

PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM
MINUTES OF POLICE OFFICER'S MEETING
JANUARY 13, 2009

The regular meeting of the Tucson **Police** Public Safety Personnel Retirement System Board was held on Tuesday, January 13, 2009, on the 5th Floor, Finance Conference Room, City of Tucson, City Hall, 255 W. Alameda, Tucson, Arizona. Chair Robert Walkup called the **Police** Board meeting to order at 9:17 a.m.

1. ROLL CALL

Police Board Members:

Present:	Robert Walkup	Chair
	Marion Pickens	Member
	Debra Hillary	Member
	Mike Gurr	Member
	J. D. Kragnes	Member

Staff Present: Elizabeth Martinez – Police and Fire Board Secretary
Dee Dee Roberts-Meech – Police and Fire Board Staff
Kathy Maish – Executive Assistant/Finance Department
David McEvoy – Police and Fire Board Attorney

Also Present: Brian Delfs – Fire Board Member – left at 9:17 a.m.
Roger Tamietti – Fire Board Member – left at 9:17 a.m.
Patrick Arendt – Police System Member – left at 9:46 a.m.
Thomas McNally – Police System Member – left at 9:30 a.m.
David Stone – Police System Member – left at 9:32 a.m.
Thomas Stillwell – Attorney for Police System Member – left at 9:46 a.m.

2. POLICE CONSENT AGENDA: ITEMS A – E

A. RATIFICATION OF PRIOR ACTION FROM THE MEETING OF DECEMBER 9, 2008

- a. MINUTES FOR APPROVAL – 11/4/08
- b. PENSION PAYROLL – Addition of Normal Service Retirement for Mike Cascia amount pending. Addition of Normal Service Retirement for Pedro Gonzalez amount pending. Addition of Normal Service Retirement for Kathy Rau out of DROP in the amount of \$2,885.76. Deletion of Normal Service Retirement Benefits for Brice Fuller in the amount of \$5,289.95 due to his death on 11/21 and addition of Survivor Benefits for Margaret Fuller in the amount of \$4,231.96.

- c. NORMAL SERVICE RETIREMENT
Mike Cascia - Last day worked 11/28/08 – Pension effective 12/01/08
Pedro Gonzalez - Last day worked 11/28/08 – Pension effective 12/01/08
Kathy Rau - Last day worked 11/28/08 – Pension effective 12/01/08
- d. SURVIVOR PENSION
Margaret Fuller – Brice Fuller Passed away 11/21 – Pension effective 12/01/08
- e. DEFERRED RETIREMENT OPTION PLAN
Elsa Martinez – Election to participate in the DROP 11/30/08
- f. REDEMPTION OF PRIOR SERVICE
Scott Gamble – Redemption of service 1.563 years from Midvale City, Utah Police to Tucson Police in the amount of \$27,230.00.
- g. TRANSFER OF SERVICE
Aaron Foster – 0.3614 years of prior service with the Tucson Police to the Airport Police in the amount of \$951.92.
- h. EXPENDITURE STATEMENT IN THE AMOUNT OF \$174.00 FOR ANNUAL PHYSICAL for Stephen Hippel by Dr. Thomas Brodrick at Seminole Orthopaedic Assoc. Also for DISABILITY PHYSICALS for Kathryn Anderson and Peggy Redman for \$500.00 by Dr. Dennis Thrasher at Sunnyside Medcenter, P.C.
- i. RETAINER FEE OF \$400 PLUS COSTS-DAVID McEVOY, ATTORNEY

B. MINUTES FOR APPROVAL – 12/9/08

C. PENSION PAYROLL – Deletion of Survivor Benefits for Carolyn Sinclair due to her death on 12/02/08.

D. DEFERRED RETIREMENT OPTION PLAN
Wendy Adkisson – Election to participate in the DROP 12/31/08
Peter Buchanan – Election to participate in the DROP 12/31/08

E. RETAINER FEE OF \$400 PLUS COSTS-DAVID McEVOY, ATTORNEY

MOTION by Mr. Kragnes, seconded by Mr. Gurr that Police Board Items A – E are adopted and the appropriate action taken. Motion **CARRIED** by a roll call vote of 5-0.

3. FIRE CONSENT AGENDA: ITEMS A – F

A. MINUTES FOR APPROVAL – 12/09/08

B. PENSION PAYROLL – Addition of normal service retirement for Gerald Bates out of DROP in the amount of \$6,477.14 and addition of normal service retirement for Michael Hart out of DROP in the amount of \$6,143.20.

C. NORMAL SERVICE RETIREMENT
Gerald Bates - Last day worked 12/30/08 pension effective 01/01/09
Michael Hart – Last day worked 12/30/08 pension effective 01/01/09

D. PRE-EMPLOYMENT PHYSICAL REQUIREMENT

DOH: 11/17/08

PSPRS: 11/17/08

Patrick Kelly

Passed Pre-Employment physical

E. REDEMPTION OF PRIOR SERVICE

Dominic Cuffel – Redemption of service 0.085 years from Rural Metro Fire to Tucson Fire in the amount of \$1,591.00.

F. RETAINER FEE OF \$400 PLUS COSTS-DAVID McEVOY, ATTORNEY

The Police Board requires no action because this is a Fire Board item.

**4. APPLICATION FOR DISABILITY RETIREMENT EXECUTIVE SESSION
Discussion or consideration of records exempt by law from public inspection A.R.S. 38-431.03[2] and discussion or consultation for legal advice with attorney staff A.R.S. 38-431.03 (A [3 & 4])**

Police

Thomas McNally

David Stone

There was no executive session.

**5. APPLICATION FOR DISABILITY RETIREMENT
Direction regarding Executive Session**

Police

Thomas McNally

David Stone

A discussion ensued regarding the Permanent Accidental Disability application received by Mr. McNally. There was concern that the injury was caused to a substantial degree by a fall in October that occurred while he was off duty rather than a job related injury. In the letter to Dr. Thrasher, the Board members directed Ms. Martinez to include that information along with the fact that Mr. McNally is scheduled to see a neurologist on 02/17/09. Finally, Ms. Martinez asked Dr. Thrasher to contact the Board office if he thought he would need a copy of the neurologists report (for visit of 02/17/09) before making his final determination.

MOTION by Mr. Kragnes, seconded by Ms. Pickens after review of the medical evidence to request that Mr. Thomas McNally go to the Board Physician for a physical examination to determine if he is eligible for a Permanent Accidental Disability. Motion **CARRIED** by a voice vote of 3-2.

MOTION by Mr. Kragnes, seconded by Mr. Gurr after review of the medical evidence to request that Mr. David Stone go to the Board Physician for a physical examination to determine if he is eligible for a Permanent Accidental Disability. Motion **CARRIED** unanimously.

**6. REHEARING APPLICATION FOR DISABILITY RETIREMENT EXECUTIVE SESSION - Discussion or consideration of records exempt by law from public inspection A.R.S. 38-431.03[2] and discussion or consultation for legal advice with attorney staff A.R.S. 38-431.03 (A [3 & 4])
Police – Attachments**

Patrick Arendt

There was no executive session.

**7. REHEARING APPLICATION FOR DISABILITY RETIREMENT
Direction regarding Executive Session**

Patrick Arendt

Ms. Martinez announced this was the time set for the rehearing for Mr. Arendt. She acknowledged the presence of attorney Thomas Stillwell who is representing Mr. Arendt.

Mr. McEvoy acknowledged the receipt of a rehearing memorandum with attachments along with a 72-page transcript from Mr. Stillwell. Mr. McEvoy invited Mr. Stillwell and his client to present their case.

Mr. Stillwell addressed the board and began by commenting briefly on a case the Board had just finished discussing. The point he wanted to raise regarding the previous case was the distinction between the burden of proof of a member and the amount of contribution of a work incident. He went on to say there is no question it is black and white law that the applicant has the burden of proving their case to a reasonable degree of probability. That means that Mr. Arendt has to prove that it

is 51% likely that he is eligible for benefits but not in anyway does he have to prove 100%.

Many of you here are accustomed to dealing with police matters where the standard would be beyond a reasonable doubt. That is not the standard here. The standard is just more likely than not. However, that begs the question, what is more likely than not? Because what the Board has in these particular cases are multiple causes to their (members) disabilities. You have people who come into the workplace with pre-existing conditions. You have people who have off the job incidents that occurred and maybe you have on the job incidents. The question is what the standard for PSPRS cases is. Does the work activity or incident have to be the only cause of the disability, which is certainly the highest possible standard we may set. Or, could it be an insignificant cause but nonetheless just a slight contributing cause, which would be the lowest standard, we can set. On the other hand, as Mr. Stillwell believes the law should be is it simply that the work incidents or activities were a cause, one of the contributing factors to the disability.

Mr. Stillwell, who has practiced worker's comp law for 20 years, deals with disabilities and injury law and employers and indeed City of Tucson employees. He continued stating there is a body of law for worker's comp. Hundreds and hundreds of cases have gone to the Court of Appeals and the Court of Appeals have told us many issues not the least of which is how much contribution is enough for it to be considered work related. Mr. Stillwell said if you go into the gold books in Mr. McEvoy's office and look up PSPRS (in contrast to worker's comp where you will find hundreds and hundreds of cases) you would find one case on the subject of PSPRS benefits. Unfortunately, it does not happen to be on this subject. The Appellate Courts have never addressed the issue specifically with regard to PSPRS and as to whether he (Mr. Stillwell) is right about the standard that the work incident or activities must be a contributing cause. Mr. Stillwell said as a Board they have to decide whether to look for guidance in another body of law and he cannot think of a better law than worker's comp. From a worker's comp perspective all an injured police officer need show is that his on the job injury was a contributing cause to his disability in order for his entire disability to be covered under the worker's comp law. However, Mr. Stillwell does not think Mr. Arendt's case is that close. Per Mr. Stillwell, it is a more substantial body of evidence in favor of his accidental disability application and that is where we get to the memorandum and the attachments that were given to the Board.

Dr. Lindner provided the history stating he (Mr. Arendt) had no shoulder pain or symptoms during the time I (Dr. Lindner) cared for him until his injury of

01/13/05. He also says that it is strong likelihood of medical probability that his current disability is directly related to his on the job incident. Dr. Meaney says that to within a reasonable degree of medical probability he had some pre-existing condition but certainly that injury caused an acceleration of symptoms and aggravation of a pre-existing disease ultimately leading to the wearing out of the joint and the need for the procedure performed by Dr. Butler. There are two notes from Dr. Butler that are attached to the memorandum, one where he somewhat addresses and the second one which he very strongly addresses the issue of contribution. Then there is the information from Dr. Abbott who was actually an examiner for the City via Pinnacle Risk Management. He says assuming the accuracy of Mr. Arendt's history as given to him it would appear that the injury of 01/13/05 did contribute to his shoulder complaints, which persisted in spite of the conservative care ultimately requiring an arthroplasty. As also noted there is discrepancy between his history and the medical records available. Dr. Abbott was unaware of Dr. Butler's clarification on that issue there. Mr. Stillwell thinks this case at the very least deserves some clarification from a medical board, appointed by you to provide clarification on this and he encourages the Board to send Mr. Arendt for an examination.

Mr. McEvoy stated the standard that Mr. Stillwell referred to can be a cause or one of the contributing factors. The standard in the Wills case, which he refers us to, uses a little stronger language. It says more than just a contributing factor and a substantial contributing cause, so some of this stuff can get blurry. It is more than just a cause and more than just a contributing factor. It has to be, as the Wills case says, a substantial contributing cause. The question for the police board is do they feel that there is enough evidence to send Mr. Arendt to the Doctor. Under A.R.S. 38-859 C the boards may not award an accidental disability unless there is medical evidence established by the Board's physician so that is a gatekeeper issue.

Mr. Kragnes stated that under 38-844 D. it states in part "no member shall qualify for an accidental, catastrophic or ordinary disability pension if the local board determines that the member's disability results from the following: 3. A physical or mental condition or injury that existed or occurred prior to the member's date of membership in the system". Moreover, in reading Mr. Arendt's medical packet there is a letter from Dr. Butler from September 15, 2008 that indicates his case started years ago when he was treated for a disability and had arthritis present and the injury he had in defensive tactics ended in acute exacerbation of his pain. In addition, a letter from Dr. Meaney dated October 9, 2008 said Mr. Arendt had some pre-existing injury prior to his shoulder injury but the new injury caused an acceleration of symptoms and aggravation.

Mr. Kragnes further stated that in the paperwork received on Monday, on page 57 of Dr. Butler's testimony he was asked the following question: If he (Mr. Arendt) had a healthy shoulder and no pre-existing arthritis and he had this injury, would he be less likely to have major problems if he had the healthy joint beforehand? Dr. Butler's response was I don't think I would have seen him short of a cuff tear or something. Therefore, based on the paperwork and testimony Mr. Kragnes believes there was a pre-existing injury.

MOTION by Mr. Kragnes, seconded by Mr. Gurr that based on the evidence presented to deny the rehearing for the application for Permanent Accidental Disability Retirement. Motion **CARRIED** unanimously.

8. CONSIDERATION OF RULE 16 – ANNUAL PHYSICAL EXECUTIVE SESSION Discussion or consideration of records exempt by law from public inspection A.R.S. 38-431.03[2] and discussion or consultation for legal advice with attorney staff A.R.S. 38-431.03 (A [3 & 4])

Fire - Attachment

Roscoe Ealey– Hire date: 10/29/90 Retired: 01/16/08 Last Phy: 01/02/08

There was no executive session.

9. CONSIDERATION OF RULE 16 – ANNUAL PHYSICAL Board Direction Regarding Executive Session

Fire

Roscoe Ealey

The Police Board requires no action because this is a Fire Board item.

10. COMPLIANCE WITH RULE 17 – ANNUAL PHYSICAL EXECUTIVE SESSION Discussion or consideration of records exempt by law from public inspection A.R.S. 38-431.03[2] and discussion or consultation for legal advice with attorney staff A.R.S. 38-431.03 (A [3 & 4])

Police – Attachments

Stephen Hippel

Darryl L. Alexander

There was no executive session.

**11. COMPLIANCE WITH RULE 17 – ANNUAL PHYSICAL
Board Direction Regarding Executive Session**

Police

Stephen Hippel

Darryl L. Alexander

MOTION by Mr. Kragnes, seconded by Mr. Gurr that Mr. Stephen Hippel and Mr. Darryl Alexander have complied with rule 17 and there is sufficient evidence that they continue to be eligible for a permanent accidental disability benefit based on the letters from the Clinic in Florida and Dr. Dennis Thrasher. Motion **CARRIED** unanimously.

**12. COMPLIANCE WITH FINANCIAL AUDITS – RULE 18
EXECUTIVE SESSION Discussion or consideration of records exempt by law from
public inspection A.R.S. 38-431.03[2] and discussion or consultation for legal advice
with attorney staff A.R.S. 38-431.03 (A [3 & 4])**

Police - Attachments

Judy Augustine

There was no executive session.

**13. COMPLIANCE WITH FINANCIAL AUDITS – RULE 18
Board Direction Regarding Executive Session**

Police

Judy Augustine

MOTION by Mr. Kragnes, seconded by Mr. Gurr that Judy Augustine has complied with the 2008 audit for 2007 income, and has not gone over the financial limit, and she continues to be eligible to receive her benefit. Motion **CARRIED** unanimously.

14. BUDGET 2008/09 AND PRO FORMA BUDGET 2009/10

Police & Fire

The Board members reviewed the budgets and the proposed reductions.

MOTION by Mr. Gurr, seconded by Mr. Kragnes to approve the 10 % budget reduction for 2008/09 budget and the pro forma budget for fiscal year 2009/10. Motion **CARRIED** unanimously.

15. FUND INFORMATION

Police & Fire

Ms. Martinez provided a copy of the weekly update (attached) from PSPRS with regard to the financial market volatility and the Madoff Securities scandal. PSPRS members should be pleased to know that the System has never had any investment exposure to the Madoff Investment Securities firm.

**16. ADJOURNMENT (Fire Board - 9:17 A.M.)
(Police Board – 9:50 A.M.)**

MOTION by Mr. Gurr, seconded by Mr. Kragnes to adjourn. Motion **CARRIED** unanimously.

The next regular meeting of the Tucson Police and Fire Public Safety Personnel Retirement System Boards is scheduled for 9:00 A.M. on **Tuesday, February 10, 2009** in the Finance Department Conference Room, Fifth floor of City Hall, 255 W. Alameda, Tucson, AZ.

Elizabeth Martinez, Board Secretary

Robert Walkup, Chair

VERBATIM TAPE RECORD ON FILE IN THE TUCSON POLICE AND FIRE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM BOARDS' OFFICE LOCATED AT CITY HALL, FINANCE DEPARTMENT, 1ST FLOOR WEST, 255 W. ALAMEDA, TUCSON, ARIZONA – AVAILABLE UPON REQUEST.