CITY OF PORT ORANGE
FIRE AND RESCUE PENSION BOARD OF TRUSTEES QUARTERLY MEETING
MINUTES
Monday, February 8, 2016, 4:00 P.M.

Members Present:	Jim Reardon Bob Ford Joe Meeske Josh Moore
Members Absent:	None
Plan Administrator:	Sheila Hutcheson
Plan Attorney:	Scott Christiansen
City Staff:	Heather Carrizales, Human Resources Manager; Cindy DePina, Administrative Services Director
Claimant:	Carol Calache
Claimant's Attorney:	Richard A. Sicking
Public:	John Calache
Plan Members:	Justin Adams, Chris Taylor

CALL TO ORDER/ DETERMINATION OF A QUORUM

The meeting was called to order at 4:08 p.m. by Secretary Josh Moore. There was a quorum with all members present.

Welcome new Trustee Joe Meeske

The Board welcomed Mr. Meeske. The Attorney confirmed that Mr. Meeske had timely filed his initial Financial Disclosure Form.

Election of Officers

Nominations were taken for each position, as follows:

Chairman - Member Moore nominated Jim Reardon; Member Ford seconded the motion. There were no other nominations. The motion passed unanimously.

Secretary - Member Ford nominated Josh Moore; Member Reardon seconded the motion. There were no other nominations. The motion passed unanimously.

The new officers are: Chairman Jim Reardon and Secretary Josh Moore. The Administrator will distribute a new Board Member list after the appointment of the fifth trustee, and will then have all Trustees execute an updated authorized signers' form for PNC, the Plan's custodian bank.

Chairman Reardon proceeded with the meeting.

Initial hearing - Disability claim filed by Carol Calache

Attorney Christiansen opened with a review of the disability claims and criteria procedures, as outlined in the Operating Rules and Plan Document.

The process began with a claim filed by Ms. Calache along with the required physician's statement stating that the claimant's disability prevented her from performing the duties of a Firefighter. Upon receipt of a valid, complete application for disability, a set of interrogatories was sent by Attorney Christiansen for **all** medical information (including any pre-existing conditions) and employment/workers' compensation records. The claimant signed a waiver of confidentiality and authorization to all the providers for records. The release also states that the medical records, after the hearing, are considered public records, if there is a request for them.

Upon receipt of all the records in the Attorney's office, an Independent Medical Examination (IME) was scheduled with Dr. Zulima Nicoloff (cardiovascular physician). All the records collected from all sources were sent to Dr. Nicoloff, and also to the Administrator for the Board, and a copy to the Claimant, in case she wished to submit any additional information for consideration. After the IME, Dr. Nicoloff's report was sent to the Attorney; the report included the specific criteria that must be considered. The initial hearing was then set, which is the purpose of today's meeting. There are three choices for the Board to make today:

- Records are sufficient to make a determination of disability (grant disability);
- Records are insufficient to make a determination of disability (deny disability); or
- Identify any additional records that might be needed or any records that need to be clarified or augmented. Then the Board would recess the hearing and reconvene after more information is available.

If the claim is denied, the claimant can appeal the denial and submit additional evidence at a formal evidentiary hearing by the Board, and the process outlined above would begin again. The evidentiary hearing may involve additional testimony as well. If the disability is granted at the second hearing, the effective the date of the disability would be the date of the formal evidentiary hearing. If the claim is again denied at the formal evidentiary hearing, the Board's consideration is completed, but the claimant can file a petition for writ of certiorari. The circuit court would then review the record to see if the Board could reasonably have made its decision based on competent evidence or, alternatively, the circuit court could send the claim back to the Board for further consideration.

Next, Mr. Christiansen discussed the role of his office in the procedure: collect records and provide legal criteria to the Board. The Attorney is not adversarial to the claimant, but serves as the advisor to the Board. The claimant has the burden to prove that the criteria for approval of the disability claim have been met. In this quasi-judicial hearing, the standard of proof for disability is a preponderance of the evidence, not evidence beyond any reasonable doubt.

The criteria for disability in the Plan are, as follows: the firefighter must be totally disabled from performing the duties of a firefighter for the Department. A permanent disability means the condition prevents him/her from serving as a firefighter and the condition is not likely to get better. For the Department's purposes, improvement must mean he/she can fully perform the duties required of a firefighter. If it is determined that the claimant's disability is due to an "exclusionary" factor (as listed below), there would not be any eligibility for a disability pension:

- excessive use of narcotics,
- while fighting or committing a crime;
- during active military service; or
- after employment has ended.

If the disability claim is approved, the final decision the Board must make is whether or not the disability is in-line-of-duty or not in-line-of-duty. If the disability is not in-line-of-duty, the claimant must have at least ten years of service with the Port Orange Fire/Rescue Department to be considered. Mr. Christiansen noted that, with regard to in-line-of-duty disability, there are certain diseases that are presumed to be work-related in Florida Statutes. These presumptions of disability are not in the City's ordinance. He enumerated the diseases and stated that if any of these diseases occurred after employment with the Port Orange Fire/Rescue Department, it is presumed to be "line-of-duty."

The Attorney next outlined the specifics of this case, including work history, age, etc., and discussed/summarized the medical reports and treatments, including that of Dr. Nicoloff, the independent medical examiner. Dr. Nicoloff states that Ms. Calache is, in fact, totally disabled from performing the duties of a firefighter and that this condition may be permanent; the report also stated that Ms. Calache's disability is service-connected. The Attorney outlined the specifics detailed in the doctor's IME report.

At this point, Ms. Calache and her Attorney were given the opportunity to address the Board.

Mr. Sicking introduced himself and reviewed Ms. Calache's precipitating accident in 2014. As a result of that physical injury, Dr. Nicoloff referred to the records of the orthopedic doctor who had treated Ms. Calache and provided an IME of the orthopedic condition. This IME also found that Ms. Calache's condition was work-related (service-connected). It was initially thought that the hypertension was perhaps incidental to the injury and associated medications. But it was later determined that the hypertension was an ongoing condition, and not just situational. This is essential hypertension and meets the criteria of the presumed diseases. He then referenced Dr. Nicoloff's IME report, noting that the work that Ms. Calache can no longer perform includes many of the essential functions of a firefighter's duties, which addresses that the disability meets the standard of being a total disability. With respect to the permanency of the disability, Mr. Sicking noted that a number of physicians' reports in the record support that the disability is, in fact, permanent. He requested the Board's approval of a service-connected, permanent total disability for Ms. Calache.

At this point, Attorney Christiansen said that the Board can now make its decision.

The Board then discussed whether or not the disability was in-line-of-duty or not service-connected. Member Ford said that it is clear that the disability does meet the criteria for being service-connected, based on the preponderance of the evidence.

Member Ford made a motion to approve a line-of-duty (permanent, total) disability for Carol Calache as of February 8, 2016; Member Meeske seconded the motion, which passed unanimously.

The Administrator pointed out that in the current ordinance the benefit amount would be 42% of average final compensation, whereas the recently approved labor contract has increased the minimum 42% benefit to 51%. Several attendees pointed out that the labor contract specifies that benefit improvements will be effective as of January 1, 2016, at such time as the enacting ordinance is adopted. The Board's consensus was for Attorney Christiansen to send a letter to the City in this regard. The Attorney and the Administrator said that the goal now is to process the request to the

Plan's Actuary as soon as possible for Ms. Calache's benefits to begin (based on the current 42% amount) with a retroactive adjustment to her selected benefit option when the ordinance specifying the minimum 51% benefit is adopted by the City Council.

NOTE: Subsequent to the meeting, Ms. Calache advised the Administrator that she has questioned some of the earnings history from the City. Ms. Hutcheson said that, if the City submits revised pensionable earnings subsequent to the benefit calculation, the selected benefit option amount will be recalculated, in the same manner as the minimum 51% benefit noted above.

For the record, it was also noted that the pension plan provides for an offset of the disability benefit amount in the event of a settlement for workers' compensation claims filed by Ms. Calache. The City Human Resources Manager was asked to provide this information to the Administator if such a settlement is awarded.

Consideration of appointment of fifth member (Request for appointment submitted by Chris Taylor)

Member Meeske made a motion to appoint Chris Taylor as the fifth member for a term through December 31, 2017; Member Moore seconded the motion, which passed unanimously.

The Administrator will submit this appointment to the City Clerk for ratification as a ministerial duty by the City Council.

Approval of expense reimbursement to Administrator for copy and shipping charges for disability claim records/mileage - $287.87

Member Meeske made a motion to approve the Administrator's expenses in the amount of $287.87 (related to the disability records for the claim considered at this meeting); Member Ford seconded the motion, which passed unanimously.

REQUESTS FROM THE PUBLIC - none

ADJOURNMENT - There was no further business; the Chairman adjourned the meeting at 4:55 p.m.

Respectfully Submitted:

Sheila Hutcheson, Plan Administrator

Approved:

Jim Reardon, Chairman