

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

A Public Meeting of the Corrections Officer Retirement Plan Local Board for the Superior Court was convened Tuesday, September 5, 2017 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, Chairman; Rob Lubitz, Danna Quinn, Jason Hathcock, Mark Smalley

Also Present: Hannah Auckland, Board Attorney; Annette Corallo, Board Secretary; Leticia Chavez, Recorder; Court Reporter, Ottmar & Associates; Bradley Martin, Disability Applicant #17-01

Call to Order:

Approval of the Minutes:

August 8, 2017 – Public Meeting Minutes

MOTION: A motion to approve the public meeting minutes of the August 8, 2017 meeting was made by Danna Quinn. Motion was seconded and passed unanimously; minutes stand approved. **CORP 2017-41**

Consideration of Disability Application #17-01 - IME Review; Decision on Benefit

The Board received Application #17-01 from Bradley W. Martin for Ordinary Disability Retirement on April 20, 2017. The applicant was a juvenile detention officer in Mohave County. He was separated from employment for medical reasons on August 1, 2017. The applicant was not injured in the course of physical contact or confrontation with a probationer or detainee. The Board Secretary advised that the applicant initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting, and that the applicant was notified via certified letter that the Board would consider the IME report at this meeting and of his right to attend. The Board Secretary also advised that since the Board's last meeting, Mr. Martin has amended his application to include COPD as a disabling condition.

The applicant's physical exam dated April 18, 2013, was provided for the Board's review. The following were noted as pre-existing conditions in the physical exam report: total left knee replacement; myocardial infarction (x2); stents (x4); bilateral hearing loss – severe (+ hearing aids). Mr. Martin received a certified letter dated June 17, 2013, that informed him of the pre-existing conditions stated in the exam report.

Dr. Charles R. Breed, Board Certified in Cardiology, performed an Independent Medical Examination of the applicant on June 20, 2017. A copy of the IME report was provided, along with all medical records submitted to Dr. Breed. Dr. Breed completed the Ordinary Disability Questionnaire (Form C5-LB-O) and answered the four questions posed by the Board in the letter dated June 6, 2017, referring the applicant for the IME.

Dr. Breed stated that the applicant does not have a cardiac condition that totally and permanently prevents him from performing a reasonable range of duties within his department or a mental condition that totally and permanently prevents him from engaging in substantial gainful activity.

After receipt of the completed IME, Mr. Martin provided additional medical records on July 17, 2017. The additional records were provided to the Board for review. The only records provided that post-dated the IME exam are a “fit for duty” exam conducted at Kingman Regional Medical Center Occupational Health on June 22, 2017, and an office visit at Kingman Pulmonary Associates on June 12, 2017. The fit for duty exam stated the Mr. Martin could not safely and effectively perform his duties as a juvenile detention officer. At its meeting on August 8, 2017, the Board voted to submit the additional medical records to Dr. Breed for his review. Dr. Breed reviewed those records, along with the report of an additional office visit with his pulmonologist that Mr. Martin submitted on August 16, 2017. Dr. Breed’s addendum to his earlier report was provided to the Board for review.

The Board Secretary advised that the Board will need to make a determination on eligibility based on the IME. 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 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 stated that since the application has been updated the Board would be unable to make a determination on this case today. The Board Attorney stated that the Board could make a determination based on the current IME as it relates to the heart attack, but any additional condition would need to be evaluated by an IME physician.

Board member Jason Hathcock asked Mr. Martin if he received a copy of the updated IME report. Mr. Martin confirmed that he did receive the updated report. Jason Hathcock advised Mr. Martin that the Board would make its decision based on that updated IME report and that the Board would send Mr. Martin for another IME based on the updated disability application which now includes COPD.

The Chair asked if the Board had to make their determination on the current IME or as it relates to Mr. Martin’s pre-existing conditions. The Board Attorney stated that the Board only needs to make a general determination related to the case.

MOTION: A motion to deny Ordinary Disability benefits for Applicant #17-01, Bradley W. Martin, based on the findings of the independent medical evaluation conducted by Dr. Charles Breed as set forth in his report dated June 20, 2017, and his addendum report dated August 23, 2017, in which Dr. Breed states the applicant does not have a cardiac condition that he believes would totally and permanently prevent Mr. Martin from performing a reasonable range of duties within his department or a mental condition that totally and permanently prevents him from engaging in substantial gainful activity, was made by Jason Hathcock. Motion seconded and passed unanimously. CORP 2017-42

MOTION: A motion to send Applicant 17-01, Bradley Martin for an independent medical evaluation based on Mr. Martin's amended application which includes the condition of COPD, was made by Jason Hathcock. Motion seconded and passed unanimously. CORP 2017-43

Mr. Martin expressed his concern and confusion over the conflicting medical findings where Dr. Breed stated Mr. Martin does not have a condition that totally and permanently prevents him from performing a reasonable range or duties, and the report from Occupational Health that stated he was not fit for duty. The Chair advised Mr. Martin that the Board is bound by statute regarding decisions on disability benefits. The Board Attorney added that Dr. Breed was sent the report from Occupational Health but the Board must rely on their physician's medical expertise to make a determination.

The Chair advised Mr. Martin that the Board Secretary will contact him to schedule the IME related to COPD.

Consideration of Disability Application #11-01 - Status Update on Reevaluation

The Board approved Application #11-01 from Annette Lemond for Ordinary Disability benefits on June 7, 2011. At its meeting on May 9, 2017, during its fifth review of this case and based on medical records that seemed to indicate improvement of her condition, the Board voted to send Ms. Lemond for an independent medical reevaluation after collecting her medical records.

Staff has now obtained all medical records and contacted Medical Consultants Network (MCN) to discuss the appropriate type of specialist to conduct the exam. MCN advised that a psychiatrist would be appropriate because her ongoing psychiatric challenges appear more relevant than the limited physical symptoms (headaches). However, MCN only has one psychiatrist on contract in Colorado. AOC procurement policy requires at least three quotes for the evaluation based on the cost, so staff is now attempting to locate additional psychiatric providers of IME's in Colorado to solicit quotes. The evaluation will be scheduled after a provider can be located and contracted.

The Chair advised that staff could move forward with a single provider so long as documented contact to other providers is submitted with the quote.

Approval of Rules of Local Board Procedure:

PSPRS approved a revision of the Model Uniform Rules of Local Board Procedure on November 16, 2016. At the Board Attorney's suggestion, staff reviewed the current model rules against the Board's Rules of Procedure.

The Board Secretary advised that the model rules were extensively reformatted from the prior version. As a result, only Section A, Definitions, lends itself to expressing the changes in legislative format. The "Proposed Amendment of Definitions" displays how the Board's current rules would be modified by accepting the "Definitions" in the new Model Rules. Staff did not see any terms in the revised definitions that are inconsistent or in conflict with the current definitions used by the Board. The Board Secretary advised that the "Subcommittee" definition is a new provision in terms of its practice.

With respect to the rest of the Model Rules, the new Model Rules contain less 'legalese' in their provisions, making them more accessible to members who must follow the rules in proceedings before the Board. Listed below are the items that differ from the current rules and current Board practice in meaningful ways. The Chair requested the Board Members review and discuss each provision.

C.2.: The reference to "election" of chair is inaccurate for this Board. The reference should be to A.R.S. §38-893(A)(4), specific to the judiciary, which calls for appointment rather than election of the chair.

C.5.e.ii: The Board Secretary is not currently preparing and retaining a certificate of destruction when electronic recordings are destroyed. The Board Secretary advised that the Board's Records Retention Schedule states that electronic recordings are destroyed three months after a meeting and after minutes are transcribed or summarized and approved. The Board Attorney stated that if they Board chose to adopt this provision staff could consider what the Judiciary has in place regarding destruction of electronic records. The Chair requested that staff further research this provision and bring back to the Board for review.

D.1 and 2: Unlike as stated in the revised Model Rules, this Board does not contract directly with a designated physician; however, the departments under this Board's jurisdiction do comply with this rule. The Chair requested that staff revise the language in this provision to match with the current policy language regarding pre-existing physical exams.

D.4: The Board Secretary is not currently notifying employees that the physician or clinic has reported that the employee has a pre-existing condition prior to the Board's consideration of that employee's membership. Currently employees are being notified of a pre-existing condition after approval of their membership by the Board. If the Board implements this provision, the practical effect is that officers with pre-existing conditions will take longer to appear on the Board's membership approval list because 30 days will be given for the officer to submit comments before the officer's name is placed on the agenda. Board members agreed to adopt this provision and

stated that should any additional documentation be submitted by an employee, that documentation could be retained with their physical exam at the Board's discretion.

E.3: The Board does not currently utilize a Consent Agenda. The use of a Consent Agenda is optional, as the provision states the Board "may" authorize the Board Secretary to present Routine Claims as a Consent Agenda item. For example, if the Board wishes, it could direct the Board Secretary to place applications for retirement and survivor benefits, and/or new memberships, on a Consent Agenda.

E.5.b: The deadline for conducting a hearing on a Non-Routine Claim is extended from 60 to 90 days in the revised Model Rules. The Board Attorney advised that this is consistent with statute.

F.2.: The revised Model Rules would require that the Board determine whether the medical and other documentation submitted with a disability application is sufficient to conclude that the statutory requirements are satisfied by the Claimant and, if so, the Board "shall" direct that an independent medical evaluation be conducted. The Board Attorney advised that this is consistent with statute.

F.4: For mental examinations, the revised Model Rules would now require only that the claimant be examined by a psychiatrist (eliminating the need to also be examined by a psychologist prior to examination by the psychiatrist). The Board Attorney added that if the Board had a case in which sufficient treatment records were not provided or available, the Board could still send an applicant to a psychologist before the applicant sees a psychiatrist to conduct the IME.

G.1.c.: The Revised Model Rules would allow the Chair to direct a Subcommittee of the two elected members of the Board to review a list of Members receiving disability benefits and report the Subcommittee's recommendations regarding medical evaluations of such members to the Local Board. Since this Board only has two elected members the Chair asked if the language in this provision needed to be revised. The Board Attorney stated that she would further review and advise the Board if they could revise the language to include "two members" rather than "two elected members." The Board Secretary added that the Board is not required to have a Subcommittee. Board Member Rob Lubitz added that the Board could adopt the provision as is but would still have the opportunity to revise the rules at any time.

H.1.b: This provision will need to be modified if this Board were to be legislatively authorized to approve Employee requests to remain in ASRS.

I.4: The deadline for conducting a Rehearing is extended from 60 to 90 days in the revised Model Rules. The Board Attorney advised that this is consistent with statute.

MOTION: A motion that the Board adopt the Revised Model Uniform Rules of Local Board Procedure (dated November 16, 2016) as its own rules, pursuant to the Board's authority under A.R.S. §38-893.F, with a revision to Section C.2 to include a reference to A.R.S. §38-893(A)(4), specific to the judiciary, which provides for appointment of the Local Board chair was made by Mark Smalley.

AMENDED MOTION: The motion was amended by Mark Smalley to amend Sections C5.e.ii, D1, D2 and D4 as discussed by the Board. Motion was seconded and passed unanimously. **CORP 2017-44**

The Board asked the Board Secretary to research AOC policy on destruction of recordings as to whether a certificate of destruction is used. The Board Attorney will review and advise at the next meeting on Section G.1.c.

Approval of Normal Retirement Benefits:

MOTION: A motion to approve the payment of Normal Retirement benefits to the following applicants in about the following amounts, effective September 1, 2017, was made by Rob Lubitz. Motion was seconded and passed unanimously. **CORP 2017-45**

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|-------------------------|--|
| Robert Scott Batchelor: | \$3,515.25; Reverse DROP Estimate \$129,712.09 |
| Tom R. Hernandez: | \$1,077.30 |
| Sherri L. Justice: | \$3,571.82 |
| Karl R. Kasowski: | \$4,518.38 |
| Judy A. West: | \$1,076.83 |

Legislative Update

The Board Secretary attended the 2017 Legislative Update presented by PSPRS. The handout from the session was provided for the Board to review. The major changes prescribed in SB 1442 for CORP are:

- Effective July 1, 2018, closes CORP for all current designated positions, except for Probation and Surveillance (AOC). This means that juvenile detention officers hired beginning July 1, 2018, will participate in the Defined Contribution Plan.
- Creates a Defined Contribution (DC) Plan for a new hire after July 1, 2018. The employer contribution rate for CORP DC is 5%. The Employee contribution rate for CORP DC is 7%. When a member joins, they have a one-time option to select an employee contribution rate lower than 7%, but the rate must be at least 5%.
- CORP DC members participate in the PSPDCRP disability program.
- Public Safety and CORP DC members are not eligible for an ordinary disability under the PSPDCRP disability program.
- Death benefits are available to surviving spouses or eligible children of CORP PSPDCRP participants who are killed in the line of duty or die from injuries suffered in the line of duty.
- Tier 3 CORP members, other than judiciary probation and surveillance officers, are automatically enrolled in the PSPDCRP.

- Tier 3 judiciary probation and surveillance officers have 90 days after their hire date to select either the DB (Defined Benefit) or the DC Plan. If a decision is not made within 90 days, the member will be enrolled in CORP. The decision is irrevocable and is the election for the remainder of the employee's employment with any employer under the plan.
- Normal retirement for Tier 3 CORP members is 10 years of service and at least 55 years old. The monthly benefit is equal to the member's average monthly salary multiplied by the number of whole and fractional years of credited service multiplied by a multiplier. The multiplier for Tier 3 CORP members is as follows:
 - 1.25% for members with 10 but less than 15 years of service;
 - 1.50% if the member has at least 15 but less than 20 years of service;
 - 1.75% if the member as at least 20 but less than 22 years of service;
 - 2.00% if the member has at least 22 years but less than 25 years of service;
 - 2.25% if the member has at least 25 years of service.

A copy of SB 1442 was provided to the Board for review. The Board Secretary advised that no implementation planning for the CORP changes has occurred to date at Public Safety. The Board Secretary agreed to serve on the Implementation Workgroup for the CORP changes.

Acknowledgement of CORP Physical Exam Final Letters:

The Chair noted, for the record, that physical examination reports for Ashley M. Blaurock and Shelli McClure were not received within 60 days of receipt of their membership applications and that final letters requesting an examination were sent to these members via certified mail on August 25, 2017.

Approval of Membership:

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|-------------------------|----------|------------|
| Beck, Sheley | Pinal | 5/22/2017 |
| Blaurock, Ashley | Pima | 5/30/2017 |
| Briscoe-George, Valerie | Apache | 2/6/2017 |
| Burton, Christopher | Apache | 4/10/2017 |
| Contreras, Norma | Pima | 8/6/2017 |
| Flores, Mariano | Yuma | 8/14/2017 |
| Howell, Cyndee | Mohave | 5/1/2017 |
| Judd, Chase | Maricopa | 7/17/2017 |
| Lopez, Audrey | Maricopa | 8/14/2017 |
| McClure, Shelli | Yavapai | 5/21/2017 |
| Metzger, Victoria | Maricopa | 8/14/2017 |
| Nelson, Andrew | Yavapai | 6/5/2016 |
| Pollard, William | Maricopa | 7/17/2017 |
| Prieto, Erwinn | Maricopa | 7/17/2017 |
| Reynaga, Gerardo | Pima | 7/10/2017 |
| Rhode, Christopher | Coconino | 12/19/2016 |

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|-------------------|----------|-----------|
| Stover II, Dennis | Apache | 6/6/2017 |
| Taylor, Tiana | Maricopa | 7/17/2017 |
| Yarosh, Scott | Apache | 6/5/2017 |

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

MOTION: A motion to approve the 19 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 Sheley Beck, Valerie Briscoe-George, Christopher Burton, Mariano Flores, Cyndee Howell, Christopher Rhode, Dennis Stover, Tiana Taylor and Scott Yarosh identified a physical or mental condition or injury that existed or occurred before the member’s date of membership in the plan was made by Danna Quinn. Motion was seconded and passed unanimously. CORP 2017-46

Future Agenda Items:

Board member Jason Hathcock asked if there was any update to the Potential Amendment to A.R.S. §38-891(F). The Chair responded that he will speak to Jared Smout at Public Safety about this statute and its impact on this Board.

Call to the Public:

No members of the public addressed the Board.

The meeting was adjourned at 10:44 a.m.

Transcribed September 5, 2017