

**CITY OF PORT ST. LUCIE
MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND
BOARD OF TRUSTEES MEETING MINUTES
OCTOBER 30, 2015**

A Special Meeting of the BOARD OF TRUSTEES of the MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND was called to order by Chairman Vega on October 30, 2015, at 10:30 a.m., at the Port St. Lucie City Hall, Room 366, 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.

1. CALL TO ORDER

2. ROLL CALL

Members Present: Assistant Chief William B. Vega, Jr., Chairman
Natalie Cabrera, Trustee
Officer Paul Griffith, Trustee
Sergeant Tara Pavlyshin, Secretary

Members Not Present: Daniel Kleman, Trustee

Others Present: Lee Dehner, Plan Attorney, Christiansen and Dehner, P.A.
Paul A. Kelley, Bichler, Kelley, Oliver, Longo, & Fox, Claimant's
Legal Counsel
Sandra H. Steele, Plan Administrator
Gabrielle Conger
James Weinert
Jeannette C. Baeza, Secretary

3. PUBLIC COMMENT

No one signed up to speak under this Item.

4. HEARING ON SERVICE CONNECTED DISABILITY RETIREMENT APPLICATION BY GABRIELLE CONGER

Chair Vega stated, "I will be turning it over to Mr. Dehner for the ground rules, as the last disability pension hearing was 16 years ago. I was on the Board, but it has been a while. Mr. Dehner, if you could, please give us an overview." Mr. Dehner stated, "I would like to discuss the procedures the Board will follow in making this determination, as well as the substantive provisions of the Ordinance that are applicable to this claim, and the principles of general law that will apply to your consideration of this matter. Three principles of judgement apply to whatever action you will take. Procedurally, we are

conducting this proceeding pursuant to the Board's claims procedures, which is Rule 14 in your Operating Rules and Procedures. We are in the initial hearing phase. As you know, this is the first time the Board has had an opportunity to get together and discuss the records that have been submitted at this point, as well as hear any statement from the claimant and/or her attorney. In conclusion of that, it will be open for discussion and any questions you may have. Should you determine that entitlement to granting the claim is not established today, and you need additional evidence on some of the issues, then one of two things can be done. Strictly under your rules, you would deny the benefit if that be the case, and you would state what additional information and evidence you would need. Alternatively, if you receive a request from the claimant to stipulate to continue the informal proceeding, in order to have the opportunity to submit additional evidence, we could do that, but it would have to be per agreement. Are there any questions?" There was no response.

Mr. Dehner continued, "The claim has been filed pursuant to the In Line of Duty Disability Section of the Pension Ordinance, which is Section 8, Paragraph 1. The first issue for your consideration is whether or not Ms. Conger is totally and permanently disabled to the extent she is unable to render useful and efficient service as a Police Officer. As judicially construed, that means not only that she cannot do specific duties she was doing prior to the injury, but also, that she cannot perform any light duty that may be made available on a permanent basis. Another issue in this case, which is a threshold issue that we need documentation on, is the termination that may have occurred. We don't have any official termination documents. It is important where termination occurred. If that is the case here, we look at the circumstances, because that could have an impact on your consideration of the disability issues. If we get to the point where you find that there is a total and permanent disability, then the next issue before you is whether or not the injury was sustained and directly caused by the performance of duty as a Police Officer. Are there any questions?" **(Clerk's Note: There was no response.)** Mr. Dehner stated, "The proof of the issues I just mentioned is on the claimant to prove, by the greater weight of the evidence, that she is entitled to the benefit, and disclosed as directed by the performance of duty."

Mr. Dehner said, "The three principles of general law that are applicable to your consideration are: your decision has to be supported by substantial evidence; you must comply with the essential requirements of law, which means applying the provisions of your Ordinance to the evidence before you, as well as applicable law; and you are required to provide procedural due process, which means having your rules in writing at the onset of claims procedures, and following your rules. Those are the standards that will be applied throughout the proceeding, as far as procedural due process. We've obviously done that up until now, and will continue to that. Before we open it up, I will address an issue. If termination did occur, we will need more records on that. Everybody's package has the same materials in it. That would be something we would certainly need to receive more information on, because as I said, it could affect your consideration of other issues." Officer Griffith asked, "Can you explain that a little more? Does termination mean she was terminated because she couldn't perform the duties as an Officer, or for disciplinary reasons?" Mr. Dehner replied, "That's why we need to know more about it."

Just as an example . . .” Ms. Cabrera interjected, “Whose responsibility is it to notify the Board of termination? How would the Board know that?” Mr. Dehner replied, “We request all documents, whether they be medical, personnel, Human Resources, or Workers' Compensation.” Ms. Cabrera asked, “Are you saying it should have been in their personnel file?” Mr. Dehner responded in the affirmative and said, “It should have been provided, but was not, for whatever reason. With respect to termination, pursuant to the Plan provisions and case law in Florida, first, you have to be an active employed person to be eligible to be considered for a disability benefit, with one exception. The exception is if the City terminates for medical reasons, and then, you could consider the claim from a person who is not active at the time you're considering it. That is one possibility. Another is if a termination occurred as a result of resignation. If it's before your adjudication of the matter, versus not active any longer, you have a specific Plan provision that says terminated persons are not eligible for disability benefits. If there was a termination for disciplinary reasons, as you mentioned, Officer Griffith, or any reason other than medical termination by the City, then you have that Plan provision that comes to us for consideration. That's why the circumstances of termination are important. If there is nothing else pursuant to the rules at this point, the claimant would have the opportunity to address the Board for up to 15 minutes, and then it would be open for Board discussion and questions.”

Mr. Kelley stated, “Thank you for allowing us to be here. My name is Paul Kelley, and I am representing Gabrielle Conger. A lot of you know her, and have seen her before. For those who may not be familiar with Ms. Conger, she started with the City of Port St. Lucie on April 20, 1998, and she worked as a law enforcement officer for the Police Department, primarily assigned to road patrol. The circumstances that bring us here today are that she was involved in a work-related injury on March 10, 2011. She was trying to subdue a combative suspect, who did not want to cooperate. Unfortunately, she had to take this young lady to the ground. In doing so, she tore her rotator cuff, and her supraspinatus tendon. She has undergone multiple surgeries. Immediately after the injury, she was sent to the Employee Clinic, and Dr. Wayne Weidenbaum took care of her and sent her for an MRI. Initially, it was denied, but was later allowed. They did see the tear in the rotator cuff, and a tear in the muscle. They sent her over to Coastal Orthopedic, where she initially saw Dr. Shute. Unfortunately, Dr. Shute is an ankle and foot specialist, but she had a tear to her left shoulder, so she was then transferred to Dr. Rosario, who started doing treatment. He actually did four different procedures on her. Her initial treatment was on September 2, 2011, and he did a left shoulder arthroscopy, a sub cranial decompression, and an open Mumford procedure to try to rectify the torn rotator cuff. At that time, he did not deal with the supraspinatus tendon tear; he kind of left it, as he did not know whether it warranted surgery. They were going to see how the rotator cuff did. She healed from that and continued on. They had her go through physical therapy at several different places. Initially, Dr. Shute had her going to physical therapy at Mobile Physical Therapy. There are no records for Mobile Physical Therapy in your packet, mainly because they went out of business, and nobody knows who has their records. The other records that I'm talking about are in your packet. The second procedure he did was a rotator cuff repair, and then he did capsular release on January 26, 2012, because she had ongoing problems. Since she had the original injury on March 10, 2011, she would be either out

of work, or on a restricted light duty position. I would like to commend the agency, because they kept her working light duty most of the time. They had her as a Public Service Aide a majority of the time, and she was able to fulfill that job.”

Mr. Kelley stated, “Three months later, she underwent another procedure on April 6, 2012. She went under anesthesia, and they manipulated her shoulder and tried to do some adjustments. She came out of that, and had numbness and tingling in the fingers of her hand, and had problems there. Dr. Rosario did a fourth procedure to address the adhesions and capsulitis she had. He also did a bicep tenotomy and manipulation, because he noticed there was a bicep tear. He started on it, but didn’t complete it. That did not resolve the issues with the numbness and tingling in the hand, as a matter of fact, they got worse. He told her that he still didn’t think she could be a law enforcement officer, but that she could continue on light duty. She kept pushing, trying to go back to full duty, but he did not allow that. Ultimately, she was sent by Workers' Compensation to Dr. Ryan Simovich, partly because she’d had four procedures, and was not getting better. They were looking for another option to see what else was out there. Dr. Simovich did surgery on April 15, 2015. He went in and reattached the bicep tendon, which was not properly attached. In addition, there were supposed to be three pins in there, and there were only two, so we’re not sure what happened. I said pins, but they are actually anchors. He also repaired the tear in the tendon again, and reattached the supraspinatus muscles to the anchors. This still did not give her relief, and she still has the problems. She still has bilateral numbness and tingling in both hands. He has done everything he was able to do, and ultimately placed her at maximum medical improvement. On January 12, 2015, he assigned her a permanent impairment rating of 23%. In your booklet, her application for line of duty disability is provided. The application, which is on Page 22, talks about how during an altercation with the suspect, she injured her shoulder and had five surgeries, which we’ve just talked about. On Page 23, you’ll see the physician’s statement done by Dr. Simovich, and he basically tells about the procedures he’s done for her. He says that her condition has stabilized. At the time he filled this out, she was not at maximum medical improvement, but she is now. You’ll see that he checked the box to indicate that she cannot perform present work, but is capable of performing another line of work. If you flip the page, it says it is due to the on-the-job injury. He was asked how he related it to the on-the job injury, and I cannot read what he wrote, but it is basically from the accident. The bottom shows additional questions. It says, ‘In the opinion of the undersigned, the patient is totally and permanently disabled, to the extent that this patient is not able to render the full range of useful and efficient service as a law enforcement officer.’ That is not sitting very well with Ms. Conger. She has wanted to come back to work as a law enforcement officer, but unfortunately, this is not something they were able to do. She was placed on a medical leave of absence, and this goes to what Mr. Dehner was talking about. Under the City’s provision, which is Section 4 of the personnel rules and regulations, there are types of leaves of absence, but you cannot be out more than 180 days cumulatively. According to the July 15, 2015, letter, Thema Neal, the Benefits Coordinator wrote, ‘Our records indicate that your leave of absence will reach 180 days effective August 23, 2015. At that point, your employment with the City will be a cessation of employment, pursuant to Section 11 of the Rules and Regulations.’ We can make copies of this letter, but I will pass it around for you to look at. This shows that she was

medically separated from the City effective August 23, 2015. She went on medical leave on February 24, 2015, and she had been out for quite a bit of time. She never returned to full duty after the initial injury in March of 2011."

Mr. Kelley continued, "Dr. Robert McShane was this Board's independent medical examiner. In the packet that you have to Dr. McShane, Ms. Conger went for all her x-rays and MRI's. They also have the information form Premier Physical Therapy, and Quality Performance Rehab, who both did therapy on her. Dr. McShane reviewed everything, and did his report. I don't know that your report is in your packet, as mine is separate. If yours is in the packet, it should be around Page 89. Basically, Mr. Dehner puts together the same packet. We are not allowed to gather the records, because if we gather the records, there are people who will pull stuff that is not favorable to them and send it to the doctors. One of the things I appreciate about what Mr. Dehner and partner do is that they gather the records from the doctors, to make sure you get everything. When Ms. Conger went to see the doctor, not only did she tell him about this accident, but she also told him about when she was in the military, before coming here. Ms. Conger was in the Army, and had ratings there. She has a rating of 5% in each of her knees, based on her time there, for a 10% rating. She has a right ankle injury for a 10% rating, and she has a total of 20% veteran's rating. Ms. Conger told the doctor everything, so that he would know about it. He comments on that in the report, and Mr. Dehner sent him a letter with some questions. I want to point you to the questions. On Page 3 of his report, he goes through the records he reviewed. If you look at that list of records, it matches almost exactly what's in the front of your index. On Page 5, he starts answering Mr. Dehner's questions. This first question is, 'What is the date of the accident, or injury?' You'll see, on Page 5, that he says it is March 10, 2011. Do you all need another copy?" Officer Griffith responded in the affirmative. Mr. Kelley continued, "On Page 5, he answered the questions Mr. Dehner sent. You all probably have a copy of the questionnaire Mr. Dehner sends the independent medical examiner. The first question is, 'What is the onset of the date of injury?' He indicates in here that the onset was March 10, 2011. The next question is whether or not she is at maximum medical improvement. Maximum medical improvement is a medical term, but it is also used legally to basically ask if you've done everything you can for her. In other words, is she the best she can get? He answered yes, she is at maximum medical improvement. The third question asks whether she is totally disabled from performing the duties of a Police Officer, as described in the enclosed job description. He has the same job description that you have in your packet. I will tell you that I've never seen him do this before, but on this one, Dr. McShane literally goes through every aspect of her job, and he points out what she can, and cannot do. He has carefully reviewed it, and has gone through, giving indications. There are certain things she can do. You will see a paragraph, for example, that will go through foot patrols, and at the bottom of that paragraph, it says she is capable of doing this. The next one is to answer radio dispatches for citizens' requests for police services, and it says she is able to do this. Turning to Page 6, it says she can operate law enforcement vehicles, load firearms, and communicate with people. It goes on to say, 'Exercise independent judgment in determining reasonable suspicion and detain people.' He says she is able to do this, but cannot use force in arresting suspects. That could be problematic if you're a law enforcement officer. Next, it says, 'Perform searches of people, vehicles, etc.,' and she

can do this. Go to Page 7, you'll see where it says, 'Locate, searches, and obtain suspects. Effect arrest, forcibly, if necessary. Subdue resisting suspects, using maneuvers and weapons, feet, and hands in self-defense.' He clearly says she is not able to do this. Next is, 'Process and transport prisoners,' which she can do. She can also conduct visual and audio surveillance. What's interesting is where he says, 'Process and transport prisoners, using handcuffs and appropriate restraints.' From reading some of these, I don't think he has a full understanding of what that means. Even though they're restrained, you all know they get combative. There are things like that going on, and you'll see that he'll say she can do some of these things, but I don't think he understands exactly what they mean. When it says, 'Pursuing fleeing subjects,' he noted that she cannot do this. He noted that she can read and comprehend legal documents."

Mr. Kelley said, "Go to Page 8, and you'll see a paragraph about performing rescue functions. She is able to do this, but she cannot drag out or carry people from dangerous situations. For instance, if she and a partner go in a situation, and the partner is injured and needs to be helped out, she is not going to be able to help, and that is very important. It goes on to say that she can operate a respirator, question victims, investigate accidents, and process arrest suspects. Again, I don't think they understand that even in processing, people do not care for that sometimes, and may get combative. She can direct and control traffic, which kind of surprised me, because if you're out directing traffic, your arms are going all over the place. I've seen my brother and my father direct traffic. With her having the injury she has to her arm, I don't see her being able to do that, but he says she can. It is just interesting that he has a lot of those things. It says, 'Inspect public establishments,' and he says she can do that. Again, I think there is crawling and other things of that nature which you all do in inspecting these things, which he is not understanding. He goes through a variety of things she can do, such as using a K-9 dog. I don't think she can use a K-9 dog, but he says she can. Basically, there are a lot of things he says she can do, but there are also a lot of things he says she cannot do. Let's look at Page 10. It asks, 'If the claimant is disabled, is that disability permanent?' He says yes. Number 5 asks, 'Are there any other procedures or regiments she can do?' He said no, and the reason why is because they have offered her five procedures, and she's had five procedures. She has done every procedure they have offered her, and it has not been able to help her. It asks, 'Did the accident incur from her duties as Police Officer?' He answered yes, and added that there were no injuries to her shoulder prior to that. Question 7 asked whether he was of the opinion that she has physical restrictions, and if so, to list what they are. Not only does he have the things in the job description that he talked about, but he also says that she has restrictions of no lifting more than 20 lbs. and goes into detail. Based on the report of the Board's independent medical examiner, I believe the conclusion there is also that she cannot perform the useful and efficient work as a law enforcement officer."

Mr. Kelley said, "I think you've all seen the letter from the City that released, or medically separated her, because her 180 days was up. Just so you all know, she has also been seen by Dr. Shatabdi Patel, who is a neurosurgeon. We don't have any records from that doctor, because the first visit was literally last month. Ms. Conger is still trying to seek treatment, to see if she can get better. Right now, there is nothing they can offer, but Dr.

Patel has documented the same thing these other doctors have, which is that there is nerve entrapment, which is causing problems with her hands. It is our position, based on the evidence presented to this Board, that she meets the criteria for in the line of duty disability. That means that her disability is total, and prevents her from doing the full range of work as a law enforcement officer. Secondly, her disability is permanent. There are no other procedures out there which will render her to be able to go back and do the full range work as a law enforcement officer. The third thing is that permanent disability and the conditions causing it were related to the accident that took place when she took the suspect down. The fourth thing is that she's at maximum medical improvement, and then there are the exclusionary provisions listed in the Plan. None of the exclusionary provisions apply. Specifically, those exclusionary provisions are that this was not occasioned by her involvement in fights, riots, or civil insurrections; it was not occasioned by the use of illegal narcotics or alcohol; it wasn't in the military; and it wasn't done with another employer, or alternatively, after she left employment with the agency. Those exclusions are listed on Pages 11 and 12 of your Plan. None of those exclusions apply here, so it is our position that she should be eligible for that, and we would respectfully ask the Board for a fully favorable finding of an in the line of duty disability pension. I open it up to the Board for any questions you may have."

Officer Griffith stated, "You said that you've never seen the doctor go into such detail with this. What does this doctor normally do? I've never been through a disability hearing before." Mr. Kelley replied, "He will go through and say that he read the job description, and they either do or don't meet it, and that is the extent of it. As a matter of fact, Mr. Weinert went to the same doctor, and you will see that at the next hearing we do. He does not thoroughly go through that, and it is very interesting." Officer Griffith inquired, "I know you are just presuming, but why do you think he'd do that in this case?" Mr. Kelly replied, "I don't know. I could presume I will give you my opinion. It's not evidence, but my observation is that sometimes, he is not sure what he's doing it for. Dr. McShane is a very good and competent orthopedic surgeon. He is known in the Workers' Compensation community to be very conservative. His opinions are a little bit different when they're written for a Workers' Compensation if he thinks it's been done for Workers' Compensation. When he does it for pension, he is very thorough like this, but when he thinks it's for Workers' Compensation, he'll do it a little bit differently, and will pick up on the Workers' Compensation things. I think that's what happened with Mr. Wienert's, to be honest with you. Mr. Weinert's should have been like this one, where he goes through each step and addresses them. Mr. Dehner and I have traveled the state doing these. Dr. McShane does some of the more thorough reports you will see out there. He does take the time and listens to the people. He reviews the records, and goes into great detail. I was quite surprised to see him do that in this one, because it's not something that I normally consistently see, but I was just as surprised on the other one, which does not look like that." Mr. Dehner said, "I don't want to get into the evidence on Mr. Weinert, but he did have a different opinion on that case, in terms of what Mr. Weinert was able to do. He didn't place limitations, which may be why he didn't go into specifics on that." Mr. Kelley said, "Mr. Dehner, in Ms. Conger's email, she has the original letter from the City, which put her on the medical leave of absence, beginning February 24th. If the Board needs it, we can send it out." Mr. Dehner said, "My observation is that we would like to

have that, and really would like to have what is out there. As you know, we normally have everything by this point, but we don't today. I reviewed the correspondence from the Benefits Coordinator, dated July 15, 2015. To me, this doesn't fully address the issue of the reasons for the termination. You could read this and construe it as there was not compliance with the policy of coming within 180 days. Your position is that it is for medical reasons, but this is a very important issue in this case, so I would suggest that we need specific information on the circumstances of the termination. You mentioned Dr. Patel's records, and it sounds like Ms. Conger is under their treatment now, so you should have those records as well." Mr. Kelley responded, "The only thing Dr. Patel is looking at is whether there is any cause of numbness in the hands that she can take care of. She just started seeing her in September, but Dr. Patel is not addressing the shoulder, as there is nothing she can do for the shoulder." Mr. Dehner said, "That is of record, but given the fact of the significance of the termination issue, and that the burden of proof is with the claimant, I recommend that the Board receive more regarding the official circumstances of the termination. That letter could be construed several ways." Officer Griffith stated, "So you're basically saying that the documentation leads up to the City's determination to do this." Mr. Dehner responded in the affirmative.

Mr. Kelley stated, "The problem I have with that, and Mr. Dehner and I have run into this multiple times, is that the City will send out these letters, which are form letters, and are very cryptic. They don't go into details about it. They don't state what the reason is. For instance, the initial letter that she just sent me, which I am emailing to Mr. Dehner's office right now, basically just says that Ms. Conger's doctor has indicated that she is unable to come back to work. It does not say which doctor, which condition, or anything along those lines. For whatever reason, they don't put those in the form letters, and I don't know if it's because of HIPAA, or whatever the reasoning is, but it is not in there. If we do what we're talking about, we are going to delay the pension hearing and the ruling, to get letters that are not going to provide any clarification. The only way you are going to get clarification is from the City, and maybe sending them a letter that specifically asks which doctor they were depending on, and what the basis of it is. If you look at it, the timing of it was exactly when Dr. Simovich filled out the form saying she was totally disabled, and could not do it. It was right after they got that form, along with her line of duty disability application, that this came out. My concern is that we delay the hearing and the response, to get something that is not going to provide any clarification." Mr. Dehner said, "I don't think we can speculate about what may or may not be behind this, because it is a critical issue, as you know, and I really believe the Board needs evidence on that. If we want denial today, we can go into a full hearing, and bring the City employees to testify before the Board on the issue, or provide additional documentation. We know there has to be reasons behind it, but we simply need to know what they are." Chair Vega asked, "Is your suggestion to have the City personnel come in and speak, or is it better in writing?" Mr. Dehner replied, "As I mentioned at the onset, if you felt today that you need additional evidence on some issue, you could do one of two things. You could extend this informal hearing, and give an opportunity to the claimant to present the additional evidence you're requesting, as part of this initial hearing procedure, or under your rules, the time has come for a decision and they're entitled to it. Based on the absence of this, I would think it would be a denial, and they would have the opportunity to ask the Board for a full hearing within 90 days.

We would then move into that, at which time, live testimony could be presented by either party if necessary." Mr. Kelley said, "What is concerning to me is that we have absolutely nothing in the records from the City, whether it is personnel, or Workers' Compensation. I don't know why they did not provide that to you all." Mr. Dehner said, "I don't know either, and I think that is the problem. We have some unanswered questions out there." Mr. Kelley said, "I respectfully disagree with you; I think the questions are fully answered. We know she was terminated, and has never been back to full duty since she had that March accident. That is very clearly put into records we have, and there is no other basis for her to be terminated, other than what you saw saying that she was not able to come back within 180 days." Mr. Dehner said, "That is what I don't think is clear. I think it is speculation and conjecture. I think that because of the significance of it, it is important for the Board to have the evidence. You know if there was termination for some reason other than medical, we don't have an active member, and pursuant to the Plan there would be no entitlement to the disability. If there is evidence that the City did terminate for medical reasons, then under the Gaines case, as you know, the Board would Provided it is not total Under that case. In any event, that is why I'm concerned."

Officer Griffith asked, "Who would've been responsible to get us that information?" Mr. Dehner replied, "We requested it from the City." Officer Griffith said, "So the City just didn't give us the information we requested." Mr. Dehner responded, "That's correct." Ms. Cabrera stated, "That was my question. How would we know about it? I guess we made the request, and not all of the documents were there." Mr. Kelley said, "None of the documents from the City are in here." Officer Griffith asked, "Who from the City did we make the request with?" Mr. Dehner replied, "Human Resources." Officer Griffith asked, "Do we know who handled that request?" Mr. Dehner replied, "We did get some personnel records, which are in the materials, but not anything with respect to the termination." Mr. Kelly said, "The only thing that I saw we have from the City was the City Clinic documents. That's the only thing I see from the personnel file." Mr. Dehner said, "We could make a follow-up request to Human Resources, even though the burden is on the plaintiff. That may be a route to go, to make a request for all of the Human Resources records, including those concerning the termination." Mr. Kelley said, "As you know, Mr. Dehner, I am not allowed to contact the employer, because it is a represented party." Mr. Dehner said, "I'll do it." Mr. Kelly stated, "With regard to getting the information, my concern is that we're going to get the same form letters, and I've seen the form letters. As a matter of fact, they are in Mr. Weinert's folder, but not in this one. The letters are the same thing; they just say 180 days, but they don't say what the reasoning is. I think that is the position the Board is going to take is that it's not enough information, we are going to have to do a denial, because the only other way to do that is to bring testimony in here, which I cannot get otherwise." Mr. Dehner said, "I'm fine with that." Mr. Kelley said, "My concern is that if we delay this, assuming benefits are granted later on, they won't start from today if we just continue it. If there was a denial and we come and approve it, they would start effective today. Is that correct?" Mr. Dehner responded in the negative and said, "Under this Plan, the commencement of the benefit would be when the Board finds eligibility. You may be thinking of when somebody asks for in line, normally not in line is established, and subsequently, in line is established. That would go back to the date of the award, but the benefit begins when the Board determines they are total and permanent." Mr. Kelley

said, "I thought under this Plan, under the formal, if you go to the formal and they reverse what was done at this point, it goes back to today's date. Is that not accurate?" Mr. Dehner replied, "Right."

Ms. Cabrera asked, "Can we break to discuss this? Is there anything we can discuss off record?" Mr. Dehner responded in the negative and added, "Everything has to be on the record." Mr. Kelley asked, "Is there a way to get somebody from Human Resources in here to clarify this?" Mr. Dehner replied, "No, that is not provided for under the rules for today. Today is to discuss the documents, hear from the claimant, determine if you need something additional, or decide whether or not there is enough before you to grant an award. That is really the purpose of today. To me, this discussion is whether we need additional information. I don't have a vote, it is your decision." Officer Griffith said, "Obviously, you're advising that we do. On the record, I think it is messed up that Human Resources did not provide us with everything we were supposed to have prior to this happening." Ms. Cabrera said, "The 180-day letter is basically because when someone has been out and they reach that 180-day maximum, it has been our practice to terminate. Which doctor, or which notification from a doctor spawned it, I don't know if that is even related. I think it is just a 180-day rule." Chair Vega said, "I think what they are asking for is a more in depth letter. This is almost like a form letter." Officer Griffith said, "I'm sure there was communication from someone, I'm guessing the Risk Management Director, in reference to everything that led up to this point. There has to be documentation that the City put together. I had an incident with my heart, and there were 30 forms I had to fill out. I cannot believe that there is not documentation coming from Risk Management in reference to her Workers' Compensation. There has to be something." Ms. Cabrera said, "It may that's their Workers' Compensation file, which would be in Risk Management. Human Resources would not have that. That could be where we missed bringing them forward." Mr. Dehner responded, "We requested the Workers' Compensation record also." Mr. Kelley added, "Those weren't provided, either." Officer Griffith said, "I don't want to make Ms. Conger wait any longer than she has to, but I am not going to go against the advice of my attorney, either. I think we need to prove Even though it is obvious. There is no presumption, but we need to have that documentation ahead of time. We should have had it, and I guess we had it with Mr. Weinert." Mr. Kelley replied, "It is the same form letter. It is going to be a similar question, but we'll have to talk about it during that hearing. My question was whether or not the Chief or anybody was involved with that process where they look at full time employment on a light duty basis. I didn't know if you could shed light on that." Chair Vega asked, "In reference to what? I'm sorry." Mr. Kelley replied, "In reference to Ms. Conger being terminated. It was my understanding that they did not have full time light duty available for her, so she could not come back full time." Chair Vega concurred, "We do not have full time light duty." Mr. Kelley said, "I didn't think so. I didn't know whether that was part of this conversation that took place with the 180-day rule."

Chair Vega asked, "Are there any questions?" There was no response. Mr. Dehner said, "As I understand the discussion, Mr. Kelley is asking that you deny today. Unless there is an agreement otherwise, you have to do so under your rules. If you are, you would deny it and state the reasons, and the references to the portion of the system. We mentioned

that if you're terminated, there is no disability. You would also state what would additionally be needed to perfect the record." Officer Griffith asked, "If we did a continuance, could we expedite this more quickly, by having Mr. Dehner's office get that information, and get it back to us as soon as possible? We could move forward on this a little quicker than going to a formal hearing." Mr. Kelley replied, "Let me clarify this. First of all, we still believe there is sufficient information in front of this Board to make a line of duty disability finding today. The only reason I was suggesting a denial is because I thought that if you did the denial based on the Plan, the benefits would revert back to today. If they are not going to revert back to today, then the denial is not going to be beneficial to her at all. The biggest thing we need is to have clarification. I think just getting the letter that Thema Neal in Human Resources wrote is not going to clarify anything, because it is a standard form letter that does not have the basis. We are going to need something more than just Human Resource's records. I think we are going to need a letter or clarification from Human Resources stating who was the doctor that said, 'No more work,' and what was the actual basis for termination. I cannot get that, as I am not allowed to make contact." Mr. Dehner said, "The basis for the termination is exactly what is missing." Sergeant Pavlyshin asked, "Could we write a letter to Human Resources in which we ask them to specifically answer those questions of what the basis was, and who was the doctor?" Mr. Dehner responded in the affirmative and said, "Really the reason for the termination is the bottom line of what we want to know. I'd be happy to go either route on this." Officer Griffith said, "I think we need to expedite this as quickly as possible. She's obviously waited long enough for this, and we're here. I am not one to push things off. I think this is something we should take care of as soon as possible. I think our attorney's questions for us will be answered by getting that paperwork, and then we can proceed forward. I think if we don't do this properly, we are setting a bad standard for the future." Mr. Dehner said, "Because it is such an important issue, I don't think you can assume or speculate the reason for the termination, and we don't have that identified in this letter."

5. BOARD ACTION ON APPLICATION

Sergeant Pavlyshin said, "If you can respectfully request that information from Human Resources, I would **move** to continue this hearing as soon as possible." Chair Vega asked, "Can that motion be made like that?" Mr. Dehner replied, "We need a request from Mr. Kelley." Officer Griffith said, "That seems to be the most expeditious route." (**Clerk's Note:** At this time, the conversation became inaudible.) Mr. Kelley said, "Our biggest concern was how quick this will happen. I know that with a formal hearing, we know how quick it can be in here, because it won't take time. I'll set depositions and be back in here very fast. I'm not sure how quickly we, or you, can force the City to answer this. The reason we're looking at this is because I don't think there is a question in anybody's mind in here as to why she was terminated. I think the evidence is very clear, and I think we all know why it is. I think the letters support what we are saying, and I think that's why this Board could find for a line of duty disability pension. If, based on your recommendation, this Board is not going to do that, she really wants to get this done and over with." Mr. Dehner said, "If the Board agrees with you that it is clear to them that it was for medical reasons, like I said, they have the votes. I don't have a vote. That is just my evaluation that I have at this point." Mr. Kelley said, "I think we'd prefer a vote at this point." Chair

Vega asked, "If it is denied, is it 90 days?" Mr. Dehner replied, "If you deny, they have 90 days from the receipt of the order denying to request a full hearing. You would have 90 days from the date of that request to convene a full hearing. This does not mean you're going to take 90 days. Obviously, you are going to do it as soon as you can get it scheduled." Officer Griffith said, "I think it would be quicker if we continue it. One of the things you need to understand is that one of the members of this Board works for Human Resources, and she has already indicated to the attorney, on the record, to let her know when the request gets sent out." Mr. Kelley said, "If we can do it quicker that way, I don't have an issue with it." Officer Griffith said, "You just said 90 days, plus another 90, possibly." Mr. Kelley said, "I have 90 days from that day. I will tell you that if the Board voted, I would say on the record, right now, that we are appealing, and would request a formal hearing, so that we don't blow the 90 days. If they can expedite it, then I am fine with a continuance. Ms. Conger has no income, so we have to do something to resolve this quickly." Officer Griffith said, "You're an attorney. If you advise your client to do something, which you are doing right now, you are going to want her to do what you're advising her to do. I believe in our Plan Attorney. Truthfully, this is my first disability hearing. I think everyone on the Board knows that I like to speak up and take chances with other things, but I would never go against my attorney's advice, because he knows what he is talking about. I am compassionate to the fact of the situation she's in, obviously. I will do everything in my power to get this done as quickly as we possibly can." Mr. Dehner said, "The other thing, which I know Officer Griffith understands, is" Officer Griffith interjected, "We're held by the City." Mr. Kelley said, "That is my concern. It could go 30, 90, 60, or 120 days. I didn't realize that Ms. Cabrera works in Human Resources, and might be able to expedite this. We've been in situations where we waited an extremely long period of time, and not get a response, and then we had to go to formal hearing." Officer Griffith said, "She has to take your advice. If we are going to approve this benefit, I want to get through this as quickly as possible." Mr. Kelley stated, "We will agree to a continuance to try to get it expedited."

Sergeant Pavlyshin stated, "My motion stands." Ms. Cabrera **seconded** the motion. Chair Vega asked, "Can you please clearly state the motion?" Sergeant Pavlyshin stated, "I move that we continue this hearing, for the purpose of Mr. Dehner obtaining the information we need from Human Resources as soon as possible." Chair Vega asked, "Is that good?" Mr. Dehner added, "The information on the reasons for the termination." The motion **passed unanimously** by voice vote. Ms. Cabrera asked, "Will you be copying the Board on the request?" Mr. Dehner replied, "I copy Plan Administrator Steele on everything." Sergeant Pavlyshin stated, "Please make sure we all know."

6. OTHER BUSINESS

There was nothing heard under this Item.

16. ADJOURN

There being no further business, the meeting adjourned at 11:25 a.m.

MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST
FUND MEETING MINUTES

OCTOBER 30, 2015


Assistant Chief William B. Vega, Chair


Jeannette C. Baeza, Secretary