

**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 Monday, December 7, 2015, 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; Jason Hathcock, Mark Smalley, Rob Lubitz

**Board Members Absent:**

Danna Quinn

**Also Present:**

Hannah Auckland, Board Attorney; Annette Corallo, Board Secretary; Leticia Chavez, Recorder; Court Reporter, Ottmar & Associates; Mark E. Frankel, MD (by telephone); Ruth K. Marblestone (by telephone); Monique R. Usher (by telephone); Randy Garo (by telephone)

**Call to Order:**

**Approval of the Minutes:**

November 3, 2015, Public Meeting Minutes

**MOTION: A motion to approve the November 3, 2015 Public Meeting Minutes was made by J. Hathcock.** Motion was seconded and passed unanimously, minutes stand approved. **CORP 2015-71**

**Consideration of Disability Application #15-01 – IME Decision:**

**MOTION: A motion to enter Executive Session to receive legal advice was made by R. Lubitz.** Motion was seconded and passed unanimously. **CORP 2015-72**

**MOTION: A motion to return to open session was made by M. Smalley.** Motion was seconded and passed unanimously. **CORP 2015-73**

The Board received Application #15-01 for Ordinary Disability from Ruth K. Marblestone on May 14, 2015. The applicant was a Juvenile Probation Officer in Pima County. She terminated employment on July 31, 2015, for Health/Medically Unfit reasons. The applicant was not injured in the course of physical contact or confrontation with a probationer or detainee. The applicant identified the disabling conditions as “Herniated disks at C4-5 and C-6. Advanced Degenerative Disk Disease L3-4 and L4-5” per the applicant’s response to the Board Secretary’s request for identification of the medical condition(s) via email dated May 14, 2015.

The applicant was notified via certified letter that the Board would consider her application at this meeting and of her right to attend. The Board Secretary advised that the applicant initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting.

Complete medical records were obtained from all of the providers listed in Ms. Marblestone's application, which were related to the 2012 accident, and from those providers later submitted by the applicant for a previous motor vehicle accident in 2008.

A copy of the applicant's physical exam dated October 2, 2012, was provided. A copy of the Board's certified letter dated November 16, 2012, noting a pre-existing condition was also provided. The exam identified a pre-existing condition: "Status post lumbar laminectomy."

A.R.S. § 38-886.01(E) may be a consideration in the Board's determination given the pre-existing condition noted in the applicant's physical exam. The statute provides:

"A member does not qualify for an ordinary disability pension if the local board determines that the member's disability results from any of the following:

1. An injury suffered while engaged in a felonious criminal act or enterprise.
2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.
3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the plan."

IME Reports:

Dr. Mark E. Frankel, Board Certified Orthopedic Surgeon, performed an Independent Medical Examination of the applicant on September 30, 2015. A copy of Dr. Frankel's IME report was provided to the Board.

Dr. Gary Prince, Board Certified in Psychiatry, performed an Independent Medical Examination of the applicant on October 21, 2015. A copy of Dr. Prince's IME report was provided to the Board. Prior to the appointment with Dr. Prince for the psychiatric IME, the applicant saw Dr. John Beck for a psychological evaluation on October 6, 2015, for evaluation and testing. A copy of Dr. Beck's report was also provided to the Board. Dr. Prince reviewed the results of the psychological evaluation and testing before performing the psychiatric IME.

The Chair noted for the record that Dr. Frankel and Ms. Marblestone were present via conference call.

Ms. Marblestone confirmed that she received copies of the independent medical evaluations and the psychologist's report via certified mail.

The Chair noted for the record that Ms. Marblestone sent in some comments regarding the IME reports via email to the Board Secretary on December 2, 2015. Those comments were provided to the Board for review.

Regarding the physical aspect of the injury and the IME conducted by Dr. Frankel, the Chair had a question regarding Dr. Frankel's response to Question #1 on page six of the IME report. In the report, Dr. Frankel stated that he was concerned Ms. Marblestone would have some problems performing the physical demands of her job. However, on Form C5-LB-O, under the Physician Response, Dr. Frankel answered "No" to Question #2, which asks if the physical injury totally and permanently prevents the employee from performing a reasonable range of duties within the employee's department.

The Chair asked Dr. Frankel to elaborate on the two apparently conflicting responses within his report to the Board.

Dr. Frankel stated that the question on form C5-LB-O was a compound question and clarified that his reasoning for answering "No" on Question #2 was that he believes with time and treatment Ms. Marblestone's physical disability would resolve. However, Dr. Frankel stated that at the present time he was concerned about the vigorous strenuous aspect of Ms. Marblestone's job.

The Chair asked if the time and treatment needed for Ms. Marblestone's recovery would be over a year. Dr. Frankel stated that he believed it would be over a year. Dr. Frankel also added that without treatment his answer would be "Yes" to Question #2, which asked if the physical injury totally and permanently prevents the employee from performing a reasonable range of duties within the employee's department.

Board Member Jason Hathcock confirmed with Dr. Frankel that his opinion is that Ms. Marblestone is physically disabled for at least one year. Dr. Frankel responded affirmatively.

The Chair also had a question regarding the response to Question #4 of the IME report, in which Dr. Frankel states that the pre-existing condition does factor into Ms. Marblestone's current disability. However, on Form CB-L5-O, which asks whether the injury occurred prior to the applicant's CORP membership date, Dr. Frankel answered that the pre-existing condition did not cause the current condition. The Chair asked Dr. Frankel to clarify his responses to those questions.

The Board Attorney added that, in answering the Chair's question, Dr. Frankel is asked to indicate whether or not Ms. Marblestone's current disability condition is the result of a pre-existing condition and whether or not he could state to a reasonable degree of medical certainty that the 2012 accident was more likely than not, or less likely than not, a substantial contributing cause of Ms. Marblestone's current condition.

Dr. Frankel stated that the accident was more likely than not to be the cause of her disabling condition.

The Board had no further questions for Dr. Frankel or Ms. Marblestone.

The Board Attorney advised the Board that a decision regarding the physical condition could be made and the mental condition could be addressed at a later meeting.

**MOTION: A motion to (1) approve the application for Ordinary Disability Retirement benefits from Applicant #15-01, Ruth K. Marblestone, based on the independent medical evaluation report dated September 30, 2015, and clarification from Dr. Frankel via conference call that the physical disability is total and permanent, and that the pre-existing condition is not to a substantial degree the cause of her current condition; (2) approve an Ordinary Disability Benefit for Ruth K. Marblestone in about the amount of \$134.15 effective August 1, 2015; and (3) review this matter again in one year pursuant to A.R.S. §38-886.01.D., was made by J. Hathcock. Motion was seconded and passed unanimously. CORP 2015-74**

The Chair advised Ms. Marblestone that the Board would also have some clarifying questions for Dr. Prince regarding the mental condition but would have to table the issue as Dr. Prince was not available via conference call. The Chair advised Ms. Marblestone that even though the Board approved her disability application as it pertains to the physical condition, the Board will need to resolve the mental condition as well in the event that the physical condition is resolved in the next year with treatment.

The Chair shared with the Board that he would like to have the following clarifying questions asked of Dr. Prince. The Chair requested that the Board Secretary prepare the questions in a letter to Dr. Prince as follows:

1. On page 7 of your report, in your response to Question #2, you stated, “At this time, in the midst of active posttraumatic stress disorder that requires much more work, she is not capable of any gainful employment even in a low-stress environment with understanding supervisors.” But on the Form C5-LB-O, you answered “No” to Question #2, as to whether the mental condition totally and permanently prevents Ms. Marblestone from engaging in any substantial gainful activity. Can you clarify what seems to be a conflict between your statement on page 7 and your response to Question #2 on the Form C5-LB-O?
2. You qualified your statement on page 7, Question #2, with the preface phrase “At this time...” If you believe that Ms. Marblestone’s current PTSD status is likely temporary, can you discuss or estimate the timeframe that she will be in active treatment?
3. You reviewed Dr. Beck’s report of his psychological examination and testing. On page 7 of his report, Dr. Beck stated: “Overall, on the objective psychological testing, the examinee presents no acute signs of emotional stress. She was open and honest with the testing and skills were well within normal limits. There were no significant signs of any acute depression or any anxiety raised. However her underlying pattern of response is consistent with a diagnosis of PTSD but in remission at this time.” Please explain whether you agree or disagree with Dr. Beck that Ms. Marblestone’s PTSD is in remission at this time.

**MOTION: A motion to send the clarifying questions to Dr. Prince as stated by the Chair and to have Dr. Prince available via conference call at the Board’s next scheduled meeting was made by R. Lubitz.** Motion was seconded and passed unanimously. **CORP 2015-75**

**Review of Notice of Retiree Return to Work: (Taken Out of Order)**

The Board received a Notice of Retiree Return to Work from Pima County for Salvatore Calabrese. The form indicates that Mr. Calabrese retired from the Pima County Superior Court under CORP effective November 1, 2015, and returned to work for the Pima County Superior Court on November 2, 2015, as an Intermittent Probation Officer.

**MOTION: A motion that the Board received a Notice of Return to Work for Salvatore Calabrese and finds that (1) Mr. Calabrese is eligible to continue to receive a CORP pension and (2) Mr. Calabrese’s employer (Pima County) is not responsible for paying the CORP alternate contribution rate on his behalf was made by M. Smalley.** Motion was seconded and passed unanimously. **CORP 2015-76**

**Approval of Normal Retirement Benefits: (Taken Out of Order)**

The Local Board may consider and vote on the approval of Normal Retirement benefits for the following applications or defer decision to a later date:

Colleen M. Curran  
Ramon J. Garcia, Jr.  
William N. Stricklin

The Board Secretary advised that the effective CORP retirement date for Colleen M. Curran and Ramon J. Garcia was December 1, 2015. The effective date for William N. Stricklin was November 1, 2015.

**MOTION: A motion to approve the payment of Normal Retirement benefits to the following applicants in about the following amounts, effective December 1, 2015, except as noted was made by J. Hathcock.** Motion was seconded and passed unanimously. **CORP 2015-77**

Colleen M. Curran:	\$3,399.48 (Reverse DROP Estimate: \$41,130.15)
Ramon J. Garcia, Jr.:	\$4,666.83
William N. Stricklin:	\$3,272.43 (effective November 1, 2015)

**Approval of Membership: (Taken Out of Order)**

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

Bennett, Taylor	Pima	10/5/2015
Blair, Matthew	Maricopa	7/17/2015
Breemes, Lindsey	Maricopa	10/12/2015
Coria, Christina	Maricopa	10/12/2015

Grasso, Adriana	Pima	10/19/2015
Guzman, Eric	Maricopa	8/31/2015
Kim, Bo	Pima	10/18/2015
Little Jr., Charles	Maricopa	11/9/2015
Livingston, Katie	Pinal	10/26/2015
Lopez-Linton, Erica	Pinal	10/26/2015
Matthews, Karen	Pima	10/19/2015
Sanchez, Sandra	Maricopa	9/14/2015
Shelton, Keith	Coconino	10/26/2015
Smith, Lesley	Yavapai	7/5/2015
Yates-Arce, Crystal	Maricopa	10/12/2015

**MOTION:** A motion 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 Taylor Bennett, Lindsey Breemes, Adriana Grasso, Charles Little Jr., Katie Livingston, Erica Lopez-Linton, Karen Matthews, Lesley Smith and Crystal Yates-Arce 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 J. Hathcock. Motion was seconded and passed unanimously. **CORP 2015-78**

**Consideration of Disability Application 09-01 – Annual Review (Taken Out of Order):**

The Board approved Application #09-01, Rosella Roberts, for Ordinary Disability benefits on September 2, 2009. Ms. Roberts was advised via certified mail that the Board would conduct an annual review at this meeting.

The Board Secretary advised that the applicant did not sign the confidentiality waiver to allow discussion of medical information in open session, so any discussion of the applicant's medical information should occur in executive session.

On September 24, 2015, via certified letter, the applicant was asked to provide all medical treatment records since October 1, 2014, to assist the Board in determining whether an independent medical reevaluation of the applicant's condition is necessary.

No records have been received in response to the Board's request as of December 7, 2015. The Board office received delivery confirmation of its letter dated September 24, 2015, requesting that current records be submitted by November 13, 2015. The Board Secretary contacted Ms. Roberts by telephone on November 17, 2015, to inquire about the status and Ms. Roberts stated that she would contact her medical providers again to ask that they send her records.

The Board has voted for the past four years to suspend the requirement that Applicant #09-01 undergo a medical reevaluation for one year (October 28, 2010; September 7, 2011; September 6, 2012; February 5, 2014; December 2, 2014).

The Board Secretary advised that the applicant's earliest normal retirement date would have been August 22, 2018, when she would attain 20 years of service.

The Board requested that the Board Secretary follow up with the applicant regarding the medical records and to allow one more month for the records to be received.

**MOTION: A motion to continue to seek medical records from Applicant #09-01, Rosella Roberts, before the Board's next meeting and to table review of this case until the medical records have been received, was made by M. Smalley.** Motion was seconded and passed unanimously. **CORP 2015-79**

**Future Agenda Items (Taken Out of Order):**

The Board Secretary advised that the Board would be unlikely to be able review Disability Case #15-02 until its February meeting.

Board Member Jason Hathcock asked if the 2016 membership audit had begun. The Board Secretary advised that the membership list was just received from Public Safety, and she will begin auditing the list against the Board's records in December.

Board Member Jason Hathcock asked if there was any update on the cancer insurance offering. The Chair stated that a bill will be proposed for the upcoming legislative session and has been reviewed to make sure it includes not only probation officers but also surveillance officers.

Board Member Jason Hathcock asked if there was any update on the Reverse DROP training. The Board Secretary advised that training sessions in Navajo and Mohave counties were held in November, as well as a session for the Maricopa County Juvenile Officers at Durango. The Board Secretary also advised that she will present training at Maricopa County Juvenile Southeast on December 9. Maricopa County Adult Probation has still not contacted the Board Secretary to schedule any training sessions.

The meeting was recessed for 15 minutes while the Board waited for Application #15-03, Monique R. Usher, to join the meeting.

**Public Session Resumed – 11:15 a.m.**

**Consideration of Disability Application #15-03, Monique Usher – IME Decision (Taken Out of Order)**

The Board received Application #15-03 for Accidental Disability benefits from Monique R. Usher on November 9, 2015. The applicant was a Surveillance Officer in Pinal County. Pinal County Human Resources confirmed that the applicant has terminated employment. The applicant identified the disabling condition as "PTSD from incidents that occurred on duty, out in the field during contacts." The applicant was notified via certified letter that the Board would consider the application at this meeting and of her right to attend. Ms. Usher was in attendance via conference call.

The Board Secretary advised that the applicant initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting. The applicant also provided treatment records and reports of medical findings from some of the providers listed in her application.

Since the application referred to incidents that occurred on duty, the Board Secretary contacted Ms. Usher to request documentation of the incidents to confirm that the incidents met at least one of the criteria for Accidental Disability benefits per A.R.S. § 38-881.1:

- (a) physical contact with inmates, prisoners, parolees or persons on probation;
- (b) responding to a confrontational situation with inmates, prisoners, parolees or persons on probation
- (c) a job-related motor vehicle accident while on official business for the employee's employer.

Ms. Usher agreed to send incident reports but indicated in an email dated November 12, 2015, that she should have applied for Ordinary Disability and not Accidental Disability benefits, because Ordinary Disability is better suited to her circumstances. In reviewing the incident reports she provided, the Board agreed it does not appear that either incident involved physical contact or responding to a confrontational situation with persons on probation, nor a job-related motor vehicle accident. The Board was asked to determine whether Ms. Usher should instead be considered for Ordinary Disability benefits.

The Board Secretary also advised that the applicant's physical exam dated December 21, 2011, identifies "White Coat" hypertension as a pre-existing condition.

The Chair asked Ms. Usher to confirm the type of disability she would like to apply for. Ms. Usher stated that she would like to amend her application to apply for Ordinary Disability benefits.

Board Member Jason Hathcock asked if Ms. Usher could elaborate on the notation in her CORP Physical Exam which states that she sought counseling for mental health problems. Ms. Usher stated that she participated in grief therapy after the loss of a family member.

**MOTION: A motion to defer decision on an independent medical evaluation until full medical records are available for the Board's review was made by M. Smalley.**

**Discussion:**

The Chair felt that since the Board must base its decision on an independent medical evaluation, the Board should direct the Board Secretary to schedule the IME when all medical records are received.

**AMENDED MOTION: A motion to obtain complete records of medical treatment and findings from all providers listed in Application #15-03 and to refer Applicant #15-03 for an independent medical evaluation upon receipt of records from all providers listed in the application, was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2015-80**

The meeting was recessed for 15 minutes while the Board waited for Applicant #14-01, Randy Garo, to join the meeting.

**Public Session Resumed – 11:33 a.m.**

### **Consideration of Disability Application #14-01 – Annual Review (Taken Out of Order)**

The Board approved Application #14-01, Randy Garo, for Ordinary Disability benefits on September 9, 2014. This matter is brought to the Board for an annual medical of medical records. The applicant initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting. Ms. Garo was in also in attendance via conference call.

The applicant was asked to provide medical treatment records since October 1, 2014, to assist the Board in determining whether an independent medical re-evaluation of the applicant's condition is necessary (see letter dated September 24, 2015).

Some medical records were received from the applicant on October 5, 2015, and were provided for the Board's review. The Board Secretary advised that the remaining records were received the morning of this meeting, which does not allow the Board the proper time to review them. The Chair suggested that Board table this item to allow the Board to review the newly-received medical records.

The Board established on September 9, 2014, that the disabled member's condition should be reevaluated in one year. The applicant's earliest normal retirement date would have been June 10, 2022, when she would attain 62 years of age and 10+ years of service.

Board Member Rob Lubitz asked Ms. Garo if she had completed the MRI that the IME doctor had stated was to take place six months after the last exam. Ms. Garo stated that she had not yet scheduled the IME, but she is confident the MRI can be conducted before the Board's next review of her case.

**MOTION: A motion to continue to seek current medical records from Applicant #14-01, and to table review of the case until the Board's meeting in March 2016, was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2015-81**

#### **Call to the Public:**

No members of the public addressed the Board.

The meeting was adjourned at 11:39 a.m.

Transcribed December 7, 2015