

**MINUTES OF THE LADY LAKE  
SPECIAL POLICE PENSION BOARD MEETING  
LADY LAKE, FLORIDA  
MAY 29, 2014**

The Police Pension Board Meeting was held in the Commission Chambers, 409 Fennell Blvd., Lady Lake, Florida. The meeting convened at 4:30 p.m.

**1. Call to Order/Roll Call:** Chairperson Wherry called the meeting to order at 4:30 p.m. and proceeded with roll call.

**MEMBERS PRESENT:** Chairperson Officer Vernon Wherry, Member John Schmied, Member Sgt. Robert Tempesta, Member Dee Dee Rountree; and Member Van Reynolds

**TOWN STAFF PRESENT:** Kris Kollgaard, Town Manager/Town Clerk; Jeannine Michaud, Finance Director; Tia O’Neal, Human Resource Director; and Nancy Slaton, Deputy Town Clerk

**ALSO IN ATTENDANCE:** Scott Christiansen of Christiansen & Dehner, P.A.; Commissioner Tony Holden; Commissioner Dan Vincent; and Brice and Lisa Noble

**2. Public Comment**

Chairperson Wherry asked if anyone in the audience had any comments or questions. There were no comments.

Prior to proceeding with the agenda, Chairperson Wherry introduced and welcomed the Police Pension Board’s two new members: John Schmied and Van Reynolds.

**3. Hearing Regarding the Disability Claim for Brice Noble**

Attorney Scott Christiansen of Christiansen and Dehner, P.A., stated this is an initial, informal hearing and there will be review of procedure, criteria and records prior to making a decision on the disability claim for Mr. Noble. He noted that Mr. Noble is present along with his wife, Lisa.

Mr. Christiansen reviewed the rules of procedure, stating they are conducted under Rule #14 – Operating Rules adopted by the Board. He stated it begins with the filing of an application for a disability pension, with a letter attached from a doctor wherein the doctor indicates that the individual is totally and permanently disabled and unable to perform the duties of a police officer. Once the application is filed, the applicant is then sent an interrogatory questionnaire about the nature of the disability; when and how it occurred, and whether there was a pre-existing condition. It also includes questions about all healthcare providers.

Mr. Christiansen stated a number of medical authorization forms are also sent to the claimant which have the claimant acknowledge the fact that records will be collected and that the records will be reviewed at a public hearing and will become subject to public inspection if requested. The forms also authorize any doctors and healthcare providers to provide copies of records to the Board. All of the records are collected by the Board’s attorney’s office, including personnel records from the Town, and then an Independent Medical Evaluation (IME) appointment is set up for the claimant with a doctor who has expertise in the area in question; in this case, Dr. Gary

Jay. This doctor is provided with a copy of all of the records and completes his own examination of the claimant, and then provides his opinion of the case. The claimant is also provided a copy of all the records, and as such, can review and notify the attorney's office if anything is missing or if the claimant feels something is not right.

Mr. Christiansen stated the doctor performing the IME is provided with a list of specific questions from his office in order to assist the Board with making a determination on the claim. Once all of this information is received by the attorney's office, an initial, informal hearing is scheduled and a notice is sent to the claimant. He stated that the Board has three choices at this hearing:

- 1) The Board finds that all the criteria is established by the records to grant the disability pension effective today.
- 2) The Board finds that one or more criteria has not been established by the records provided and the claim is denied. The claimant would have a right to request a formal evidentiary hearing before this board and may obtain additional statements/affidavits from a doctor, and if lawyers are involved, may obtain depositions. Testimony could be heard at a formal hearing as a result.
- 3) The Board identifies that they need additional information or explanation, perhaps from a doctor, in which case the Board would recess and come back at another time for the initial hearing.

Mr. Christiansen stated that if there was a formal evidentiary hearing, the Board would have the same three choices, and if the claim was approved at that hearing, the pension would become effective the same date. If the claim was denied again, the claimant has the right to appellate proceedings at the circuit court level and the case would be reviewed by virtue of a Petition for Writ of Certiorari. This is allowed if the claimant feels the Board did something wrong or made a procedural error, etc., and can appeal their decision in front of a circuit court judge, although no new evidence would be heard.

Mr. Christiansen reported that the burden of proof is on the claimant, even though the attorney's office collects the records, and the claimant has the right to supplement the records. He stated the standard of proof for this type of proceeding is based on a preponderance of the evidence, rather than beyond a reasonable doubt as in criminal proceedings. Mr. Christiansen also stated that this is not an adversarial proceeding; his duties are to collect the records of documentary evidence and to answer any legal issue questions.

Mr. Christiansen read the criteria as per the Plan under Section 10.5-38 as follows: *Any member who shall become totally or permanently disabled to the extent that he is unable by reason of a medically determinable physical or mental impairment to render useful and efficient service as a police officer has a right to a disability pension.* He stated that the definition of totally disabled for the Board's purposes means unable to perform service as a police officer for this department, not whether he can work at any other job. He explained that permanent disability means that the claimant's condition is not likely to get better to the point that he can be a police officer again.

Mr. Christiansen stated the claimant would *not* have a right to a disability pension from the Town's plan if the disability was caused by any of the following disqualifying conditions: a) excessive use or habitual use of any drugs, intoxicants or narcotics, b) injury or disease sustained

by willfully and illegally participating in fights, riots or civil insurrections, or while committing a crime, c) injury or disease sustained while serving in any branch of the armed forces, d) injury or disease sustained by the member after his employment as a police officer with the Town of Lady Lake shall have terminated, and e) injury or disease sustained by the member while working for anyone other than the Town and arising out of such employment. Mr. Christiansen stated that in his review of the records, he did not see that any of these conditions would apply.

Mr. Christiansen stated that if the Board does find that the claimant is totally and permanently disabled, and no exclusionary conditions apply, then the final decision is whether the disability is in line of duty or not in line of duty. He stated this decision is critical in this case as Mr. Noble only had eight years of service in the department and is only eligible for an in line of duty disability pension. A member must have at least ten years in service to be eligible for a not in line of duty disability pension.

Mr. Christiansen stated that an in line of duty disability claim is through direct evidence that the injury or disease is a direct result of the claimant performing his duties as a police officer, or resulting from a provision in FS 112.18 regarding presumptive disabilities. He explained that the presumption is defined as *any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence provided that the member had successfully passed a physical examination upon entering into service, including a cardiogram, and the examination failed to reveal any evidence of such condition.* Mr. Christiansen stated that the presumption is rebuttable if there is evidence from a doctor stating that the disability is definitely not the result of hypertension or heart disease.

Mr. Christiansen stated that Mr. Noble was employed by the Town as a police officer in 2005, and had completed approximately 8  $\frac{3}{4}$  years of service when terminated by the Town in December of 2013. The condition Mr. Noble is basing his claim on is a cerebral vascular accident, or stroke, which occurred in February, 2013. Mr. Christiansen stated Mr. Noble was 60 years old and was terminated by the Town for medical reasons after he attempted to return to work after suffering a stroke and going through therapy. The Town determined that because of the residual effects of Mr. Noble's stroke, he was unable to effectively perform the duties of a police officer and he was terminated. Mr. Christiansen stated this is important because the Board cannot legally find that the claimant is not totally disabled because the Town has determined him unable to perform his job as police officer. He stated that the totally disabled determination has already been made, and what the Board now needs to determine is whether it is permanent and whether exclusionary factors apply, and whether the disability is in line of duty.

Mr. Christiansen reviewed the records of the case. He stated that medical records were received from Leesburg Family Medical Center and Dr. Anthony Shydohub (a neurophysiologist). Mr. Christiansen stated that Dr. Shydohub reported that he felt Mr. Noble's stroke was the result of hardening of the arteries and his stressful work activities. He stated records were also received from Leesburg Regional Medical Center; Karen Kuperburg, ARNP; and Dr. Sunil Kakkar, whose opinion was that Mr. Noble could not return to work as a police officer because of his residual impairment, and he indicated Mr. Noble was at maximum medical improvement for hypertension. Records were also received from Lake Center for Rehabilitation where he received therapy.

Mr. Christiansen reported that the Independent Medical Evaluation was conducted by Dr. Gary Jay, a neurologist. He stated an issue was that a stroke could be considered either cardiovascular or neurological, or both. Mr. Christiansen stated that Dr. Jay did a good job answering the questions he asked in order to be able to determine whether this claim could be considered in line of duty or not in line of duty, specifically. He stated that the Board needs to discuss whether the presumption of in line of duty has arisen - whether Mr. Noble's stroke was caused by hypertension or heart disease. Mr. Christiansen reported that all the doctors across the board reported that Mr. Noble would not be able to be a police officer anymore, and that it would be a permanent condition. He stated that Dr. Jay in particular reported his opinion that the claimant cannot perform the duties of a police officer because of the lacunar infarction, as this would typically indicate a probable hypertensive etiology, or cause, of the stroke and would fall under the hypertensive/heart condition impairment of health.

Mr. Christiansen asked if the claimant or his wife had any questions or comments.

Lisa Noble stated they had no questions or comments at this time.

Member Dee Dee Rountree asked if Mr. Noble had any issues when he was hired.

Mr. Christiansen replied that the records show that Mr. Noble did have a physical when he was hired, and it included an EKG, which was normal. He stated that possibly the reason for the presumption is that the Florida Legislature realized that a police officer has a very stressful job and should not have to prove that the stress of the job caused hypertension or heart disease, and as long as it was not present at the time of hire and developed later, it could be presumed to be in line of duty.

Member Reynolds asked if there is a provision in the Town's plan regarding a time frame for developing a presumptive condition such as hypertension or heart disease.

Mr. Christiansen replied that other than the examination at hire, the plan has no time frame.

***Upon a motion by Member Tempesta and seconded by Member Rountree, the Board approved the disability claim by Brice Noble for an In the Line of Duty Disability, by a vote of 5-0.***

Mr. Christiansen reported that the pension benefit is effective as of today, and the claimant will get a partial check for two days, and a full check beginning the first of the month. He stated the actuary needs to be contacted to have the calculation done, and optional forms of benefits can be selected, and should be completed as soon as possible. Mr. Christiansen stated he has an order made out to be signed by the Board secretary and a copy can be given to the claimant. He stated the records distributed to the members for this hearing should be turned into the Clerk's office for shredding, and they will keep one copy for the record.

On a side note, Mr. Christiansen informed the members that the disability hearing for Mr. Stienstra was originally scheduled for June 11, 2014, but Mr. Stienstra's attorney was not available on that date, and it was tentatively rescheduled for July 16<sup>th</sup> at 4 p.m. He reminded the members of the next regular Police Pension Board meeting on June 11, 2014, with the training to follow. Mr. Christiansen stated he was sorry that one of the new members will not be able to attend.

Town Manager Kris Kollgaard asked if any of the members would be on vacation in July.

Member Rountree replied that she will be out of town the week following the 4<sup>th</sup> of July.

#### **4. Adjourn**

*With no further business to discuss, Chairperson Wherry adjourned the meeting at 5:13 p.m.*

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Kristen Kollgaard, Town Clerk

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Chairperson Officer Vernon Wherry

Transcribed by Nancy Slaton, Deputy Town Clerk