

**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, December 3, 2019 at 10:00 a.m., Conference Room 109, Arizona State Courts Building, 1501 West Washington Street, Phoenix, Arizona.

Board Members Present in Conference Room 109: Kevin Kluge, Chair; Scott Mabery; Mark Smalley; Jason Hathcock; Jennifer Fish

Also Present in Conference Room 109: Vanessa Haney, Board Secretary; Cynthia Kelley, Board Attorney; Alicia Bocardo, Recorder; Ottmar & Associates, Court Reporter; Matthew Baack (Conference Call); Kenneth Gorr

Call to Order:

Approval of the Minutes:

November 5, 2019 – Public Meeting Minutes
November 5, 2019 – Executive Meeting Minutes

MOTION: A motion to approve the public and executive meeting minutes of the November 5, 2019 meeting was made by Scott Mabery. The motion was seconded and passed unanimously; minutes stand approved. **CORP 2019-54**

Consideration of Disability Application:

A. #19-02, Matthew Baack: Ordinary Disability Rehearing

An application (#19-02) for Ordinary Disability benefits was received from Matthew Baack in May 2019. The applicant initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting. The Board denied the application on August 6, 2019, based on the Independent Medical Examination (IME). A copy of this examination was provided for the Board. Mr. Baack requested a rehearing within 60 days after receiving notification of the Board's denial. Mr. Baack also requested an additional 90 days to gather related medical evidence to present at the rehearing.

The Board granted the request for a rehearing; however, the Board stipulated the rehearing take place at the regularly scheduled Local Board meeting on December 3, 2019. The applicant provided additional medical reports of findings and treatment. The medical records were provided to the Board for review.

Statutory Guidelines (A.R.S. 38-886.01):

Local boards shall base a finding of ordinary disability on medical evidence that is obtained by a designated physician or a physician working in a clinic selected by the local board and shall

disregard any other medical evidence or opinions. If the local board retains more than one physician or clinic in connection with the application, the local board shall resolve any material conflicts presented in the medical evidence that is presented by the designated physicians or clinics.

Ordinary disability means a physical condition that the local board determines will prevent an employee from totally and permanently performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will prevent an employee from totally and permanently engaging in any substantial gainful activity.

The Chair noted for the record that applicant #19-02, Matthew Baack, was in attendance via conference call.

The Chair asked Mr. Baack for clarification about the site of the injury because the IME noted the site of the injury near the border while the medical records indicate the applicant was taken to a Flagstaff hospital. Mr. Baack replied that the site of injury did in fact take place in Flagstaff.

The Chair stated that IME doctors often misreport title classification in the IME reports because doctors are unaware of the full scope of job duties and responsibilities of each position. He stated that the misstating of the job title does not invalidate the medical records of which the Board lawfully bases their decision on.

Board member Scott Mabery asked Mr. Baack to elaborate on his experience with the IME doctor because of the applicant's claim stating that the doctor did not spend enough time with him to make an appropriate evaluation report.

Mr. Baack described his visit as brief with a duration of five minutes. He added that his evaluation consisted of: standing up, moving his hips in a circular motion, sitting down, the measurement of just one calf, and half a dozen questions.

Mr. Baack informed the Board that the doctor's office sent the applicant a letter stating that he could bring in medical records to be considered by the doctor during the examination. Mr. Baack claimed he brought medical records during the evaluation and states that the doctor said "I do not need any of this" upon viewing the records.

Mr. Baack also stated that it was unclear to him why the IME doctor would mention his profession as border patrol agent or why the site of injury would be described as near the border. Mr. Baack questioned the IME evaluation particularly referencing the portion about his ability to meet the physical requirements needed for the job because he claims that the doctor did not test his physical ability to determine whether he could: crouch, kneel, or carry 70 pounds. He reiterated to the Board that no physical examination of his capability to complete those items took place during the evaluation.

Mr. Baack additionally informed the Board the straight leg test that was described in the IME report as part of the evaluation did not take place.

Board member Jason Hathcock informed the applicant that the IME report contained treatment and a diagnosis review. He then asked the applicant where the IME doctor could have gathered the information from. Mr. Baack responded that he was not certain where the doctor could have collected the medical history unless his medical records were provided to him from staff.

The Chair responded that all medical records that were provided to staff were sent to the IME doctor. The applicant replied that the IME doctor could have reviewed the medical records that were sent over to his office but did not review the records that were brought in the day of the

evaluation. Board member Jason Hathcock asked Mr. Baack if the medical records that were sent to staff differed from the medical records he presented that day. Mr. Baack responded that they were the same records.

The Chair asked the applicant if the most current medical records provided to the Board were dated after the IME evaluation. Mr. Baack confirmed that was correct and that the current medical records were part of his continued medical treatment care. Mr. Baack stated that the more current medical records contained an x-ray and an MRI.

The Chair inquired whether the doctor had seen the most current MRI and x-ray. The applicant replied that one set of MRI and X-rays took place before the IME and another set was taken after indicating two separate sets. The Chair stated that the first set were sent to the office, but it is unclear if they were reviewed by the doctor. Mr. Baack stated that the report indicated that the films were not reviewed. The Chair noted that the Board did review the doctor's note that no outside films were made available.

Board member Scott Mabery asked Mr. Baack that, besides both the job title and site of injury reported in the IME being incorrect, if the injury itself was factual.

Mr. Baack replied that the description of the accident itself was correct but that the doctor's note about the pain in his back being for a short period of time was not. The applicant claimed that he has had prolonged back pain.

Mr. Baack began to elaborate on the medical treatment that was received after the accident. The Chair interjected to describe to Mr. Baack the Board's role in the rehearing process. He explained to Mr. Baack that the Board cannot issue a medical opinion and does not have medical expertise to make an official determination for his appeal based on his description of treatment alone. The Chair added that the Board is bound by statutes and must base their decision on what is reported in the IME.

Mr. Baack responded that he wanted the Board to acknowledge one item: his MRI. He added that the MRI and previous medical notes indicate that his vertebrae never healed and could be seen in MRI as two separate pieces. He stated that despite accommodation provided to him by his employer, he was not able to continue to work because he needed constant periods to rest and could not sit for long.

Board member Jason Hathcock stated that the IME report indicated a physical examination including: a straight leg test and four measurements of both thighs and calves. He asked Mr. Baack if his thighs were measured. Mr. Baack stated that his thighs were not measured and that only one calf was measured.

Board member Jason Hathcock revisited the doctor's response to second question of the Ordinary Disability Questionnaire. The question asked, "in regard to the physical injury, does the injury totally or permanently prevent the employee from performing a reasonable range of duties in a CORP designated position?" The IME doctor noted that Mr. Baack can work within restrictions.

Board member Jason Hathcock then asked the applicant to elaborate on what "restrictions" were discussed, or what the doctor might have been referring to when he stated "restrictions". Mr. Baack replied that he was unclear what "restrictions" the doctor was referring to because work accommodations and physical restrictions post injury were not discussed. He added that if the doctor may have been referring to the physical demand requirements of: lifting 75 pounds,

bending, scooping, kneeling, crouching, and crawling then the statement is incorrect because his ability to perform the actions were not examined or tested during the evaluation.

The Chair stated that there are three options available: (1) send Mr. Baack to another IME doctor, (2) send him to the same IME doctor but with all the updated medical records, or (3) keep Mr. Baack's application as denied.

The Chair informed the Board of possible implications with the first two options. He added that the Board would have to provide substantial justification for basing a decision off one IME and not the other. The second option would also run the risk of another claim of an unthorough IME report if the same IME doctor will be used.

Jason Hathcock asked Board Attorney Cynthia Kelley if Mr. Baack was sent to another IME doctor resulting in two conflicting IME evaluations, would the Board have to compare the discrepancies or base a decision off the most recent IME. The Board Attorney advised the Board that a decision could be made based off the most recent IME if there was justification in the discussion to substantiate a decision off one and not the other.

The Board Attorney also referenced the doctor's comment that Mr. Baack could work within "restrictions" and noted that it was unclear what the IME doctor was referring to. She added that because uncertainty of the term, it was unclear if working with "restrictions" could potentially put him outside the range of duties required for his position.

Board member Jennifer Fish inquired whether the position description was provided to the IME doctor. The Chair responded that the position descriptions are always provided to the IME doctor with the evaluation material. The Board Attorney added that the IME doctor did not provide what the "restrictions" entailed and reiterated that it was unclear whether the "restrictions" placed him within a reasonable range of duties or not.

The Board Attorney also noted the doctor's response that at the time of the evaluation he was not aware of any further treatment that would likely improve his functional ability which does create more questions with the report.

Jason Hathcock asked the Board Secretary whether the IME doctor was invited to participate in the meeting via conference call. The Board Secretary responded that the doctor was invited to join the meeting but declined. She added that staff from the doctor's office suggested that questions be submitted in writing if the Board required further clarification from him.

Board member Jennifer Fish inquired whether Medical Consultants Network (MCN) is the only contracted provider available to the Board. The Board Secretary replied that MCN was the only provider. The Chair responded that a direct contract with an outside provider could be set-up by staff. Mr. Baack then informed the Board that he would be in the Tucson, Arizona area for the upcoming holiday.

MOTION: A motion to refer Applicant #19-02 for a second Independent Medical Examination for Ordinary Disability and to provide all medical records to the medical doctor and to attempt to schedule an appointment with an IME doctor in the Tucson area within

two weeks as the applicant will be in Tucson later this month, was made by Jason Hathcock. The motion was seconded and passed unanimously. **CORP 2019-55**

B. #19-03, Kenneth Gorr: Ordinary Disability IME Decision

The Board received Application #19-03 for Ordinary Disability benefits from Kenneth Gorr on November 13, 2019. The applicant is a Maricopa County Adult Probation Officer with 15.504 years of credited service with CORP. The applicant identified the disabling conditions as: “two strokes; Basilar Artery Stenosis; brain aneurysm”. The applicant’s physical exam dated May 7, 2007 was provided to the Board for review. The exam report identified “history of back pain and left shoulder pain from weightlifting” as pre-existing conditions.

The applicant was notified via certified letter that the Board would consider the application at this meeting and of the applicant’s right to attend. The applicant initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting. 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 Ordinary Disability benefits per A.R.S. §38-886.01 are:

“Ordinary disability” means a physical condition that the local board determines will prevent an employee from totally and permanently performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will prevent an employee from totally and permanently engaging in any substantial gainful activity.

A copy of A.R.S. §38-886.01 governing Local Board consideration of applications for Ordinary Disability was included for reference purposes.

Board member Jennifer Fish stated that that she would recuse herself from voting on this case. The Chair recognized her request. The Chair acknowledged that applicant #19-03, Kenneth Gorr, was present in person at the meeting.

Board member Jason Hathcock and Board member Mark Smalley both agreed there was enough medical evidence to send Mr. Gorr for an IME. The Chair asked Mr. Gorr if he wished to comment. Mr. Gorr declined.

MOTION: A motion to refer Applicant #19-03 for an Independent Medical Evaluation for Ordinary Disability, was made by Mark Smalley. The motion was seconded and passed. **CORP 2019-56**

Mr. Gorr promptly left the conference room at 10:49 a.m.

Approval of Normal Retirement Benefits:

There were five applications for Normal Retirement benefits submitted for the Board’s approval pursuant to A.R.S. § 38-893 (D).

MOTION: A motion to approve the payment of Normal Retirement benefits to the following applicants in about the following amounts, effective December 1, 2019 was made by Jason Hathcock. The motion was seconded and passed unanimously. CORP 2019-57

Deanna Baker	\$3,423.36
Wendy Buechler-Matlock	\$3,795.67
Lora Deleon	\$2,247.51
Cecelia Puls	\$2,051.39
Julie Smith	\$2,060.38

Approval of Membership:

The Local Board may consider and vote on the approval of the following requests for membership or defer decision to a later date:

Archuleta, Krystal	Maricopa	7/15/2019
Campbell, Valerie	Coconino	7/1/2019
Flores, Karla	Pima	11/10/2019
Gould, Kelsi-Ann	Yavapai	11/1/2019
Louden, Elisa	Yavapai	11/1/2019
Montague, Rachel	Maricopa	11/10/2019
Proulx-Placencia, Hailey	Pima	8/5/2019
Smith, Harry	Pima	9/6/2019
Stevens, Bryce	Navajo	9/22/2019
Ugbisien, Ezini	Pima	9/16/2019
Vellutato, Ashleigh	Maricopa	11/10/2019
Wood, Lanelle	Mohave	11/1/2019

MOTION: A motion to approve the 12 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 Krystal Archuleta, Elisa Louden, Rachel Montague, Hailey Prulx-Placencia, Harry Smith, Ezini Ugbisien and Lanelle Wood identified a physical or mental condition or injury that existed or occurred before their date of membership in the plan, was made by Jennifer Fish. The motion was seconded and passed unanimously. CORP 2019-58

See Attachment A to these minutes for details of the membership approved at this meeting.

Future Agenda Items:

The Board Secretary informed the Board that the two pending disability cases, #19-02 and #19-03, will be placed on the January 7, 2020 meeting agenda should the IMEs be scheduled during the holidays.

Call to the Public:

No members of the public addressed the Board.

The meeting was adjourned at 10:53 a.m.

Transcribed December 3, 2019