

**MINUTES OF THE BOYNTON BEACH POLICE OFFICERS' PENSION FUND
QUARTERLY BOARD MEETING HELD ON FRIDAY, JANUARY 27, 2017
AT 11:00 A.M., AT BOYNTON BEACH CITY HALL,
100 E. BOYNTON BEACH BOULEVARD, BOYNTON BEACH, FLORIDA**

PRESENT:

Toby Athol, Chair
Jason Llopis, Secretary
Scott Caudell
Russell Faine

Bonni Jensen, Board Counsel
Robert Dorn, Pension Administrator

ABSENT:

Joe DeGuilio

1. CALL TO ORDER

Chair Athol called the meeting to order at 11 a.m.

2. ROLL CALL

A quorum was present.

3. PUBLIC DISCUSSION: None.

4. CONSENT AGENDA

a. Minutes from 11-16-16 Meeting

Motion

Mr. Llopis moved to approve the minutes. Mr. Faine seconded the motion that unanimously passed.

b. Minutes 10-16-16 Minutes

Motion

Mr. Caudell moved to approve the minutes. Mr. Faine seconded the motion that unanimously passed.

b. Warrant Ratifications / Approvals

Mr. Dorn reviewed each warrant to be approved.

He noted there was an issue with getting mail from Klausner, Kaufman, Jensen and Perry and arrangements were made to receive mail via email. He also pointed out payment for SunTrust was approved at the last meeting, but payment of this invoice was for the difference that was owed and a late charge. All was aligned with the bank, including online access for credit cards and the checking account. Anyone wanting view access should contact him.

Mr. Dorn did not have warrant no. 067 for member Ronald Davis who made his retirement selection, which was verified by the actuary. He requested the motion to approve include this amount and for warrant no. 068 the actuary's calculations for Vincent Brooks. Attorney Jensen asked if Mr. Brooks' amounts were more than the life annuity. Mr. Dorn explained based on his factors, it comes out that way. The figures listed were the actuary's calculations. Mr. Dorn had questioned IT about the amount and they all spoke with the actuary and were advised the calculation of factors were based on the benefits given to the fund. Mr. Dorn noted he reviewed back to September 2015 and the same thing occurred for a few other members. It was suggested the actuary explain it when they review the valuation.

Mr. Dorn wanted to leave the amount for Officer Crowder open for discussion.

Chair Athol requested a motion to approve the warrants with further review on the Vincent Brooks amount.

Motion

Ms. Llopis moved to approve. Mr. Faine seconded the motion that unanimously passed.

5. NEW / UNFINISHED BUSINESS

Mr. Dorn pointed out there is a draft disability order in the meeting materials. A motion was needed to execute the order for disability for Ronald Davis.

Motion

Mr. Faine so moved. Mr. Caudell seconded the motion that unanimously passed.

6. DISABILITY HEARING

Robert Kellman

Attorney Jensen explained the Board received records. Most of the packet was the same as the October 10, 2016, meeting. The Board left off with Mr. Kellman changing his application from a duty to a non-duty disability and the question arose if there was an ultimate diagnosis of illness or injury. Attorney Jensen followed up with the doctors

and received new material which was included in the meeting backup. Attorney Jensen reviewed the responses.

Attorney Kelley and Mr. Kellman were present.

Attorney Kelley explained Mr. Kellman applied for a Line of Duty (LOD) disability because it was brought up at the job and he was terminated from the job because of it. He then changed his application to a non-Line of Duty (non-LOD) disability pension. He noted Dr. Curlanders most recent opinion was based on what Dr. Stock and his report indicated, but Dr. Stock only saw Mr. Kellman on initial occasions and did not have all the information. Attorney Kelley referred the board to Exhibit D. The doctor had been treating Mr. Kellman since 2013 and it was clear what he was being treated for as references of the condition were throughout his notes starting in 2013, long before this process started. Additionally, medication was prescribed for the specific condition. Mr. Kellman had also seen another physician as contained in Exhibit I. Dr. Stock's evaluation was contained in Exhibit E. Attorney Kelley contended Dr. Stock reviewed the other two doctor's records who were the treating physicians. He noted Exhibit G regarding Workers Compensation and Exhibit H from the doctor who had treated Mr. Kellman since May 2015 and a definitive diagnosis was made. Dr. Stock did not have benefit of those records. Mr. Kellman was fighting to keep his job when he was sent for a fitness for duty exam. This particular doctor could not offer a definitive diagnosis. His basis for the opinion of not fit for duty was contained on page 15 of the report and were not due to personality characteristics. They were the same things he was being treated for by two other doctors. It was not possible to give a definitive diagnosis due to test result responses on several assessment measurements. Mr. Kellman was trying to keep his job so he was not telling the doctor all the things he was should have. It was not that there was no definitive diagnosis that he needed to be treated for, because he continued to receive treatment. In November 2015, an assessment was conducted because the Department terminated him for being unfit to perform his duties as a law enforcement officer in October 2015.

Attorney Kelley commented case law specifies the Board is bound by the decision of the agency and the termination regarding total disability and fitness. Because the agency terminated him, the question as to total disability to perform the duties of a law enforcement officer has been found. He feels the Board has to follow it, but the Board has to determine if the disability is permanent and if there are treatments, medications, therapies or protocols that will change the prognosis. He reiterated this has been ongoing since May 2013 and it was not a condition that came about as a result of the termination. For the Board to grant a non-service connected disability, the individual must have an injury illness or disease. He noted the ADA definition of a disability is physical or mental condition or impairment that affects or limits a person's movement, senses or activities. The US Department of Labor says it is a condition that affects or limits a person's ability to perform things in the normal way. He asserted those definitions fit the description of a non-service connected disability under the Board's Plan. He commented the undisputed medical evidence is Mr. Kellman has been treated

for disorders since May 2013 and continues to do so even after termination by the agency, consisting of counselling or medications. There is a case that indicates the Board can make a determination when there is a conflict of medical evidence which he cited. Attorney Kelley commented there is a conflict. One doctor based a good portion of his opinion on a doctor who did not have information from two other doctors. He felt the information on page 15 supports a finding for a LOD disability as it talks about treatable conditions.

Attorney Kelley feels the information all points to Mr. Kellman being permanently and totally unfit for performing his duties as a law enforcement officer. Exhibit N answered questions the Board had from the last meeting which were consistent with what Mr. Kellman was being treated for since 2013. The date the doctor made the diagnosis was December 2015, but the treatment notes show there were conditions that were present since 2013. Three doctors all indicated Mr. Kellman is totally unfit from doing his job. Two doctors stated other factors, one of which changed his diagnosis. Attorney Kelley pointed out that if the physician who changed Mr. Kellman's diagnosis had done so in the initial evaluations, the City could not and would not have terminated Mr. Kellman.

It was Attorney Kelley's position the Board should find Mr. Kellman is entitled to a non-LOD disability and the medical evidence in its totality supports the decision.

The Board members asked several detailed questions regarding Mr. Kellman's condition and there was discussion about medical records from an additional physician Mr. Kellman started seeing in June 2016. Chair Athol asked about the relevance of the additional information from the new physician and if it was post termination. Attorney Jensen explained it was a Board decision. The application was made on the basis of the fitness for duty, which is the document that said he could not perform the functions of a police officer and the documents the Board was provided with indicated the same. The doctor was not basing his determination on a psychological disability nor did the City's Independent Medical Examiner. Lengthy discussion ensued.

Chair Athol recessed the meeting at 11:55 a.m. for a short break and reconvened the meeting at 12:10 p.m.

The Board members continued their discussion regarding Mr. Kellman's application and the City Manager's termination letter.

Chair Athol commented the Board has to consider hundreds of pages of medical records, and through no fault of the applicant, during evaluations what could be at stake with one diagnosis and what the benefits, medically, financially and for his family are. All the information becomes very subjective. Attorney Kelley agreed and pointed out that was why it was crucial to consider who was treating Mr. Kellman since 2013 because that gave a definitive diagnosis.

Attorney Jensen explained the issue is to make a decision. She inquired if the Board wanted more information from the newest treating physician; however, all agreed it was not relevant to the current discussion. Mr. Llopis felt the Board fulfilled their obligations by availing themselves to the physician.

Motion

Based on the information, Mr. Llopis moved to deny the current application and clarified the motion was not that he is entitled to a future entitlement, only that he was not entitled to a disability incurred entitlement. Mr. Faine seconded the motion that unanimously passed.

Attorney Jensen will draft an order denying the request listing the specific reasons, hopefully for the February 7th meeting or as soon thereafter as possible.

7. ATTORNEY'S REPORT

8. PLAN ADMINISTRATOR'S REPORT

a. Audit- Update

Mr. Dorn announced the update will be in draft form next week and he would forward it to the members for review.

b. Death Checks

Mr. Dorn advised Patricia Gailbraith passed away and her benefits have been stopped.

9. OPEN DISCUSSION

Mr. Dorn pointed out Appendix A in the disability pack, pertains to the City's ordinance, contained under Death Benefits D in reference to Joseph Crowder Attorney Jensen explained an issue in the Crowder matter is the death benefit and the inconsistency in the ordinance and the ability to designate beneficiaries. Mr. Dorn noted Section D.2 of the Ordinance and commented the question was he had a spouse and post his divorce, he redid his beneficiary form and named his brother as the beneficiary. Mr. Dorn read it and did the calculations which were sent to the actuary. The beneficiary should get a life annuity beyond just like any other beneficiary. Reading the language with Attorney Jensen's and Plan Actuary, Pete Strong's opinion, they get a 10-year certain benefit. The calculations he submitted earlier via the check warrant was based on a commencement date of January 1, 2017, and an end date of December 1, 2026. Mr. Dorn does not read it that way as he believes he should get a life benefit from it as if it was a spouse. He did not choose a benefit option only. The language included the word spouse and not the word beneficiary. Mr. Dorn commented at one time a spouse

was a spouse and there were no domestic partnerships. After that was accepted by the courts, they look at others they can give the benefit.

Attorney Jensen reviewed the matter and noted he completed the beneficiary form and the provision in the Plan indicates the member can designate a beneficiary to say what you want to happen in the event of death. The provision on the document they allow the member to sign and in the pension plan says that. Section D.2 has a conflict or an internal inconsistency as it only provides to the spouse or the estate, and there is no real provision that the benefit would go to a designated beneficiary. The question is what benefit would Officer Crowder have been entitled to and how could the Board make that work consistently. The normal form of benefit is a 10-year certain. If the Plan was going to substitute the spouse for the designated beneficiary who is not the spouse and who could not be a spouse under a same sex marriage, (in this case, Mr. Crowder's brother) in the absence of someone electing a form of benefit, they would get a 10-year certain benefit. Mr. Llopis asked if the member could take the option on the date the decedent would have retired, similar to a deferral. He noted Officer Crowder was going to retire in five years.

Attorney Jensen responded there was no provision to do so because the bottom line choice is to pay it to the estate. She noted an estate cannot be opened five years hence, and if something happened to Officer Crowder's brother, they would not be able to pay to the estate. Chair Athol asked if there were any circumstances that a Plan would deny a payout to a listed beneficiary. Attorney Jensen explained if the Board applied the strict language to the provision, it would require the family to open an estate. Chair Athol could not imagine the intention of the article was to avoid someone purposely listed as a beneficiary.

Mr. Dorn explained his question to the actuary was is a spouse considered a beneficiary in the Board's Ordinance. Some cities have it you can interchange spouse with beneficiary. He asked how Mr. Strong was interpreting this calculation-wise and is it open for the Board. Mr. Strong's opinion was the benefit was a 10-year certain on the beneficiary.

Attorney Jensen noted the other interesting thing about the beneficiary section B allows the Board to direct the commuted value of the remaining monthly payments be paid in a lump sum amount to the estate because an estate cannot receive payments over a 10 year period. A lump sum payment would lose the interest, but the beneficiary would receive it all at present value.

Mr. Dorn requested clarification if, going forward, the benefit is a 10-year certain as a default unless it is a spouse. Attorney Jensen explained when the Plan was created, the purpose of a pension was to provide income to the family. In most cases, the man worked and the woman was at home without a job. The idea was pay her the money she would need to live because the husband was gone. West Palm Beach has an automatic survivor benefit for a spouse. There is not an automatic benefit for a non-

spouse beneficiary, even if they are a significant other. The ability to leave money to beneficiaries arose if unmarried. When the plans were amended, that kind of language was not fixed in that section. The next time they amend the plan, the Board would have to address payments to a beneficiary.

Mr. Dorn asked if the Board wanted to have payments over 10 years for the 10-year certain or force the beneficiary to accept a lump sum payment. Chair Athol did not see any reason to force a lump sum benefit. It is an income. Attorney Jensen explained there are two issues to consider: There is a pending issue as a result of his divorce and if paid out in a lump sum, there could potentially be issues. The second issue is Mr. Crowder named, as contingent beneficiaries, his minor children. If anything happened to the brother, his children may be entitled to a benefit if they are paying it over time, as opposed to paying a lump sum as the money would be gone. If a primary beneficiary is listed, the payment goes to the beneficiary and if something happens to the beneficiary, it goes to the contingent beneficiary.

The language is problematic. The internal reading, in the light most favorable to the participants and beneficiaries, is they do pay to a beneficiary. It is a matter of how much and whether or not to make a lump sum payment.

Chair Athol thought they could contact the beneficiary. Since another person is listed as the beneficiary and then the children, he thought the Plan should pay the person as the intent is to take care of the children. It was who Mr. Crowder foresaw would be the caretaker. The 10-year certain would help them. Mr. Dorn liked paying on a monthly basis. Attorney Jensen had been contacted by counsel representing the former wife, and they are contemplating an interpleading which means they take the money to court. They would sue the Pension Board saying there is money, the Board is not sure who it belongs to and ask the court to make the determination and the money would pay attorney fees and costs. Officer Crowder was separated and then legally divorced. Attorney Jensen noted there was a provision in the divorce for a Qualified Domestic Relations Order which the Board cannot honor. She was awarded five years of his benefit and it took more than a year to work out how much she would be entitled. Five years of the vested interest which is called the marital portion. The court decided to use the date of the separation.

Attorney Jensen researched the matter and found a circumstance where the court said as long as you are alive when the Qualified Domestic Relations Order was entered and the court retained jurisdiction, the court may have the ability to act on the decision post death. The Plan can only honor an income deduction order.

Chair Athol asked what the liability to pay the beneficiary on a monthly basis was and learned the Board could not pay the former wife. It would be a civil matter between her and the beneficiary and it would be the beneficiaries responsibility to pay the former wife. Attorney Jensen cautioned not to make lump sum payment on February 7th. Mr.

Dorn requested permission to start paying Officer Crowder's beneficiary. The calculations were provided to the Board.

Mr. Llopis felt the Board should honor Officer Crowder's intent and make payments to the brother. It is clear the brother was the beneficiary, and the brother will take care of the children. Chair Athol did not see a problem starting the monthly benefit. Government plans have only one avenue to follow.

Mr Dorn requested approval of warrant no. 069 in the amount of \$4,478.22 to be paid to the beneficiary of Joe Crowder. The actuary ran the calculations on a 10-year certain benefit.

Motion

Mr. Llopis moved to execute warrant no. 069. Mr. Caudell seconded the motion that unanimously passed.


Attorney Jensen explained the Board should propose an amendment to the Ordinance. There is a pending amendment to the Ordinance to adopt the mutual consent provisions and rehire after retirement. They will be discussing the matter with the City. Language would be drafted by February and also clarification on the calculations for Vincent Brooks. Mr. Dorn advised he was not issuing payment.

The mortality table is already changing, but it is not used for the Plan. The Board will get an explanation as Mr. Strong will be present at the next meeting.

Mr. Dorn thanked the Board and announced the next meeting was February 7th at 10 a.m. The audit and valuation reports will be reviewed.

10. ADJOURNMENT

There being no further business to discuss, Mr. Llopis moved to adjourn. Mr. Faine seconded the motion that unanimously passed. The meeting was adjourned at 12:46 p.m.


Catherine Cherry
Minutes Specialist.