

**CITY OF PHILADELPHIA  
BOARD OF PENSIONS AND RETIREMENT  
Meeting of February 26, 2015**

**MINUTES**

On February 26, 2015, Paula Weiss called the Regular Meeting of the Board of Pensions and Retirement to order at 9:12 a.m. in the Board's Conference Room.

Present: Paula Weiss  
William Rubin  
Brian Albert  
Carol Stukes-Baylor  
Patricia Fitzgerald  
Ronald Stagliano  
Andrew Thomas  
Veronica Pankey  
James Leonard

Also Attending: Francis Bielli - Board of Pensions  
Shamika Taliaferro, Mark Murphy - Board of Pensions  
Jo Rosenberger Altman – Law Department  
Ellen Berkowitz, Katherine Janoski – Law Department  
Brad Woolworth, Chris DiFusco, Dan Falkowski - Investment Unit  
Dominique Cherry, Kristyn Bair, Aubrey Hassan – Investment Unit  
Mark Johnson – Cliffwater  
Pam McCue – Financial Investment News  
Leigh Troy – Aya Investment Manager  
Ken Kent, Bob Murray, Karen Zangara, Anu Patel – Cheiron  
Will Greene – Loop Capital Markets

Ms. Weiss stated that the first order of business was the consideration of the Minutes of January 22, 2015.

Brian Albert made a motion to approve the Minutes of January 22, 2015. Ronald Stagliano seconded the motion.

**The motion to approve carried unanimously 8-0.**

**CONSIDERATION OF (213) PENSION APPLICATIONS AND (46) WITHDRAWAL APPLICATIONS**

Brian Albert made a motion to approve. Ronald Stagliano seconded the motion.

**The motion to approve carried unanimously 8-0.**

## **APPLICATION FOR SERVICE-CONNECTED DISABILITY BENEFITS**

### **Case of Danielle Alba, Application for Service-Connected Disability Benefits– Plan “B”**

This is an application submitted by Danielle M. Alba, former police officer for Service-Connected Disability benefits under Pension Plan “B”.

According to Ms. Alba, on June 11, 2011 while exiting a police wagon she landed on the edge of the curb and injured her knee.

Brian Albert made a motion to deny. Patricia Fitzgerald seconded the motion. The motion to deny failed 3-5.

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

**The motion to approve carried 5-3.**

### **Case of Richard A. Bowes Jr., Application for Service-Connected Disability Benefits – Plan “B”**

This is an application submitted by Richard A. Bowes Jr., former police officer, for Service-Connected Disability benefits under Pension Plan “B”.

According to Mr. Bowes on September 23, 2008, while working as a highway patrol officer, he and his partner encountered a felon. During the course of a foot pursuit he was shot three times, causing his injury and subsequent surgeries.

Ronald Stagliano made a motion to approve. Andrew Thomas seconded the motion.

**The motion to approve carried unanimously 8-0.**

### **Case of Thomas G. Eiler, Sr., Application for Service-Connected Disability Benefits – Plan “B”**

This is an application submitted by Thomas G. Eiler, Sr., former police officer for Service-Connected Disability benefits under Pension Plan “B”.

According to Mr. Eiler on August 28, 2008, while attempting to place a suspect under arrest a struggle occurred. Mr. Eiler struck a wall, fell to the ground and injured his arm and wrist.

Ronald Stagliano made a motion to approve. Andrew Thomas seconded the motion.

**The motion to approve carried unanimously 8-0.**

**Case of Cesar Nunez, Application for Service-Connected Disability Benefits – Plan “B”**

This is an application submitted by Cesar Nunez, former police officer for Service-Connected Disability benefits under Pension Plan “B”.

According to Mr. Nunez, on December 30, 2008 while attempting to make an arrest he was knocked to the ground striking his chest on an unknown object. He reports he immediately experienced chest pains and difficulty breathing.

Ronald Stagliano made a motion to approve. Andrew Thomas seconded the motion.

**The motion to approve carried unanimously 8-0.**

**Case of Ivan Rosado, Sr., Application for Service-Connected Disability Benefits – Plan “B”**

This is an application submitted by Ivan Rosado, Sr. former police officer for Service-Connected Disability benefits under Pension Plan “B”.

According to Mr. Rosado on September 13, 2011, while practicing a motorcycle stunt he fell and awoke in the hospital. He reports that he felt pain all over; he specifies injuries to his head, shoulder, neck, sternum, ribs, lower back, knees, legs, and ankle.

Ronald Stagliano made a motion to approve. Andrew Thomas seconded the motion.

**The motion to approve carried unanimously 8-0.**

**Case of Estella Tucker, Application for Service-Connected Disability Benefits – Plan “B”**

This is an application submitted by Estella Tucker, former police officer for Service-Connected Disability benefits under Pension Plan “B”.

According to Ms. Tucker, on March 6, 2013 she was pinned between two cars injuring her legs. This accident resulted in the amputation of her right leg.

Ronald Stagliano made a motion to approve. Andrew Thomas seconded the motion.

**The motion to approve carried unanimously 8-0.**

**Case of Terry Brown, Application for Service-Connected Disability Benefits – Plan “D”**

This is an application submitted by Terry Brown, former police officer for Service-Connected Disability benefits under Pension Plan “D”.

According to Ms. Brown, on June 10, 2011, she was working in the balcony of City Hall when she fell as she misjudged the location of the bottom step. Ms. Brown states that she fell sideways with her right arm extended in order to break the fall. She reports injuries to her armpit, breast, ribcage, and hip when her body collided with the edges of the stairs. Ms. Brown further notes that her weapon was holstered on her right side.

Brian Albert made a motion to deny. Patricia Fitzgerald seconded the motion.

**The motion to deny carried 4-0-4.**

**Case of Evelyn F. Neal, Application for Service-Connected Disability Benefits – Plan “J”**

This is an application submitted by Evelyn F. Neal, retired medical assistant, Health Department, for Service-Connected Disability benefits under Pension Plan “J”.

According to Ms. Neal, on June 28, 1999 she tripped over a workman’s cord and fell striking the floor with both knees. She also states that her head struck the drawer of an EKG machine. Ms. Neal’s complaints include the development of heel spurs from walking across concrete and back pain associated with her duties at the Philadelphia Nursing Home.

Brian Albert made a motion to deny. Patricia Fitzgerald seconded the motion.

**The motion to deny carried 4-0-4.**

**Case of Sara Payne, Application for Service-Connected Disability Benefits Plan “J”**

This is an application submitted by Sara Payne, former Equipment Operator, Streets Department, for Service-Connected Disability benefits under Pension Plan “J”.

According to Ms. Payne on March 1, 2011 she was getting out of a broken chair and twisted her knee. She reports that she was not able to stand.

Brian Albert made a motion to deny. Patricia Fitzgerald seconded the motion.

Ms. Stukes-Baylor requested that the case be tabled instead. She stated that Dr. Guagliardo contradicts himself in his report; one sentence states Ms. Payne is due solely and needs surgery and another sentence states that she is not due solely.

Mr. Albert withdrew his motion.

Carol Stukes-Baylor made a motion to table for 30 days in order to obtain clarification of Dr. Guagliardo's report.

**The motion to table for 30 days for clarification of Dr. Guagliardo's report carried unanimously 8-0.**

**Case of Don R. Blakely, Application for Service-Connected Disability Benefits – Plan “Y”**

This is an application submitted by Don R. Blakely, former laborer, Streets Department, for Service-Connected Disability benefits under Pension Plan “Y”.

According to Mr. Blakely, on September 10, 2012 he was exiting his truck by proceeding down the stairs backward. His right foot slipped and his left knee twisted. Mr. Blakely further states that his full weight was forced toward the left knee.

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

**The motion to approve carried unanimously 8-0.**

**Case of Anthony F. Gunter, Application for Service-Connected Disability Benefits – Plan “Y”**

This is an application submitted by Anthony F. Gunter, former Laborer, Streets Department, for Service-Connected Disability benefits under Pension Plan “Y”.

According to Mr. Gunter on June 21, 2012 while working as a laborer the pinky finger of his left hand was pinned by the trash truck.

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

**The motion to approve carried unanimously 8-0.**

**Case of Percy Kirby Jr., Application for Service-Connected Disability Benefits – Plan “Y”**

This is an application submitted by Percy Kirby Jr., retired data services support clerk, for Service-Connected Disability benefits under Pension Plan “Y”.

According to Mr. Kirby on June 27, 2004, while maintaining a grid room he tripped and fell. Mr. Kirby states that his right knee was injured as a result of that fall.

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

**The motion to approve carried unanimously 8-0.**

**Case of Sarwat A. Bhatti, M.D., Application to Purchase Pension Credit for a Prior Employment With a Private Entity and for Governmental Employment Occurring After City Employment**

Sarwat Bhatti was originally hired by the City of Philadelphia's Health Department as a Clinician effective 2/6/06. She did not receive a refund of her pension contributions following her voluntary resignation, effective 8/9/08. She applied to purchase pension credit for her employment with Spectrum Health Services (SHS), from 10/29/01 through 11/3/06 and Covenant House, Inc. (CHI) from 8/18/08 through 8/9/12. Both applications were received on 12/10/14. Verification of her employment with SHS was received on 12/11/14 and verification for her employment with CHI was received on 12/10/14.

On 12/22/14, a representative from SHS verified that they are a private entity that is federally qualified, but not federally funded. On 12/23/14, the Law Department confirmed that prior employment with SHS is not eligible for purchase. Additionally, since Dr. Bhatti's employment with CHI occurred after and not prior to her employment with the City of Philadelphia, it is also not eligible for purchase.

On 1/5/15, Dr. Bhatti's application was administratively denied. Her timely appeal was received on 1/20/15.

Ms. Stukes-Baylor stated that since Dr. Bhatti is no longer a member of the pension fund she does not have the right to purchase any prior employment.

William Rubin made a motion to deny. Ronald Stagliano seconded the motion.

**The motion to deny carried unanimously 8-0.**

**Case of Kurt Green, Application for Service-Connected Disability Benefits – Plan "A"**

This case was **tabled** at the January 22, 2015 Board meeting. The Board requested that Dr. Howarth provide clarification of her conclusion of "due solely" because her conclusion also speaks to pre-existing conditions. A revised determination was received February 3, 2015.

This is an application submitted by Kurt Green, former firefighter, for Service-Connected Disability benefits under Pension Plan "A".

According to Mr. Green on May 2, 2006 he sustained an injury to his knee while fighting a fire when he jumped from a ladder onto a roof with full gear and saw to cut an opening in the roof. In another incident that occurred on November 8, 2012 he sustained an injury to his foot and leg.

William Rubin made a motion to approve. Carol Stukes-Baylor seconded the motion.

**The motion to approve carried unanimously 8-0.**

**Case of Nicholas Chichilitti, Application for Service-Connected Disability Benefits – Plan “Y”**

This case was **tabled** at the January 22, 2015 Board meeting for further clarification from Dr. Howarth. A revised determination was received from Dr. Howarth on February 3, 2015.

This is an application submitted by Nicholas Chichilitti, former Pre-trial Warrant Investigative Officer, for Service-Connected Disability benefits under Pension Plan “Y”.

According to Mr. Chichilitti on February 5, 2013 he was a passenger in a vehicle that slid off the road and went down an embankment striking multiple trees. His chief complaints are injuries to his shoulder, knee, and back.

William Rubin made a motion to approve. Carol Stukes-Baylor seconded the motion.

**The motion to approve carried unanimously 8-0.**

**Case of Frank Tepper – Appeal of Pension Disqualification, Plan “B”**

This case was **approved** to permanently **disqualify** from pension eligibility at the Board meeting held on March 27, 2014. A hearing panel was held on December 17, 2014.

The hearing panel votes are as follows:

Mr. William Rubin: Recommend **denial** of the appeal

Mr. Brian Albert: Recommend **denial** of the appeal; applicant not entitled to retirement benefit due to malfeasance in office or employment. Frank Tepper was found guilty of criminal conduct: murder. The civil action established that he was a “state agent”; hence his criminal conduct was malfeasance in office.

Ms. Veronica Pankey: Recommend **approval** of the appeal to reinstate pension benefits

The history of the case is as follows:

Frank Tepper was hired on October 25, 1993, with the City of Philadelphia Police Department and is a member of Plan B. He was terminated effective January 30, 2010. He is currently receiving an Optional Early Pension in the amount of \$1,174.07 per month.\*

Mr. Tepper was convicted of first degree murder and related offenses on February 23, 2012 for the shooting death of William Panas, Jr., on November 9, 2009. He was sentenced to life without parole and ordered to pay restitution of \$12,686.00 on April 4, 2012. Because reports indicated that Mr. Tepper was off-duty at the time of the murder, the Law Department initially concluded in May 2012 that it was not possible to disqualify him.

However, Mr. Tepper and the City were subsequently named as defendants in a Section 1983 civil rights action in United States District Court. The jury charge explained, inter alia, that to determine whether Mr. Tepper was acting “under color of state law,” the jury had to find that Mr. Tepper “was using power that he possessed by virtue of his employment as a police officer” and that the jury could look to certain facts to reach this conclusion, including but not limited to whether he was on or off duty, whether the events took place in Philadelphia County or elsewhere, and whether he identified himself as a police officer. While finding in favor of the City, the jury nonetheless found that Mr. Tepper was “a state actor at the time that he murdered William Panas, Jr.” and ordered that he pay restitution in the amount of \$4,742,000.00. Verdict sheet, December 11, 2012.

On March 19, 2014, Ellen Berkowitz, Deputy City Solicitor, opined that the civil finding that Mr. Tepper acted “under color of state law” when he committed the murder created a sufficient nexus to his employment as a police officer to trigger the disqualification provisions of the Philadelphia Code, Section 22-1302(1)(a)(.5), *Malfeasance in office or employment*. Mr. Tepper is therefore disqualified from pension eligibility.

Ms. Berkowitz advises the Board must vote on the following:

- Whether Mr. Tepper should be permanently disqualified and terminated from pension eligibility.

William Rubin made a motion to deny the appeal and approve to disqualify and terminate from pension eligibility. Carol Stukes-Baylor seconded the motion.

**The motion to approve to disqualify and terminate from pension eligibility carried 7-1.**

**Michael P. Williams, Appl. for Ordinary Disability benefits beyond the One-Year deadline**

This case was **denied** at the March 27, 2014 Board Meeting. A hearing panel was held on January 14, 2015.

The hearing panel votes are as follows:

Mr. Brian Albert:	Recommend <b>denial</b> Disability not yet determined prior to one year deadline
James P. Leonard, Esq.	Recommend <b>denial</b> Failure to meet one year deadline
Ronald Stagliano	Recommend <b>denial</b>

The history of the case is as follows:



Michael P. Williams, a former Senior Attorney with the Law Department, was separated from employment September 20, 2012. On February 6, 2014, he applied for Ordinary Disability benefits without realizing he was beyond the one year deadline to apply.

On February 10, 2014, Mr. Williams' application was denied because he was beyond his one year deadline, which expired September 20, 2013. On February 21, 2014, the Board received Mr. William's appeal explaining the cause of his delay.

Brian Albert made a motion to deny. Ronald Stagliano seconded the motion.

**The motion to deny carried unanimously 8-0.**

#### **Case of Derrell Duncan, Application for Service-Connected Disability Benefits Plan "J"**

This case was **tabled** at the December 4, 2014 Board meeting for further medical information from Dr. Weinerman. Dr. Weinerman reviewed additional medical records submitted from Dr. Geoffrey Temple and submitted a letter with his medical opinion on February 13, 2015.

This is an application submitted by Derrell Duncan, former equipment operator, Water Department, for Service-Connected Disability benefits under Pension Plan "J".

According to Mr. Duncan he worked at the sludge processing plant for over ten (10) years during which time he developed a cough and breathing issues. He further states that working in the cold weather and riding in vehicles that provided little leg room caused him to sit in a cramped position aggravating his knees and hands. Mr. Duncan cannot specify a date of injury since these conditions evolved over time.

Carol Stukes-Baylor made a motion to approve. William Rubin seconded the motion.

**The motion to approve carried unanimously 8-0.**

#### **Case of Janeen Gibson, Application for Service-Connected Disability Benefits – Plan "B"**

This is an application by Janeen Gibson, former Police Officer, Police Department, for Service-Connected Disability Benefits in Plan "B". Her case was **denied** at the August 30, 2012 Board Meeting. A hearing panel was held on December 3, 2014. Ms. Gibson has pursued her case under **SAMMONS**.

The hearing panel votes are as follows:

James P. Leonard, Esq.:	Recommend denial
William Rubin:	Recommend approval - Find Dr. Allon to be most credible.
Paula Weiss, Esq.:	Recommend denial

According to Ms. Gibson, she sustained injury while attempting to handcuff a defendant. The defendant became physically combative and difficult to restrain causing back, neck, shoulder and chest injuries to Ms. Gibson. The nature of Ms. Gibson's disability is limited mobility due to multiple injuries. Her date of injury is July 23, 2007.

William Rubin made a motion to approve. Carol Stukes-Baylor seconded the motion.

**The motion to approve carried 5-3.**

## **NEW BUSINESS**

- **Executive Director's Report** – Mr. Bielli stated that the audit is complete and the copies will be circulated to the Board shortly.
- Cliffwater will be giving an education seminar sometime in April. Dan Falkowski will contact Board members regarding dates.
- Financial disclosures are due in May.

## **FYI**

**Litigation Summary** – Ms. Rosenberger-Altman stated that the Commonwealth Court upheld the Board's determination that Mr. Pitts is time barred from his disability application and denied his appeal in mid February, and they are waiting for a decision on the Wiggins (pension disqualification) case.

**Update on Fairmount Park Trust** – Ms. Berkowitz stated they are about to send out the notices of entitlement to distribute and the eligibility to purchase service credit for the period that employees were working for the Fairmount Park Trust. Employees will have a year from the time the notice goes out to purchase the credited service time. When the letter is finalized copies will be sent to Ms. Stukes-Baylor, Ms. Pankey and Mr. Albert.

Ms. Pankey requested that training be offered to the Fairmount Park Trust employees on this specific subject and ask that the letter indicate that an information session will be held at a later date. It was also decided that training should be given to Pension staff as well so they will know what to expect.

Brian Albert made a motion to adjourn. Ronald Stagliano seconded the motion.

**The meeting adjourned at 9:30 am.**