

**CITY OF PHILADELPHIA
BOARD OF PENSIONS AND RETIREMENT
Meeting of January 5, 2012**

MINUTES

On January 5, 2012, Paula Weiss called the Regular Meeting of the Board of Pensions and Retirement to order at 9:10 a.m. in the Board's Conference Room.

Present: Paula Weiss
Ronald Stagliano
Harvey Rice
Brian Albert
Celia O'Leary
Carol Stukes
Anne Kelly King
John Reilly
Veronica Pankey
Hilary Cornell

Also Attending: Francis Bielli, Mark Murphy, Shamika Taliaferro – Board of Pensions
James Leonard, Christopher DiFusco – Law Department
Joshua Stein, Benjamin Hinerfeld – Law Department
Sumit Handa, Brad Woolworth – Board of Pensions, Investment Unit
Chester Skaziak – Retiree
Linda White - Resident

Paula Weiss stated that the first order of business was the consideration of the Minutes of December 8, 2011. She noted two changes: Celia O'Leary was **not** present at the December meeting and the vote on Page 9, middle of the page, **should be 7-0**, not 8-0. These corrections were made.

John Reilly made a motion to approve the Minutes of December 8, 2011. Ronald Stagliano seconded the motion.

The motion to approve the Minutes of December 8, 2011 carried unanimously 8-0.

CONSIDERATION OF (97) PENSION APPLICATIONS AND (97) WITHDRAWAL APPLICATIONS

Carol Stukes made a motion to approve. Ronald Stagliano seconded the motion.

The motion to approve carried unanimously 8-0.

APPLICATIONS FOR SERVICE-CONNECTED DISABILITY BENEFITS

Case of Paula Pryor, Application for Service-Connected Disability Benefits –Plan “J”

This is an *administrative application* by Paula Pryor, former Equipment Operator II, Department of Streets, for Service-Connected Disability Benefits in Plan “J”.

Ms. Pryor sustained the injury on August 22, 1999 when during a city sweep detail a car hit her vehicle. The nature of Ms. Pryor’s disability is limited mobility due to lower back pain, headaches, and depression.

Hilary Cornell made a motion to deny. Brian Albert seconded the motion.

The motion to deny carried 4-0-4.

Case of Richard Lewis, Application for Service-Connected Disability Benefits – Plan “Y”

This is an application by Richard Lewis, former Automotive Maintenance Technician, Fleet Management Department, for Service-Connected Disability Benefits in Plan “Y”.

Mr. Lewis sustained an injury on October 20, 2009 to his lower back and leg while working on a door problem. The “Creeper” machine came out from under him and caused him to fall.

Carol Stukes made a motion to approve. Veronica Pankey seconded the motion.

The motion to approve carried unanimously 8-0.

APPLICATION FOR SERVICE-CONNECTED DISABILITY BENEFITS BEYOND THE ONE-YEAR DEADLINE

Case of Ricki Howard, Application for Service-Connected Disability Benefits beyond the one-year deadline - Plan “J”.

This is an application by Ricki Howard, Streets Department, for Service-Connected Disability Benefits beyond the one-year deadline in Plan “J”.

Mr. Howard separated from the City of Philadelphia effective May 26, 2009. He applied for and commenced receipt of Ordinary Disability benefits as of his effective date of May 26, 2009. At the time he made application for benefits, he did not disclose that he had applied for, and was also receiving Workers’ Compensation benefits for the same injury. He did not apply for Service-Connected Disability benefits at that time. He is presently receiving Workers’ Compensation benefit in the amount of \$807.22, bi-weekly. He is not currently eligible to receive a Service, Separation or Optional Early Pension benefit at this time, as he has not attained the required age for such benefits.

On July 26, 2011, the Board of Pensions notified Mr. Howard and his attorney that his Ordinary Disability benefit would be terminated effective August 31, 2011, as required by Section 22-402 of the Retirement Code, which prohibits the payment of Ordinary Disability Benefits to a member who is eligible to receive Worker's Compensation Benefits. On October 27, 2011, Mr. Howard, through his legal counsel, sought to make an application for Service-Connected Disability Benefits.

On November 23, 2011, acting upon advice of the Law Department, the Board issued an administrative denial of Mr. Howard's request to apply for Service-Connected Disability as his application was made beyond the one-year deadline of May 26, 2010. On November 29, 2011, Mr. Howard appealed the administrative denial.

The sole issue before the Board at this time is the question of whether Mr. Howard will be permitted to make an application for Service-Connected Disability benefits beyond the one-year deadline stated in the Retirement Code.

Section 22-401 of the Retirement Code states:

(1) *Qualification.* Any member found by the Board to be permanently incapacitated from further performance of duty, which incapacity resulted solely from the performance of the duties of the member's position and was not caused by the member's own wrongful conduct, shall be retired and shall receive service-connected disability retirement benefits. To approve an application for such benefits, the Board must find that:

(d) *an application for service-connected disability retirement benefits is filed within one (1) year after separation from service, except as provided in § [22-401\(3\)](#).*

Veronica Pankey made a motion to approve. Carol Stukes seconded the motion.

The vote tied 4-4. The Chair voted to deny making the vote 4-5. Motion Denied.

PENSION DISQUALIFICATIONS

Case of Kenneth Crockett - Pension Disqualification and Termination of Benefits, Plan "D"

Kenneth Crockett was hired by the City of Philadelphia Police Department on May 21, 1984. After attaining 32 years, 2 months and 15 days of credited service, Mr. Crockett separated effective August 10, 2010. He is currently receiving monthly service pension benefits in the amount of \$3,619.44.

On December 13, 2011, Inspector General Amy Kurland wrote to Executive Director Francis Bielli, and provided documentation concerning the conviction of Kenneth Crockett on one count of Theft by Unlawful Taking, for acts committed in the course and/or scope of his employment.

Prior to his arrest, Mr. Crockett worked as Philadelphia Police Officer. During an investigation at the location of a possible robbery, Mr. Crockett was observed on surveillance video removing items from a safe. The items were bank deposit bags, containing \$825, leading to Mr. Crockett's arrest and subsequent conviction, as outlined in the attached memorandum from the Law Department.

On December 21, 2011, Joshua Stein, Deputy City Solicitor, opined the crime committed by Mr. Crockett trigger the forfeiture and disqualification provisions of the Philadelphia Code. Therefore, based on the above-mentioned crime, Mr. Crockett is disqualified from pension eligibility.

Mr. Stein advises the Board must vote on the following:

- Whether to immediately suspend benefits currently being paid to Kenneth Crockett.
- Whether Mr. Crockett should be permanently disqualified and terminated from pension eligibility, and
- Whether Mr. Crockett's pension contributions should be retained for payment of any applicable outstanding court-ordered fines and restitution.

Attached are the following:

1. Opinion from Joshua Stein Deputy City Solicitor dated December 21, 2011.
2. Request from Inspector General Amy Kurland, dated December 13, 2011.
3. Trial Disposition, Verdict Report and Notice of Sentencing, dated October, 2011.

Celia O'Leary made a motion to immediately suspend current pension benefits, permanently disqualify and terminate from pension eligibility, and retain contributions in order to pay court ordered fines and restitution. Brian Albert seconded the motion.

The motion to immediately suspend current pension benefits, terminate and disqualify from pension eligibility and retain contributions in order to pay court ordered fines and restitution carried unanimously 8-0.

Case of Jermaine Adderly - Pension Disqualification and Termination of Eligibility, Plan "Y"

Jermaine Adderly was hired by the City of Philadelphia's Department of Licenses and Inspections on October 1, 2005. After attaining 5 years, 7 months and 28 days of credited service, Mr. Adderly separated effective December 16, 2009. He is not collecting a Pension Benefit at this time.

On November 21, 2011, Inspector General Amy Kurland wrote to Executive Director Francis Bielli, and provided documentation concerning the conviction of Jermaine Adderly on twenty

counts, including; Burglary, Theft by Unlawful taking, Conspiracy, Firearm Sales to An Ineligible Transferee, Receiving Stolen Property, Official Oppression, Perjury and Trespassing.

Mr. Adderly worked as an L&I employee with the Community Life Improvement Program, which was assigned to clean up deteriorated properties. During his employment, Mr. Adderly, along with a number of other L&I employees, began removing personal property from City residents, with the intention of keeping it for themselves, in violation of City policy and positive law. Mr. Adderly was charged in connection with three incidents, and plead guilty to various counts as outlined in the attached memorandum from the Law Department.

On December 13, 2011, Joshua Stein, Deputy City Solicitor, opined the crimes committed by Mr. Adderly trigger the forfeiture and disqualification provisions of the Philadelphia Code and the Public Employees Pension Forfeiture Act. Therefore, based on the above-mentioned crime, Mr. Adderly is disqualified from pension eligibility.

Mr. Stein advises the Board must vote on the following:

- Whether Jermaine Adderly should be permanently disqualified and terminated from pension eligibility, and
- Whether Mr. Adderly's pension contributions should be retained for payment of any applicable outstanding court-ordered fines and restitution.

Attached are the following:

1. Opinion from Joshua Stein Deputy City Solicitor dated December 13, 2011.
2. Request from Inspector General Amy Kurland, dated November 21, 2011.
3. Order and supporting documentation signed October 27, 2011.

Brian Albert made a motion to permanently disqualify and terminate from pension eligibility and also retain contributions in order to pay court ordered fines and restitution. Hilary Cornell seconded the motion.

The motion to permanently disqualify and terminate from pension eligibility and retain contributions in order to pay court ordered fines and restitution carried unanimously 8-0.

Case of Kelly Kaufmann Layre - Pension Disqualification and Termination of Eligibility, Plan "Y"

Kelly Kaufmann Layre was hired by the City of Philadelphia's Department of Records on August 11, 1997. After attaining 12 years, 6 months and 3 days of credited service, Ms. Layre separated effective March 5, 2010. She later withdrew her pension contributions, and is not eligible to collect any pension benefits at this time.

On December 8, 2011, Inspector General Amy Kurland wrote to Executive Director Francis Bielli, and provided documentation concerning the conviction of Kelly Kaufmann Layre on one count of Solicitation of Bribery under federal law.

Ms. Layre worked in the Records Department, where she had access to traffic accident reports, police incident reports, and fire reports, which are available to the public, for a fee. Between a time period beginning in 2006 through February, 2010, Ms. Layre accepted cash payments, in the approximate amount of \$186,000, to provide these reports to certain individuals, without having to pay the normal fees to the City. Ms. Layre, along with three individuals who were making payments to Ms. Layre, were charged following an investigation by the FBI and the Office of the Inspector General.

On December 13, 2011, Joshua Stein, Deputy City Solicitor, opined the crime committed by Ms. Layre triggers the forfeiture and disqualification provisions of the Philadelphia Code and the Public Employees Pension Forfeiture Act. Therefore, based on the above-mentioned crime, Ms. Layre is disqualified from pension eligibility.

Mr. Stein advises the Board must vote on the following:

- Whether Kelly Kaufmann Layre should be permanently disqualified and terminated from pension eligibility

Attached are the following:

1. Opinion from Joshua Stein Deputy City Solicitor dated December 13, 2011.
2. Request from Inspector General Amy Kurland, dated December 8, 2011.
3. Order and supporting documentation signed December 8, 2011.

Hilary Cornell made a motion to permanently disqualify and terminate from pension eligibility. Harvey Rice seconded the motion.

The motion to permanently disqualify and terminate from pension eligibility carried unanimously 8-0.

OLD BUSINESS

Case of Barbara Staunton, Application for Service-Connected Disability Benefits

This case was **deferred** to a Hearing Panel at the May 16, 2002 Board Meeting. A Hearing Panel was held on December 7, 2011.

The Hearing Panel votes are as follows:

Mr. James Leonard: Recommend denial.
 Ms. Veronica Pankey: Recommend denial.
 Ms. Paula Weiss: Recommend denial.

The history of the case is as follows:

Ms. Staunton sustained the injury on November 8, 1996 while working when she lost control of her vehicle on a wet pavement and trolley tracks. She hit a Philadelphia Electric Company pole and injured her face, right wrist and hand.

Ms. Staunton separated on May 26, 2000 and applied for a Service-Connected Disability benefit on July 12, 2000. Her case was deferred to a hearing panel on May 16, 2002 and during the appeal process, her attorney, Michael Mulvey withdrew her application. If approved, she would receive an estimated monthly benefit of \$2490.00, subject to an offset of Workers' Compensation benefits.

Veronica Pankey made a motion to approve. Carol Stukes seconded the motion.

The motion to approve failed 0-4-4. Motion denied.

Case of Tammy Woods, Application for Service-Connected Disability Benefits – Plan “D”

This case was **denied** at the July 28, 2011 Board Meeting. A Hearing Panel was held on October 19, 2011.

The Hearing Panel votes are as follows:

Mr. Brian Albert: Recommend denial.
 Mr. James Leonard: Recommend denial.
 Ms. Veronica Pankey: Recommend approval.

The history of the case is as follows:

This is an application by Tammy Woods, former Police Sergeant, Police Department, for Service-Connected Disability Benefits in Plan “D”.

Ms. Woods sustained the injury on November 15, 2008 when she stepped in a water filled hole and subsequently fell to the ground. She twisted the entire right side of her body.

Carol Stukes made a motion to approve. Veronica Pankey seconded the motion.

The motion to approve carried 5-3.

Case of Russell L. Ferrante, Application for Service-Connected Disability Benefits – Plan “B”

This case was **denied** at the March 24, 2011 Board meeting. Mr. Ferrante appealed that decision, and a hearing was held on October 19, 2011. Mr. Ferrante invoked the Board’s “Sammons” rule in this appeal, declining to stipulate to the admission of medical reports without first taking the deposition of the author of any report submitted.

The Hearing Panel votes are as follows:

Mr. Brian Albert:	Recommend denial.
Mr. James Leonard:	Recommend denial.
Ms. Veronica Pankey:	Recommend approval.

The history of this case is as follows:

This is an application by Russell L. Ferrante, former Police Officer, Police Department, for Service-Connected Disability Benefits in Plan “B”.

Mr. Ferrante sustained injuries while working when he was lifting heavy boxes. His back “locked” and he slipped and fell. The nature of Mr. Ferrante’s disability is limited mobility due to severe pain in lower back, numbness in leg and foot, and pain in neck. His dates of injury are September 21, 2007 and April 10, 2008.

Rather than offer the testimony of an FOP-nominated physician, Mr. Ferrante instead deposed Dr. Michael McCoy, co-chair of the Board’s Medical Panel. Dr. McCoy’s deposition took place on August 24, 2011, during which he opined:

It is my opinion within a reasonable degree of medical certainty that he was symptomatic and partially disabled as a result of his work injury. It is my opinion that his disability was due solely to his work injury.

At his hearing, Mr. Ferrante testified concerning his work injury, subsequent injuries and his resulting medical treatment. He also testified at some length about his outside employment as an event DJ and photographer. The panel asked Mr. Ferrante a number of questions about his claimed permanent physical incapacity, about his decision not to seek medical treatment following a fall during which he sustained severe bruises to his right side, and about his professed inability to generate any income through his personal entertainment business.

Ronald Stagliano made a motion to approve. Carol Stukes seconded the motion.

The vote tied 4-4. The Chair voted to deny making the vote 4-5. Motion denied.

Case of Alexis Maldonado, Application for Service-Connected Disability Benefits – Plan “B”

This case was **tabled** at the December 8, 2011 Board Meeting at the request of Hilary Cornell for clarification of the conclusion on Dr. Michael McCoy’s report. An addendum to his report is attached.

This is an application by Alexis Maldonado, former Police Officer, Police Department, for Service-Connected Disability Benefits in Plan “B”.

Mr. Maldonado sustained the injury while engaging in a physical altercation with a defendant, and on another assignment Mr. Maldonado slipped on some ice while on a transportation call. The nature of Mr. Maldonado’s disability is limited mobility due to lower back pain and weakness in both legs. His dates of injury are August 8, 2007 and February 6, 2009.

Ronald Stagliano made a motion to approve. Carol Stukes seconded the motion.

The motion to approve carried 5-3.

NEW BUSINESS

Executive Director’s Report – Mr. Bielli stated that the Clifton Gunderson audit is complete and will be distributed when it is received. A draft of a timeline for the Trustee elections will be handed out at the January 26th Board Meeting so that the Board can advise if there are any conflicts with the dates. The Request for Proposal (RFP) for the vendor will go out in late February or early March.

• **FYI**

- a. Litigation Summary – Mr. DiFusco stated that the second Mark Hummel case which was an application for a purchase of service was denied.

Brian Albert made a motion to adjourn. Hilary Cornell seconded the motion.

The meeting adjourned at 9:20 a.m.