Tempe

Minutes
Tempe Police Public Safety Personnel Retirement System Board
June 4, 2015

Minutes of the Tempe Police Public Safety Personnel Retirement System Board meeting, held on Thursday, June 4, 2015, 2:00 p.m., Tempe City Hall, third floor conference room, 31 E. 5th Street, Tempe, Arizona.

Board Members Present:
Joe Brosius
Dr. Russell Schoeneman
Kelly McMenemy
Jeff Millen

Board Members Absent:
Mark W. Mitchell, Mayor

City Staff Present:
Renie Broderick, Internal Services Department Director
Chris Hansen, Risk Manager
Wendy Messina, HR Program Coordinator
Susan Buck, Executive Assistant

Legal Counsel Present:
Cynthia Kelley

Joe Brosius called the meeting to order at 2:09 p.m.

ITEM I - Consideration of Meeting Minutes
Motion by Russell Schoeneman to approve the Police PSPRS Board Meeting Minutes of May 7, 2015; second by Jeff Millen. Motion passed unanimously on a voice vote 4-0.

ITEM II - Public Appearances
Joe Brosius asked if there was a member of the public who wished to address the Board. Andrew Rodriguez indicated that he wished to address the Board regarding Agenda Item VIII, but wanted to wait to speak until the Board was ready to review that item.

ITEM III - Motion to Adjourn to Executive Session, if necessary
Motion by Kelly McMenemy to convene Executive Session; second by Russell Schoeneman. Motion passed unanimously on a voice vote 4-0. The Board convened into Executive Session at 2:10 p.m.; the board meeting was called back to order at 2:36 p.m.

ITEM IV – Retirement Application
Motion by Kelly McMenemy to approve the application by **Stephen D. Horsman** for Normal Retirement with a retirement date of 06/05/2015; and to approve the application by **James A. Stone II** for Normal Retirement with a retirement date of 07/24/2015; second by Russell Schoeneman. Motion passed unanimously on a voice vote 4-0.

ITEM V – Initial Hearing for Accidental Disability Benefits – Carlos A. Benavidez
Motion by Jeff Millen to continue this item pending further information from applicant; second by Russell Schoeneman. Motion failed on a voice vote 2-2. Motion by Kelley McMenemy to deny the application by **Carlos A. Benavidez** for Accidental Disability Benefits based on the lack of documentation of a permanent disability; second by Russell Schoeneman. Motion passed unanimously on a voice vote 4-0.

ITEM VI – Hearing for Accidental Disability Benefits
Joe Brosius noted that applicant Thomas L. Busby was in the room and asked if he wished to address the Board. Mr. Busby stated that this was not the way he wanted to go out; this is what he has done for the last 20+ years. He stated that he has to think about his family and his fellow officers; as hard as it is to admit, he could not protect his partner in his current condition.

Motion by Jeff Millen to approve the application by **Thomas L. Busby** for Accidental Disability Benefits; second by Russell Schoeneman. Motion passed unanimously on a voice vote 4-0.

Kelly McMenemy noted **Dr. Edward W. Song's** answers to the following questions:

1) Does the employee have a physical or mental condition which **totally** and **permanently** prevents him from performing a reasonable range of duties within his job classification? *YES*
2) Does the disability result from a physical or mental condition or injury that existed or occurred **prior** to his PSPRS membership? *NO*
3) Was the disabling condition or injury incurred **in the performance of his duty** as a police officer? *YES*

Internal Services Director Renie Broderick noted the Local Board's responses to the following questions found in the Public Safety Personnel Retirement System Accidental Disability Questionnaire:

1) Did the employee file the application after the disabling incident, or within one year of ceasing to be an employee? *YES*
2) Did (or will) the employee terminate by a reason of disability? *YES*
3) Did employee terminate based on a disciplinary issue? *NO*
4) If the member's period of Deferred Retiree Option Plan (DROP) has ended, if applicable, did (or will) the employee terminate by a reason of disability? *Not applicable; Mr. Busby is not in the DROP program.*
5) Is the employee still working a position within their job classification that the Local Board considers a reasonable range of duties position? *NO*
6) Has the employee refused a position within their job classification that the Local Board considered a reasonable range of duties? *NO*
7) Did the injury or condition occur prior to the current PSPRS membership date? *NO*
8) Was the injury or condition the result of an event incurred during the performance of the employee's duty? *YES*

ITEM VII – Status Update on Pending Disability Applications
Jeff Millen provided an update on the pending Application for Disability Benefits for **Steven J. Anderson**. Mr. Anderson's Independent Medical Exam (IME) has been scheduled for June 16, 2015. The IME report may be available by the July meeting.

ITEM VIII – Appeal of Denial of Accidental Disability Benefits
Joe Brosius noted that Applicant Andrew Rodriguez was in attendance and wished to address the Board. Mr. Rodriguez read a prepared statement regarding officer health and safety and noted that his physical disability hinders his ability to perform his job duties for the City of Tempe. He stated that due to his current physical limitations he would not be able to engage in a foot pursuit and would be vulnerable to injury. Joe Brosius asked Mr. Rodriguez about the information contained in his medical information, specifically the Olympic weight-lifting he engaged in. Mr. Rodriguez stated that he was weight-lifting at the direction of his attending physical therapist, his PA and Dr. Erickson. He stated that he did not reinjure himself due to the weight-lifting. Joe Brosius asked Mr. Rodriguez if he was currently under investigation and if so, what the details were. Mr. Rodriguez stated that he was served with a notice of Range 1 – Range 2, which are non-terminating offenses. Kelley McMenemy asked about a missing page from the report submitted by Mr. Rodriguez from Arizona Tech Radiology; page 2 of 5 appears to be missing. Mr. Rodriguez does not have that page with him. Joe Brosius inquired about Mr. Rodriguez' petition to re-open his worker's compensation claim. Mr. Rodriguez notified Human Resources and Risk Management, as well as submitting the required forms, but has not yet heard back from York or ICA; their decision could take up to 60 days. Jeff Millen asked if Mr. Rodriguez had received a medical opinion stating that this was a permanent, debilitating condition. Mr. Rodriguez stated that he did see Scott McMillan, a

physician's assistant with the orthopedic surgeon, on Wednesday and Mr. McMillan confirmed that he will need additional surgery. Joe Brosius asked why Mr. Rodriguez assumes the surgery will not be successful and that he will not be released to full duty. Mr. Rodriguez stated that he was concerned about re-injury if he engages hands on with an individual; he is currently on light duty and is not out in the field. Kelley McMenemy read ARS section 38-842.1, which states the definition of accidental disability as a physical or mental condition that the Local Board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's job classification and that was incurred in performance of the employee's duty. Ms. McMenemy noted that based on the application before them, the Board has to determine whether it finds the medical situation totally and permanently prevents an employee from performing a reasonable range of duties. Without knowing the result of the upcoming surgery, the Board can only go on the facts that are before them now. Mr. Rodriguez stated that he understood. Joe Brosius noted that it was also possible to request temporary disability benefits. Mr. Rodriguez stated that he was not aware of that. Board Legal Counsel, Cynthia Kelley, stated that the definition of temporary disability is the physical or mental condition that the Local Board finds totally and temporarily prevents the employee form performing a reasonable range of duties within the employees department; it is 12 months maximum for the disability. Joe Brosius noted that applying for temporary disability would require submitting a different application and withdrawing the current application. Mr. Rodriguez stated that he would like to consult with his legal counsel before deciding. Russell Schoeneman asked for clarification regarding the type of surgery that is being recommended. Mr. Rodriguez stated that it is orthoscopic surgery on his right knee for lateral and medial meniscus tears, an injury incurred while on duty.

Motion by Jeff Millen to table the Appeal of Denial of Accidental Disability Benefits of **Andrew P. Rodriguez** until the July meeting; second by Kelly McMenemy. The Board discussed the motion, with clarification that the item is being tabled to allow the applicant to obtain legal advice regarding his application options and to also submit the missing page 2 from the Arizona Tech Radiology report for the Board's review. Motion passed unanimously on a voice vote 4-0.

ITEM IX – Application for Survivor's Benefit
Motion by Jeff Millen to approve the application by **Sheila A. Warren** for a Survivor's Benefit as the designated beneficiary of **Michael S. Warren**; second by Kelley McMenemy. Motion passed unanimously on a voice vote 4-0.

ITEM X – Board Member Appointments /Re-Appointments
Jeff Millen stated that he was re-elected as an employee-member of the Board; his new term ends June 30, 2019.

ITEM XI – Future Meeting Date
July 9, 2015. Joe Brosius stated that he would not be attending the July 9, 2015 meeting.

ITEM XII – Future Agenda Items
None.

Adjournment
Motion by Kelly McMenemy to adjourn; second by Jeff Millen. Motion passed unanimously on a voice vote 4-0. The meeting adjourned at 2:59 p.m.

Renie Broderick
Local Board Secretary