

**CITY OF PHILADELPHIA
BOARD OF PENSIONS AND RETIREMENT
Meeting of September 25, 2012**

MINUTES

On September 25, 2012, Paula Weiss called the Regular Meeting of the Board of Pensions and Retirement to order at 9:04 a.m. in the Board's Conference Room.

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

Also Attending: Francis Bielli – Board of Pensions
Mark Murphy – Board of Pensions
James Leonard – Law Department
Christopher DiFusco - Law Department
Katherine Mastrobuoni – Law Department
Sumit Handa – Investment Unit
Brad Woolworth – Investment Unit
Andrew Thomas – Fire Department

Paula Weiss stated that the first order of business was the consideration of the Minutes of August 30, 2012. There was one correction. On page 4, the motion to approve the application for Donald Harris incorrectly said the vote carried **unanimously 8-0**. It should have said the vote carried **unanimously 7-0**. The correction was made to the Minutes.

John Reilly made a motion to approve the Minutes of August 30, 2012. Ronald Stagliano seconded the motion.

The motion to approve the Minutes of August 30, 2012 carried unanimously 8-0.

CONSIDERATION OF (145) PENSION APPLICATIONS AND (119) WITHDRAWAL APPLICATIONS

Carol Stukes made a motion to approve. Brian Albert seconded the motion.

The motion to approve carried unanimously 8-0.

APPLICATION FOR SERVICE-CONNECTED DISABILITY BENEFITS

Case of Michael Adams, Application for Service-Connected Disability Benefits – Plan “A”

This is an application by Michael Adams, former Firefighter, Fire Department, for Service-Connected Disability Benefits in Plan “A”.

Mr. Adams sustained injuries to his leg and back on November 26, 2010, while he was responding to a call of emergency. He was exiting his fire truck when his foot slipped off of the truck and he fell.

John Reilly made a motion to approve. Ronald Stagliano seconded the motion.

The motion to approve carried unanimously 8-0.

Case of Coretta Avery, Application for Service-Connected Disability Benefits – Plan “B”

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

Ms. Avery sustained the injury when she was involved in a vehicular accident when a tractor trailer hit her on the driver’s side while merging in traffic.

The nature of Ms. Avery’s disability is limited mobility due to back pain, neck pain, numbness in hands and legs, headaches, lack of balance, limited range of motion in left arm. Her date of injury is April 2, 2008.

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

The motion to deny carried 4-0-4.

Case of Roslyn Foley, Application for Service-Connected Disability Benefits – Plan “B”

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

Ms. Foley sustained injuries to her knee and pelvis on March 24, 2009, while reporting to an assignment when her police vehicle was hit by another car impacting the driver’s side.

Ronald Stagliano made a motion to approve. John Reilly seconded the motion.

The motion to approve carried unanimously 8-0.

Case of Michael Kelly, Application for Service-Connected Disability Benefits – Plan “B”

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

Mr. Kelly sustained the injury while on duty when he fell off of a fence in pursuit of burglary suspects. The nature of Mr. Kelly’s disability is limited mobility due to injury of his lower back and both legs. His date of injury is June 15, 2009.

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

The motion to deny carried 4-0-4.

Case of Timothy Leonard, Application for Service-Connected Disability Benefits–Plan “B”

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

Mr. Leonard sustained the injury while on duty and responding to an emergency in his police vehicle, when he was struck by a drunk driver. The nature of Mr. Leonard’s disability is limited mobility due to neck injury, pain and stiffness, and limited range of motion. His date of injury is June 28, 2009.

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

The motion to deny carried 4-0-4

Case of Paul Davis, Application for Service-Connected Disability Benefits – Plan “J”

This is an application by Paul Davis, former Laborer, Department of Streets, for Service-Connected Disability Benefits in Plan “J”.

Mr. Davis sustained injuries to his knee while on duty and attempting to load his truck, when he slipped on some ice and fell. His date of injury is January 29, 2011.

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

The motion to deny carried 6-0-2.

Case of Marc Peoples, Application for Service-Connected Disability Benefits – Plan “Y”

This is an application by Marc Peoples, former Correctional Officer, Prisons Department, for Service-Connected Disability Benefits in Plan “Y”.

Mr. Peoples sustained the injury while on duty on October 24, 2010, when an inmate attacked him. He twisted his back in his attempts to free himself and subdue the offender, and suffered injuries to his back.

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

The motion to deny carried 4-0-4

Case of Donald Wested, Application for Service-Connected Disability Benefits – Plan “J”

This is an application by Donald Wested, former Trade Worker, Prisons Department, for Service-Connected Disability Benefits in Plan “J”.

Mr. Wested sustained the injury while plastering when he lost all sensation and movement of his right arm. His date of injury is May 10, 2010.

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

The motion to approve carried unanimously 8-0.

Case of Questa Gittens, Application for Service-Connected Disability Benefits – Plan “Y”

This is an application by Questa Gittens, former Correctional Officer, Prisons Department, for Service-Connected Disability Benefits in Plan “Y”.

Ms. Gittens sustained the injury while trying to escape the attack of an inmate; she slipped on the wet floor and suffered injuries to her back. Her date of injury is July 26, 2009.

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

The motion to approve carried 5-3.

Case of Esmond Johnson, Application for Service-Connected Disability Benefits – Plan “Y”

This is an application by Esmond Johnson, former Laborer, Department of Streets, for Service-Connected Disability Benefits in Plan “Y”.

Mr. Johnson sustained the injury while on duty emptying trash cans when he stepped off of the curb and injured his ankle which caused difficulty walking. His date of injury is August 9, 2010.

Celia O’Leary made a motion to deny. Hilary Cornell seconded the motion.

The motion to deny carried 4-0-4.

Case of Keith Shanks, Application for Service-Connected Disability Benefits – Plan “Y”

This is an application by Keith Shanks, former Heavy Equipment Operator, Department of Streets, for Service-Connected Disability Benefits in Plan “Y”.

Mr. Shanks’ sustained injury to his back while on duty and he was pulling buckles from the back of his assigned truck. His date of injury is October 10, 2010.

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

The motion to deny carried 4-0-4.

RECONSIDERATION OF APPLICATION FOR SERVICE CONNECTED DISABILITY BENEFITS

Reconsideration of Case of Dennis Ondrejka, Application for Service-Connected Disability Benefits – Plan “B”

This is a reconsideration of the application by Dennis Ondrejka, former Police Officer, Police Department, for Service-Connected Disability Benefits in Plan “B”.

This case was denied at the Board Meeting of July 28, 2011. During the appeal process, the attorney for Mr. Ondrejka was pursuing the case using the SAMMONS issue. The law department recommended the deposition of Dr. Guagliardo. In addition, the deposition of Dr. Guagliardo was sent to the co-chair of the Board of Pensions, Dr. Knox who also rendered a determination in this case. Lastly Dr. Cohen rendered a medical report in regards to this case.

Mr. Ondrejka sustained the injury while controlling a crowd at a parade, an intoxicated male attacked him. The nature of Mr. Ondrejka's disability is limited mobility due to a concussion and neck fracture. His date of injury is September 30, 2007.

Harvey Rice made a motion to approve. Ronald Stagliano seconded the motion.

The motion to approve carried unanimously 8-0.

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

Case of Dell F. Baynard Sr., Request to Apply for Service-Connected Disability Benefits Beyond One Year Deadline – Plan J

This is a request by Dell F. Baynard Sr., former Street Crew Chief to make application for service-connected disability benefits beyond the one-year deadline in Plan J.

Dell Baynard Sr. was separated on a Disciplinary Dismissal effective 2/20/2009.

In a letter dated August 21, 2012, Dell Baynard explained that he is appealing the denial of his application for a Service Connected Disability (SCD). He states he did not receive any guidance or information that he could apply for a SCD. He also states that it took 3 ½ years in litigation with Workers' Compensation, and that he intended to return to work, but is not able because of injuries sustained in the work related accident. Therefore, he's requesting the Board to approve his application to apply for Service-Connected Disability beyond the one-year deadline.

Brian Albert made a motion to deny. Celia O'Leary seconded the motion. The vote was 3-5. Motion fails.

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

The motion to approve carried 5-2-1.

APPLICATION FOR SURVIVORSHIP BENEFITS

Case of Philip W. Moses, Deceased, Application for Survivorship Benefits – Plan J

This is an application by Faye A. Sewell-Moses for survivorship benefits in Plan J.

Philip W. Moses, a Financial Technician with the Department of Public Property, retired on June 29, 1992. Mr. Moses died on May 6, 2012. At the time of his retirement, Mr. Moses chose survivorship option 4 and named his granddaughter Nia Moses as the beneficiary of the Residual

Balance Only with Ms. Faye A. Sewell-Moses as the Trustee for the minor child. Ms. Sewell-Moses was named as the primary beneficiary of insurance, relationship – friend.

Ms. Sewell-Moses is applying to have the Board of Pensions recognize her 26 year relationship with Mr. Moses as a common law marriage. The couple was married on December 24, 1992. Mr. Moses had been previously married to Emily Blanche Moses. Their divorce was final on December 19, 1983. Ms. Sewell-Moses had been previously married to Howard R. Sewell. Their divorce was final on October 26, 1992. Attached are copies of the divorce decrees.

Ms. Sewell-Moses submitted letters on her behalf, as well as other evidence, attesting to the length of time she and Mr. Moses lived together and that they were believed to be husband and wife.

The Board reviewed letters and documentation regarding the case.

If approved, Ms. Sewell-Moses would be eligible to receive a \$507.29 monthly survivorship benefit.

Brian Albert made a motion to deny. Celia O'Leary seconded the motion.

The motion to deny carried 7-0-1.

APPLICATION TO PURCHASE PENSION CREDIT

Gerald J. Rocks, Application to Purchase Pension Credit for Period of Voluntary Resignation

Mr. Rocks was originally hired by the Police Department effective 3/3/97. He did not receive a refund of his pension contributions following his voluntary resignation effective 7/13/12.

He was rehired by the District Attorney's Office effective 7/30/12.

On 8/23/12, we received his request to purchase his period of voluntary resignation from 7/14/12 through 7/29/12. His request was administratively denied on 8/28/12 because there is no provision in the Code that permits him to purchase pension credit for this period.

His appeal of the administrative denial was received on 8/31/12.

Carol Stukes made a motion to deny. Brian Albert seconded the motion.

The motion to deny carried 6-1-1.

OLD BUSINESS

Case of Maria Rivera, Application for Ordinary Disability Benefits Plan “B”

This case was **tabled** for 30 days at the August 30, 2012 Board Meeting at the request of Vice-Chair Ronald Stagliano.

This is an application by Maria Rivera, former Police Officer, Police Department, for Ordinary Disability Benefits in Plan “B”

Ms. Rivera sustained the injury while lifting a wheelchair bound resident and injured her neck and back. The nature of Ms. Rivera’s disability is limited mobility due to lower back pain and numbness in right leg. Her date of injury is July 11, 2007.

Ms. Rivera made application for a Service-Connected Disability benefit and was denied at the July 26, 2012 Board meeting.

Ms. Rivera submitted a request to apply for an Ordinary Disability benefit. Her request was administratively denied and Ms. Rivera has appealed the denial.

Ms. Rivera is 44 year of age and has 13 years, 3 months and 24 days of credited service. She is not currently receiving Workers’ Compensation benefits. If approved for an Ordinary Disability benefit Ms. Rivera would receive approximately \$1,450.00 monthly.

Ronald Stagliano made a motion to approve. John Reilly seconded the motion.

The motion failed 3-4-1. Motion denied.

Case of Ora Witherspoon, Application for Service-Connected Disability (SCD) Benefits Beyond the One-Year Deadline/Reinstatement of SCD Benefits – Play Y

This case was **denied** at the April 26, 2012 Board Meeting. A Hearing Panel was held on July 11, 2012.

The Hearing Panel votes are as follows:

- | | |
|--------------------|--|
| Mr. James Leonard: | Recommend approval/Recommend approval |
| | 1) Recommend approval to allow application for SCD benefit beyond one-year deadline. |
| | 2) Recommend approval of reinstatement of SCD benefits |

Ms. Veronica Pankey:

Recommend denial/Recommend denial

- 1) Recommend denial to apply for SCD beyond the one-year limitation. Ms. Witherspoon “did not” sustain any injury on nursing job. Had she – the request would not be necessary. In fact she is applying for original injury which was previously approved.
- 2) Recommend denial of reinstatement of SCD benefits. Conflict with letter of 11/23/04 regarding “Heroic Action Status” and earning unlimited income with no reduction to SCD

Mr. Harvey Rice:

Recommend approval/Recommend approval

- 1) Approve Ora Witherspoon to apply beyond the one-year deadline for the initial injury to determine her status at this time.
- 2) Recommend approval for reinstatement of SCD benefits

The history of the case is as follows:

Ms. Witherspoon was originally approved for a SCD benefit effective August 19, 2001. She continuously received benefits up until August 2010, at which time it was discovered that she has returned to Active Employment with the City as a nurse with the Health Department as of November 2, 2009. Her benefits were terminated per Section 22-403 (5) as of August 2010. Ms. Witherspoon continued to work as City nurse until February 9, 2011, at which time she voluntarily resigned from City employment. On August 31, 2011, she re-applied for Service Connected Disability benefits. On February 7, 2012, BOP received verification from Risk Management that there are no records of the employee being treated for any injury on February 9, 2011.

Since the only injury noted is as of September 1, 1998, Employee’s application was denied since her new application was received greater than one year after her first date of separation of August 19, 2001.

She is appealing the denial but did not provide any explanation and is also requesting reinstatement of her service-connected disability benefit.

Ms. Pankey said this case was heard at the hearing and Ms. Witherspoon did not sustain another injury. Since there was already action taken on her original injury another application should not be considered. The other issue is the Heroic Action Status letter in her file which states that no

interference with her benefits will be taken if she acquires another job. Whether the letter is correct or not, that's what it says.

Page 10

Mr. Bielli stated that according to the Code someone who regains City employment while receiving a pension benefit would have their benefit suspended, regardless of what the letter says. Heroic Action was different at that time and because of the change in the law the Code doesn't require us to address it at this point, so the letter does not require fixing.

Ms. Weiss stated that if Ms. Witherspoon's service-connected disability benefit is reinstated there won't be a need for the Board to vote on an application to reapply for benefits. The Board discussed what to do if similar cases arise and decided they will be addressed on a case by case basis.

Harvey Rice made a motion to approve to reinstate Ms. Witherspoon's service-connected disability pension benefits. Carol Stukes seconded the motion.

The motion to reinstate Ora Witherspoon's service-connected disability pension benefits carried unanimously 8-0.

NEW BUSINESS

Executive Director's Report – Mr. Bielli stated that the City is in the processing stage of issuing a bond, for repayment of the deferral, plus interest. Once details are available he will let the Board know.

Mr. Murphy, Mr. Fegan and Mr. Bielli spoke to the CEO of True Ballot to make sure everything is going well and there are no issues to date.

The schedule for the Board Election is as follows:

- 10/1 - Last day to request a ballot
- 10/10 - Date for ballots to be submitted
- 10/17 - Ballots will be counted

Anyone who is interested in being a poll watcher should give their information to Mr. Fegan by the end of the week.

Ms. Pankey informed the Board of the phone number to use if anyone needs to request another ballot.

Mr. Bielli stated that the subcommittee for the Auditor RFP will meet on October 3, 2012 at 3:00 p.m. PICA will be sending out an email suggesting October 12, 2012 as the next date of the Pension Commission.

Page 11

Litigation Summary – Mr. DiFusco stated that the Board’s decision was upheld on the Melony Clark case. That was the only case this month.

Brian Albert made a motion to adjourn. Carol Stukes seconded the motion.

The motion passed unanimously 8-0 and the meeting adjourned at 9:22 a.m.