

**MINUTES OF PUBLIC MEETING
FOR THE CORRECTIONS OFFICER RETIREMENT PLAN LOCAL BOARD
FOR THE JUDICIARY**

A Public Meeting of the Corrections Officer Retirement Plan Local Board for the Judiciary was convened Tuesday, February 1, 2022, at 10:00 a.m., via Zoom, Arizona State Courts Building, 1501 West Washington Street, Phoenix, Arizona.

Board Members Present by Conference/Video Call: Kevin Kluge; Jennifer Fish; Mark Smalley; Jason Hathcock; Scott Mabery

Board Members Absent: None.

Also Present: Alicia Bocardo, Local Board Secretary (video call); Lesli Sorensen, Board Attorney (video call); Erika Muhammad, Applicant #21-03 (conference call); Matthew Baack, Applicant #19-02 (conference call)

Call to Order:

Approval of the Minutes:

January 4, 2022 – Public Meeting Minutes
January 4, 2022 – Executive Public Meeting Minutes

Board member Mark Smalley noted a correction to page 3.

MOTION: A motion to approve the public meeting minutes and the executive session minutes of the January 4, 2022 meeting was made by Mark Smalley. The motion was seconded and passed unanimously; the minutes stand approved as amended. **CORP 2022-08**

Consideration of Disability Benefits: Independent Medical Evaluation (IME) Benefit Decision

The Board received Application #21-03 for Accidental Disability benefits from Erika Muhammad on August 25, 2021, identifying a disabling condition of: “Work-related PTSD, Anxiety and Depression”.

The applicant was a Maricopa County Probation Officer with 7.209 years of service. The applicant terminated with the county on 1/4/2022.

Ms. Muhammad was notified via certified letter that the Board would consider her application at this meeting and of her right to attend.

The applicant initialed the Waiver of the Confidentiality provision, to allow discussion of the medical condition in an open public meeting.

Per the Board's January 4, 2022 instructions, an addendum request was sent to Dr. Rassiwala MD containing follow-up questions. The updated report was provided to the Board as well as the previous IME performed.

A copy of A.R.S. §38-886 governing Local Board consideration of applications for Accidental Disability is included for reference purposes.

The applicant provided medical reports of findings and treatment with the application. The application and medical reports were provided for the Board.

The criteria for Accidental Disability benefits per A.R.S. §38-886 are: "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department and was incurred in the performance of the employee's duties.

Dr. John Tsanadis (psychology) performed an Independent Medical Examination of the applicant on November 16, 2021. A copy of Dr. Tsanadis's IME report was provided to the Board.

Dr. Farida Rassiwala (psychiatry) performed an Independent Medical Examination of the applicant on December 02, 2021. A copy of Dr. Rassiwala's IME report was provided to the Board. Dr. Rassiwala completed an amended IME report on January 16, 2022. It was provided to the Board.

The Local Board will need to determine eligibility based on the Independent Medical Evaluations. Any motion to approve or disapprove the application should include a reference to the Independent Medical Evaluation upon which the determination is based. The Board can consider any medical evidence that the applicant may want to provide; however, the statutes are clear that a determination of disability shall be based on the IME. Material conflicts in medical evidence must be resolved by the findings of the Board. Disability determinations by the State Comp Fund or other workers' compensation bodies are not binding on the Local Board.

The Chair acknowledged applicant #21-03 was present via conference call. The Chair also informed the Board that the Board Attorney was available for any legal advice.

The Chair noted the applicant's presence via conference call.

Board member Jason Hathcock asked the applicant if she had terminated with the county. Applicant #21-03, Erika Muhammad, said she was terminated on January 4, 2022.

The Chair stated that the amended IME still reflected a few discrepancies. He stated that the narrative did report a disabling condition, but it appeared to be written using "past" and not "current" verbiage. He cited the following passage: "Ms. Muhammad has a mental health condition that totally impaired her in her role as a Probation officer at that time. However, I am unable to opine if it is permanent impairment as she had not received complete and comprehensive treatment in the form of medication management and therapy at the time of evaluation" (Page 2, Paragraph 3). The Chair also noted the "no" to question two on Form C5-LB-A. The question asked, "does the injury or condition totally and permanently prevent the employee from performing a reasonable range of duties in a CORP designated position within the employee's department?"

Board member Scott Mabery stated that the discrepancy appeared to be surrounding permanency. The Chair agreed that permanency in the report was the issue. The Chair noted that permanency, for the Board's purposes, was considered a 12-month period. The Chair added that the Board has historically approved cases where a disability was considered permanent for the first 12 months with the requirement of an annual evaluation to monitor progress and treatment if progress was possible. Additionally, the Chair stated that the Board could not require individuals to complete treatment, surgery, etc. to better their condition.

Board Attorney Lesli Sorensen stated that staff did provide the IME doctor with the definition of what the Board considers "permanent". She added that the doctor was provided the following guideline, "the Board considers a disability total and permanent if there is no likelihood that treatment would result in the ability to engage in full employment in 12 months"

The Board Attorney advised the Board that the IME doctor may not have wanted to report on the record the likelihood of treatment to engage in full employment in 12 months because the notes indicated that the applicant did not receive complete comprehensive treatment in the form of therapy and or medication management.

Board member Jason Hathcock noted the doctor's narrative response to questions one and three.

He read the following responses:

Page 1 Paragraph 7: "Her [Erika Muhammad] mental health is totally preventing her from gainful employment at this time. However unable to opine this is permanent as she has not yet received proper and sustained medication management from a psychiatrist and has not received trauma-based CBT"

Page 2 Paragraph 6: "Client has a disabling condition that needs to be adequately addressed with proper medication management with SSRI or mood stabilizer options that she is able to tolerate along with Cognitive Behavior Therapy for depression and anxiety and trauma-focused therapy. These are evidence-based treatments for her underlying mental health condition along with monitoring of compliance to the above. With these approaches improvement is possible, but cannot be predicted"

Board member Jason Hathcock stated that in the past, the Board has not required disability applicants to undergo surgery or medication with physically disabling conditions for improvement.

Additionally, Board member Jason Hathcock stated that he would be in favor of approving the application on the basis that Dr. Rassiwala reported Ms. Muhammad to have a disabling condition and to note for the record that the IME doctor detailed the condition's improvement to be possible but not predicted. He added that periodic reviews can be added with approval.

Board member Mark Smalley expressed concerns that the reports did not meet both guidelines of confirmed disability and permanency.

Board member Jennifer Fish also stated that she also had concerns that the statements made by the doctor were not clear enough to establish permanency. Ms. Fish referred to the Board Attorney to outline options for the Board.

The Board Attorney advised the Board that Public Safety Personnel Retirement System (PSPRS) may request a rehearing or ask the Board to provide more detailed information about the medical history in its decision making. She added that it is possible that the medical doctor did not establish permanency if the doctor concluded that the applicant did not exhaust all treatment options before reaching a permanent determination.

The Board Attorney informed the Board that they could approve the application, deny, or table the application. She stated that the Board could table the application and ask the applicant to secure medical treatment and provide enough evidence that the medical treatments outlined had been utilized.

Board member Jason Hathcock inquired about the timeliness. He expressed concerns about the timeframe between her initial application, possible tabling or rehearing time, and her time now as a terminated employee.

The Board Attorney advised the Board that tabling the matter would not affect her timeline. She stated that the member could provide more medical documentation later to secure another IME. Additionally, the Board Attorney informed the Board that if the application was denied, then the applicant would need to submit a new application within a year of termination.

Board member Scott Mabery asked for clarification about requiring additional medical documentation and if it would be required by the Board. The Board Attorney advised that the Board could not require the applicant to complete medical treatment but rather provide guidelines to better support the disability claim and in turn secure an IME with clear permanency determination.

Board member Scott Mabery asked the applicant what treatment plans she intends to undergo. Ms. Muhammad explained that she had tried different medications that did not work for her. She added that the details were included in the medical history.

Board member Jason Hathcock stated that he is still in favor of approving the application based on the IME findings that the applicant was found to be disabled and that improvement of her condition is possible but cannot be predicted.

Board member Scott Mabery asked the Chair to confirm if a 6-month or 12-month evaluation of the case can be stipulated as part of the application approval. The Chair confirmed that to be an option.

Board member Mark Smalley stated that the Board did not have the foundation to approve the application on both stipulations of disabling and permanence. The Chair replied that it was evident in the reports that the applicant does have a mental health condition that prevents her from gainful employment at this time and the only item in question was the permanency status.

The Board Attorney advised the Board that the state statutes require both items. She added that the Board may approve the application and include a discussion of permanency to establish meeting the qualifications of approval.

Ms. Muhammad expressed her concerns that the doctor did not report her full medical history intake regarding her experience with medication. She stated that the medications she tried previously were not successful and was not inclined to take medication on the Board's behalf.

Board member Jennifer Fish inquired if the Board could request another IME or another IME addendum if it appeared that the medical doctor did not report all the medical history intake.

The Board Attorney replied that the Board could not require her to participate in any medication management but rather suggested that any future medical treatment records would be helpful to the Board if the matter was tabled. The Board Attorney also advised the Board that the IME doctor's comment on medication may have not meant that the applicant did not take any medication, but that evidence suggested a lack of full proper medication management effort.

The Board Attorney also advised the Board that they are within their right to request a new IME if they believed that the report was not thorough; however, she advised against the appearance of "doctor shopping". She added that the doctor did not receive the correct guidelines for accidental disability which resulted in the amended IME which was a valid concern but cautioned against multiple IME requests.

The Chair replied that "doctor shopping" did not apply to this case. He stated that the IME report did not provide adequate information for the Board to make a clear decision.

Board member Scott Mabery stated that it may be unlikely that any IME doctor would ever clearly state a mental disability as completely permanent because mental health conditions are diverse and unique from person to person and does not follow the same guideline as a physical health condition.

Board member Jason Hathcock cited the following passages:

Page 2 Question 1: "Does Ms. Muhammad have a physical or mental condition that totally and permanently prevents her from performing a reasonable range of duties as a probation or surveillance officer within the Maricopa County Probation Department?"

Page 2 Paragraph 3: "Ms. Muhammad has a mental health condition that totally impaired her in her role as a Probation officer at that time. However, I am unable to opine if it is permanent impairment as she had not received complete and comprehensive treatment in the form of medication management and therapy at the time of evaluation"

Page 2 Question 3: "If you conclude that Ms. Muhammad does have disabling condition or injury, please detail available treatment options and their likely outcome (i.e., likelihood that treatment will restore Ms. Muhammad's ability to engage in full employment)

- a. Improvement of the condition or injury is expected
- b. Improvement of the condition or injury is possible but can't be predicted
- c. Improvement is not expected (e.g., the applicant's condition is considered terminal)

Page 2 Paragraph 7: "... improvement is possible, but cannot be predicted"

Mr. Hathcock stated that the doctor did not specifically detail whether the applicant could do the job duties of a probation officer. He added that it was uncertain what the doctor was suggesting

with the note that “impairment in her role as a probation officer at that time.” Board member Jason Hathcock stated it was unclear if the doctor meant that with treatment Ms. Muhammad could continue her role.

Additionally, Board member Jason Hathcock noted that disability cases that noted possible improvement were approved on that basis. He added that in those cases, applicants were not required by the Board to undergo any medical surgery, medication, etc. to improve their condition(s). Mr. Hathcock stated that the applicants would simply submit medical records at the re-evaluation review period.

Mr. Hathcock stated that the doctor might have not clearly understood the usage of “permanent” for the Board’s purposes.

The Chair responded that the IME doctor was provided the criteria for what the Board considered a permanent disability.

Board member Jason Hathcock stated that if the doctor was suggesting treatment for improvement, it was not noted in the three options on page 2 question 3. Mr. Hathcock noted that it was an option for the doctor to claim the applicant’s condition to have an expected improvement. Instead, Board member Jason Hathcock noted that the doctor elected option b “improvement of the condition or injury is possible but can’t be predicted” Mr. Hathcock noted that selection b defines the basis of a permanent disability which is when a condition that may have possible improvement without expecting prediction.

The Chair informed the Board they could approve, deny, or table the application.

Board member Jason Hathcock stated that he was still in favor of approving the application to be reviewed in one year based on: the IME reports that found Ms. Muhammad to be disabled; discussion on permanency that establishes her condition to have possible but unpredicted improvement.

Board member Scott Mabery stated he would be in favor of a six-month review instead. The Chair replied that six months would not provide an adequate amount of time for the applicant to provide medical records, particularly during the pandemic. The Chair added that a year would allow the Board to see more treatment progress.

MOTION: Jason Hathcock moved to: (1) Approve the application for Accidental Disability Retirement benefits from Applicant #21-03, Erika Muhammad, based on the findings of the Independent Medical Evaluation conducted by Farida Rassiwalla, as set forth in the report dated January 16, 2022 and the Forms C5-LB-A dated January 16, 2022 (2) Approve an Accidental Disability Benefit for Erika Muhammad in about the amount of \$2,215.93 (3) Review this matter again in one year pursuant to A.R.S. §38-886.01.D. The motion was seconded and passed 3-2. CORP 2022-09

The Chair completed the following questions:

1. Did the employee file the application after the disabling incident, or within one year of ceasing to be an employee? The Chair noted “yes”

2. Did (or will) the employee terminate by a reason of disability? The Chair noted “yes”
3. Did employment terminate based on a disciplinary issue? The Chair noted “no”
4. Is the employee still working in a CORP-designated position that the Local Board considers a reasonable range of duties position within the employee’s department? The Chair noted “no”
5. Has the employee refused a CORP-designated position that the Local Board considered a reasonable range of duties within the employee’s department? The Chair noted “no”
6. Did the injury or condition occur prior to the current CORP membership date? The Chair noted “no”
7. Was the injury or condition the result of an event incurred during the performance of the employee’s duty? The Chair noted “yes”

Consideration of Disability Application:

The Board approved Application #19-02, Matthew Baack, for Ordinary Disability benefits on February 4, 2020. This matter is brought to the Board for a biennial review of medical records. The applicant initialed the Waiver of the Confidentiality provision, to allow discussion of the medical condition in an open public meeting.

The applicant was previously asked to provide medical treatment records since February 4, 2020 to assist the Board in determining whether an independent medical re-evaluation of the applicant’s condition is necessary. The applicant’s medical records were received on January 21, 2022. All records were provided for the Board’s review.

This is the Board’s first biennial review of this case.

Relevant Statute: A.R.S. § 38-886.01 governs Ordinary Disability retirement for CORP members. The relevant provision to this review is A.R.S. § 38-886.01. D:

D. The local board may require a disabled retired member to undergo periodic reevaluation of the continuation of ordinary disability. If the disabled retired member refuses to submit to reevaluation, the local board may suspend the payment of the pension. If the refusal continues for one year, the local board may revoke the disabled retired member's rights to the pension. An ordinary disability pension is terminated if the local board finds the retired member no longer meets the requirements for ordinary disability retirement. This subsection does not apply after a disabled retired member reaches the member's normal retirement date. The amount of a disability pension shall not be recomputed at a disabled retired member's normal retirement date.

The Board established on February 4, 2020, that the disabled member’s condition should be reevaluated in two years. The applicant’s earliest normal retirement date would have been March 31, 2034, when he would attain 62 years of age and 10+ years of service.

The Chair noted the applicant’s presence via conference call.

Applicant #19-02, Matthew Baack, made a request to have his case heard in three- or four-year spans instead of two. He added that it was difficult to gather all the documentation for the two-year review.

The Chair asked the applicant if surgery for his condition would be taking place in the future. Mr. Baack responded that it was not his intention to proceed with surgery and that this current treatment plan consisted more of pain management.

The Chair stated that the Board would need a new IME to be able to change the periodic review. The Chair informed the applicant that the Board could decide at the next biennial review and possibly schedule an IME that could allow for a change in the re-evaluation period if still applicable.

MOTION: A motion to continue the Ordinary Disability benefit for Applicant #19-02, Matthew Baack, and review the case in two years was made by Mark Smalley. The motion was seconded and passed. CORP 2022-10

Approval of Survivor Benefit I:

An application for a survivor benefit was submitted for the Board's approval pursuant to A.R.S. §38-887.

Member: Ricky Nelson (Retired Member, deceased November 19, 2021)
Benefit Payable to Spouse Caroline Nelson beginning December 31, 2021: \$2,578.64

MOTION: A motion to approve the payment of a survivor benefit to the following applicant in about the following amount was made by Jennifer Fish. The motion was seconded and passed unanimously. CORP 2022-11

Member: Ricky Nelson (Retired Member, deceased November 19, 2021)
Benefit Payable to Spouse Caroline Nelson beginning December 31, 2021: \$2,578.64

Approval of Survivor Benefit II:

An application for a survivor benefit was submitted for the Board's approval pursuant to A.R.S. §38-887.

Member: Melissa Buenrostro (Active Member, deceased November 11, 2021)
Benefit Payable to Spouse Victor Manuel Buenrostro beginning December 31, 2021: \$1,358.28

MOTION: A motion to approve the payment of a survivor benefit to the following applicant in about the following amount was made by Scott Mabery. The motion was seconded and passed unanimously. CORP 2022-12

Member: Melissa Buenrostro (Active Member, deceased November 11, 2021)
Benefit Payable to Spouse Victor Manuel Buenrostro beginning December 31, 2021: \$1,358.28

CORP AOC Actuarial Evaluation Report:

The Chair informed the Board that the Actuarial Evaluation Report's purpose was informational only.

Decision on Notice of Retiree Return to Work I:

The Board received a Notice of Retiree Return to Work from the Administrative Office of the Courts (AOC) for Stevan Borozan. The form indicated that Mr. Borozan retired from the Pima County Juvenile Court effective January 3, 2020. Mr. Borozan returned to work for AOC on January 6, 2020, as a Court Security Training Specialist VI, which is not a CORP-designated position.

A copy of A.R.S. §38-884.N-O. was provided to the Board as well as a copy of Mr. Borozan's current job description.

MOTION: Jason Hathcock moved that: (1) Stevan Borozan is eligible to continue to receive a CORP pension; (2) AOC is not responsible for paying an alternate contribution rate on his behalf. The motion was seconded and passed unanimously. **CORP 2022-13**

Approval of Membership:

The Local Board voted on the approval of the following requests for membership:

Armstrong, Kimberly	Maricopa	9/6/2021
Armendariz, Ethan	Mohave	12/26/2021
Ayon, Manases	Pinal	1/16/2022
Brooks, Angela	Navajo	1/2/2022
Cazares, Darian	Pima	1/2/2022
Curley, Kim	Navajo	12/12/2021
Jimenez Ojeda, Jasmine	Yuma	1/9/2022
Lanhart, Forrest	Maricopa	1/16/2022
Magot, Lual	Pima	12/26/2021
Mendoza, Gabriella	Maricopa	1/9/2022
Miller, Chase	Yavapai	12/28/2021
Nyrio, Kia	Maricopa	1/9/2022
Parrish, Tiana	Maricopa	12/26/2021
Sandoval-Mantooth, Alexandra	Yuma	1/2/2022
Velazquez, Jaime	Yuma	12/19/2021

MOTION: Jennifer Fish moved to approve the 15 applicants listed on the agenda for this meeting for membership in CORP pursuant to A.R.S. §38-893.D, and to note for the record that the physical examinations for Kimberly Armstrong, Angela Brooks, and Chase Miller identified a physical or mental condition or injury that existed or occurred before their dates of membership in the plan. The motion was seconded and passed unanimously. **CORP 2022-14**

Future Agenda Items:

Staff informed the Board that the following items will be placed on the March 1, 2022 meeting agenda:

- An application for ordinary disability benefits
- Updated Uniform Rules for discussion/adoption

Call to the Public:

No members of the public addressed the Board.

The meeting was adjourned at 11:25 a.m.

Transcribed February 3, 2022.