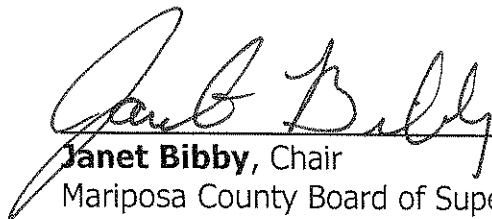
Advanced Disability Pension payments will not be made.

The primary disabling condition is psychological and physical. The member is competent to act on his own behalf in legally binding retirement matters.

The effective date of the member's disability retirement is April 1, 2007.

PASSED AND ADOPTED by the Mariposa County Board of Supervisors this 3rd day of April 2007 by the following vote:

AYES: ABORN, TURPIN, FRITZ, PICKARD
NOES: BIBBY
ABSENT: NONE
ABSTAINED: NONE




Janet Bibby, Chair
Mariposa County Board of Supervisors

ATTEST:

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Margie Williams
Clerk of the Board



Thomas P. Guarino
County Counsel



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

JANET BIBBY, CHAIR
LYLE TURPIN, VICE CHAIR
BRAD ABORN
DIANNE A. FRITZ
BOB PICKARD

DISTRICT III
DISTRICT II
DISTRICT I
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: RICHARD J. BENSON, CAO
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: Adopt a Resolution Certifying the Disability Retirement of Bryce R. Johnson, a Deputy Probation Officer III, Effective March 1, 2007

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on February 27, 2007

ACTION AND VOTE:

Adopt a Resolution Certifying the Disability Retirement of Bryce R. Johnson, a Deputy Probation Officer III, Effective March 1, 2007 (County Administrative Officer/Personnel Director)

BOARD ACTION: Rick Benson, County Administrative Officer, presented the request, and he advised that information was provided to the Board previously in a closed session and because this is a personnel matter, it would not be appropriate to discuss that information. However, he advised it would be appropriate to take the recommended action to initiate the disability retirement.

Input from the public was provided by the following:

Frank Bartholomew provided information on his background and work with civilian employees, and he advised that he has known Bryce Johnson for over twenty years and he is personally aware of the personnel action taken against him and of the funds that the County has spent to prevent this employee from returning to work; and he questioned these actions. He stated he feels that this will result in unnecessary litigation. He stated he feels that it appears that the County is forcing an employee to retire against his will. He asked that the new Supervisor(s) read the file and judge for themselves, and interview Mr. Johnson before they vote on this request. He stated he feels that it is questionable that the County Administrative Officer is the Personnel Officer. He cited a quote on a local church marquee – “Always do unto others as if you were the others.”

Laura Kim stated she is a federal government employee and is familiar with federal employment practices. She presented a written letter testifying on behalf of Bryce Johnson as a close personal friend.

11:06 a.m. Recess to allow time for the Board members to read the letter submitted by Laura Kim.

11:34 a.m. Chair Bibby noted that the information that is being provided to the Board by the public on this matter is public information.

Bryce Johnson read his written statement into the record. He advised that he has resided in the County for 23 years and employed by the Probation Department for about 20 years. He expressed concern that the recommended resolution certifying his disability retirement damages him personally and professionally. He does not feel that there is any evidence to suggest that he is disabled. He stated his attorneys have advised

PERS (Public Employees Retirement System) that he is contesting this decision and will appeal any decision to retire him. He feels that the record is clear that he worked in a hostile working environment that led to a temporary but not permanent disability, and that he was retaliated against by the department head and others when he raised officer safety issues, unfair employment practices, and inappropriate behavior by the department head. He commented on the reorganization of the department due to the loss of grant funding and stated he does not feel that due process was followed. It resulted in his position of Deputy Chief being deleted and he was demoted to a line probation officer. He read a memo dated August 1, 2005, from former Auditor, Ken Hawkins, saying there was no fiscal crisis and that General Fund dollars were available. After the reorganization, his doctor recommended that he take time off and commented on his health problems and those of a co-worker. He advised that he filed a claim for temporary disability workers compensation benefits, and he recently refused the settlement of \$10,000 and resignation of his job offer. In addition, he filed an action pursuant to California Labor Code section 132a, which provides for increased penalties to an employer who discriminates against employees for having sought relief under the workers compensation laws. He stated he feels there was also an attempt to disability retire Sheriff Allen. He commented on the legal expenses for the County and for himself in these matters. He further commented on the evaluation process with the doctors, and he feels that he has been cleared to return to work by every doctor that he was required to see. He stated he is not disabled and he has been working a security job out of necessity. He stated he always received outstanding personnel evaluations under every prior Probation department head. He stated he feels that this isn't just about him, but about every County employee who has been treated in an unfair manner merely because they have exercised their right to speak out. He urged the Board to vote "no" on this item and he referred to a saying – "get the facts or the facts will get you." He stated he feels that the requested action is fraudulent as he is not disabled.

Rick Benson advised that this action is being recommended as a result of his conferring with his immediate predecessor, and he utilized and relied heavily on the opinion of outside counsel. Discussion was held. Supervisor Aborn requested that the matter be continued to allow him time to obtain more information. Supervisor Fritz suggested that the matter be continued as Supervisor Aborn requested and to allow for a full Board to be present. The Board concurred with continuing this matter as requested.

Cc: Sandi Laird, Personnel
Chris Ebie, Auditor
File



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

JANET BIBBY, CHAIR
LYLE TURPIN, VICE CHAIR
BRAD ABORN
DIANNE A. FRITZ
BOB PICKARD

DISTRICT III
DISTRICT II
DISTRICT I
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: RICHARD J. BENSON, CAO
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: A) Adopt a Resolution Certifying the Disability Retirement of Bryce R. Johnson, a Deputy Probation Officer III, Effective April 1, 2007

RESOLUTION 07-119

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on April 3, 2007

ACTION AND VOTE:

Richard J. Benson, County Administrative Officer/Personnel/Risk Manager;

A) Adopt a Resolution Certifying the Disability Retirement of Bryce R. Johnson, a Deputy Probation Officer III, Effective April 1, 2007 (Continued from February 27th, 2007)

BOARD ACTION: Rick Benson advised that this matter was continued from February 27th for the full Board to be present and for the new Board member (Supervisor Aborn) to be brought up to status with the situation; and he advised that Attorney Woody Merrill was present. Supervisor Pickard asked that Attorney Merrill provide information concerning this matter that is public information. Attorney Merrill advised that over a period of time, a number of lawyers and County officials have reviewed the information and they feel there is enough information for this action and this matter has not been taken lightly. He recommended that there be no discussion on the issues related to the medical and personnel portions of this matter.

Input from the public was provided by the following:

Peggy Shainberg spoke supporting Bryce Johnson. She advised that she has been a resident of the County for 34 years and has known Bryce for 15 years and during part of that time she was a Deputy District Attorney. She found Bryce to be helpful and professional and she really does not understand how the County can be stating that he is disabled. She sees him running when she is out walking and he is always willing to help them with their sailboat. She feels it would be more advantage for the County to have Bryce working.

Steve Welty, Attorney representing Bryce Johnson in this matter, stated he has an emphasis in retirement issues with PERS. He advised of his review of the doctors' reports and depositions taken; and he assumes the Board has read those reports and knows the doctors opinions that Bryce is ready and willing to go back to work. He advised of the appeal process that is available to them if the Board takes this action. He stated he feels the question is whether Bryce can perform his job duties today, and he does not feel there is any evidence that he can not perform his job. He stated he finds it strange that the Board is going to adopt the retirement effective today, but the County applied for this six months ago. He stated he feels that this action is retaliation and he feels this will create issues of involuntary termination.

Supervisor Pickard asked Attorney Merrill to respond relative to the effective dates of this matter. Attorney Merrill noted that this is the date of the proposed Board action. Rick Benson advised that the resolution has to be adopted within six months after filing the disability retirement; otherwise the disability retirement will not be granted by PERS. Supervisor Bibby stated she has issues with this matter and she is unable to make the finding of the resolution. Supervisor Pickard advised that he is relying on medial opinions and legal advice in this matter and agrees with the recommendation of staff. (M)Pickard, (S)Turpin, Res. 07-119 was adopted certifying the disability retirement for Bryce Johnson as recommended by staff. Supervisor Bibby noted that the Board members have only reviewed the information that they have been provided. Ayes: Aborn, Turpin, Fritz, Pickard; Noes: Bibby.

Cc: Sandi Laird, Personnel
Chris Ebie, Auditor
File