

**MINUTES OF THE POLICE PENSION BOARD MEETING
TOWN OF LADY LAKE, FLORIDA**

December 6, 2018

This special meeting of the Lady Lake Police Pension Board was held in the Commission Chambers at Lady Lake Town Hall, 409 Fennell Blvd., Lady Lake, Florida. The meeting convened at 2:30 p.m.

MEMBERS PRESENT

Chairperson and Member Captain Jason Brough

Member Captain Robert Tempesta

Member John Schmied

Member William Farley

MEMBERS ABSENT

Member Leonard Cieciek

STAFF PRESENT

Kris Kollgaard, Town Manager; Chief Chris McKinstry, Police Department; Pam Winegardner, Finance Director; and Nancy Slaton, Deputy Town Clerk

ALSO IN ATTENDANCE

Kevin Stone of Stone & Gerken, P.A.

Jason Fox, Attorney for Disability Applicant Darwin Santos

Darwin Santos, Disability Applicant

Sandra Glick, Court Reporter

A. CALL TO ORDER

Chairperson and Member Captain Jason Brough

B. ROLL CALL

All were in attendance with the exception of Member Cieciek.

C. PUBLIC COMMENT

Chairperson Captain Brough asked if anyone in the audience had any comments. There were no comments.

D. NEW BUSINESS

1. Hearing Regarding the Disability Claim of Darwin Santos

Kevin Stone of Stone & Gerken, P.A. asked those present to introduce themselves.

Attorney Jason Fox of the firm Bichler, Oliver, Longo and Fox, PLLC, introduced himself as counsel on behalf of Mr. Santos.

Mr. Darwin Santos introduced himself.

Mr. Stone stated that this is an initial hearing for Mr. Santos' claim for a disability pension under the Board's rules of procedure. He stated this is a quasi-judicial proceeding, and any testimony given today will be given under oath. He stated anyone who intends to give fact testimony other than an attorney needs to do so under oath.

Mr. Santos was sworn in by Mr. Stone.

Mr. Stone stated his job is to provide the Board members with a set of standards they will be using to make a determination at this initial hearing. He stated the Board may make findings that lead to the approval of the disability retirement based on several elements which include whether the claimant is disabled, and whether the claimant is wholly unable to render useful and efficient service as a police officer, and whether the claimant is likely to remain disabled. These standards are applied in regard to whether the claimant is unable to fully perform the Town of Lady Lake's job description for a police officer. If the Board finds in favor of the claimant's disability claim, they will then need to decide whether the disability is an in line of duty injury.

Mr. Stone noted that the Board members received the full packet electronically for the disability claim by Mr. Santos. It included correspondence, medical records, reports of treating and examining physicians, the statement of the claimant, personnel files from the Town, responses to interrogatories, and the Independent Medical Examination (IME). Mr. Stone instructed the Board to rely only on competent, substantial evidence presented at the hearing, and not on information or things they may have seen or heard that are not presented at the hearing. If the Board finds that one of the elements that is required has not been met after review of these documents and testimony provided today, they can deny the claim for today's purposes. The Board can specify in an order the reasons for denial and what additional evidence is required from the claimant. If that is the case, the claimant has the opportunity to request a full hearing and will come back with testimony. Another choice is that the Board may continue the hearing and collect more information.

Mr. Stone noted that the Town Manager of the Town of Lady Lake brought to his attention that an ordinance of the Town states that someone who is terminated is not eligible for disability

benefits unless the termination was for medical reasons. He stated he would like the claimant's attorney to address this legal issue. Mr. Stone stated Mr. Santos' termination arose out of a Workers' Compensation proceeding where there was an agreement between the Town and the claimant to settle Workers' Compensation claims. Part of that settlement was that the claimant agreed to stop working that day. The Board will need to determine whether Mr. Santos was eligible to apply for disability benefits at the time he applied.

Mr. Stone recommended that the Chair give the claimant or his representative an opportunity to make a brief presentation.

Chairperson Captain Brough asked if anyone had any questions.

Member Farley asked what level of disability Mr. Santos is applying for, as he does not have a full 20 years on the job.

Mr. Stone stated the disability pension benefit is irrelevant to this proceeding. The Board's ordinance provides that there is a minimum of 42% of salary that is paid out as a benefit.

Mr. Fox made his presentation. He confirmed that Mr. Santos is applying for disability benefits based upon being permanently and totally disabled based upon an in line of duty back injury that occurred while directing traffic. He noted that the injury is deemed being totally disabled if the claimant is unable to perform 100% of the functions listed in the Town's job description for a law enforcement officer. Mr. Fox pointed out that the Board's IME physician agreed that Mr. Santos would not be able to perform 100% of the duties of a police officer. He stated that even following surgery, there is significant nerve injury that was not resolved that would prevent Mr. Santos from performing the duties of a police officer. Mr. Fox stated this would deem the injury permanently disabling, and suffered in the line of duty.

Mr. Stone confirmed that the Board members have access to all the documents electronically in regard to this hearing.

Mr. Fox stated Mr. Santos' application for disability was dated the same date that Workers' Compensation brought him to mediation. He stated that, unfortunately, there is an ordinance that requires that a form be signed off by the doctor and attached to the application indicating that the injury is a permanent and totally disabling injury. He stated he believed this form was submitted on November 5th or 6th, 2017. He asked if there were any questions.

Member Farley asked why the mediation with Workers' Compensation was not delayed until the disability application could be completed by the claimant. He asked if Mr. Fox was the claimant's attorney at that time.

Mr. Fox replied that the mediation documents presented to Mr. Santos at the mediation set forth in reserve an eligibility for Mr. Santos to apply for disability. He stated he was not Mr. Santos'

attorney handling the actual Workers' Compensation case at that time. Mr. Fox stated the Workers' Compensation carrier wanted separation at the time of the mediation, which is why they put the language in the mediation agreement to allow Mr. Santos to pursue the in line of duty disability pension application.

Member Farley asked if the mediation agreement would supersede the ordinance requirements.

Mr. Stone read the excerpt of the ordinance in question as follows: "Terminated persons either vested or non-vested, are not eligible for disability benefits except that those terminated by the Town for medical reasons may apply for a disability within 30 days after termination". He read Mr. Santos' resignation letter, which stated that he voluntarily resigned in accordance with his Workers' Compensation settlement agreement, dated and effective November 14, 2017. Mr. Stone stated the disability application was stamped received December 4, 2017 (about 20 days later). In paragraph six of the separation and settlement agreement (not included in the Board's packet), it noted that the claimant does not release or waive his rights to seek in line of duty pension benefits, and does not foreclose the right to any previously vested employment benefits. Mr. Stone stated that a waiver and release document does not create new rights; it only can waive existing rights. He stated it is this Board's job to apply the terms of the plan that the Town has given and the Board must make a reasonable interpretation of the ordinance. They cannot deviate from or modify the ordinance and apply it to this situation.

Attorney Fox noted that an application can be filed within 30 days from the termination date for a medical termination. He stated it was acknowledged at the time of the mediation that Mr. Santos would be applying for a disability benefit, and he was advised and told he could submit the application within 30 days of that date. Mr. Fox stated this does comply with the terms of the ordinance, as it is essentially a medical separation or termination for the purpose of allowing it to be done.

Member Farley asked for confirmation that Mr. Santos applied for disability within 30 days of his resignation and settlement agreement.

Mr. Fox replied that Mr. Santos did submit his application on December 4, 2018, within 30 days of the settlement agreement.

Chairperson Captain Brough asked Mr. Santos to explain what his secondary employment entailed on his disability application.

Mr. Santos explained it is a real estate and property management company he owns with his father that does not require physical activity.

Member Captain Tempesta asked for clarification on where in the settlement agreement Mr. Santos is still eligible to apply for disability.

Mr. Stone explained the settlement agreement was not included with the disability hearing packet as this issue was brought up recently. He stated he obtained a copy of the settlement agreement from the Town's Workers' Compensation representatives. In it, it states that the claimant's right to seek in line of duty pension is not waived by issue of this release. He stated a detailed legal opinion of this is a complicated undertaking, although he stated that it is not unreasonable for the Board to take a position that the agreement only releases rights the claimant has; it does not create new rights or a right to file late.

Member Farley questioned the issues of the voluntary termination, and asked to see a copy of the separation agreement where it states Mr. Santos does not waive his right to claim disability benefits.

Mr. Fox stated this mediation was suggested by the Town due to his injury, despite the fact that Mr. Santos attempted to return to work.

Mr. Stone again read Paragraph 6 of the settlement agreement regarding this issue. He passed a copy of this document to the members to review (separation agreement and release).

Member Captain Tempesta questioned the terminology of the ordinance regarding the 30 day requirement.

Mr. Stone replied the 30-day rule is invoked when the termination is by the Town for medical reasons. He stated an officer seeking disability benefits must either apply prior to separating from employment, or if the Town terminates an officer for medical reasons, the officer must apply within 30 days of the termination.

Chairperson Captain Brough confirmed that Mr. Santos did not apply for disability prior to his separation. He asked whether this voluntary resignation would be deemed a termination by the Town for medical reasons.

Mr. Stone confirmed that Mr. Santos did not apply prior to separation. He stated it is Mr. Fox's opinion that there is more to the story than the voluntary termination due to the separation agreement because lawyers agreed to a voluntary termination rather than a medical termination.

Member Farley stated that a voluntary termination is not a medical termination by the Town.

Mr. Fox reiterated that Mr. Santos' separation was not voluntary in the sense of his not wishing to return to work or a termination by cause. He stated it was a request by the Town and its Worker's Compensation carrier due to Mr. Santos' injury, despite his attempts to return to work. This agreement included the caveat that Mr. Santos could still apply for disability.

Chairperson Captain Brough asked why Mr. Santos did not include this stipulation in his negotiations; to include the verbiage that this would be a medical termination so Mr. Santos would be eligible to apply for disability.

There was further discussion regarding the matter of the voluntary separation versus medical termination.

Mr. Santos stated it was clear there would be no objection to him applying for disability benefits at the mediation, although Mr. Fox was not his attorney at that time.

Mr. Stone stated the Board could ask him for a more robust legal opinion on the separation agreement and voluntary termination in regard to the ordinance language, and continue this hearing to a later date. He stated the Board has not yet discussed the medical aspects of this case, and as such, cannot rule on those elements of the disability claim.

The Board agreed they would like the Board attorney to do more research on the legal issues involved.

Mr. Fox stated the separation agreement and release from the Workers' Compensation carrier was fully executed on January 10, 2018. He stated everyone at the mediation knew it was Mr. Santos' intention to file for disability.

Member Farley made a motion to continue the disability hearing of Darwin Santos to January 16, 2019 at 2:30 p.m. Member Captain Tempesta seconded the motion. The motion passed by a vote of 4-0.

Mr. Fox asked what kind of evidence would suffice for the Board to make a determination of this issue.

Mr. Stone replied it would be a legal opinion after inquiry and research. He stated he will solicit Mr. Fox's input on this as well. Mr. Stone stated he has seen cases where the court has found a city cannot estop a disability claim when the reason for the termination was a medical disability, although he has not seen a case exactly like this.

E. ADJOURN

There being no further business, the meeting was adjourned at 3:35 p.m.

s/ Nancy Slaton, Deputy Town Clerk

s/ Chairperson and Member Captain Brough

Note: The original signed documents are on file at the Town Clerk's office. Copies are available upon request.

Minutes transcribed by Nancy Slaton, Deputy Town Clerk