



NEW PORT RICHEY POLICE PENSION SYSTEM



Minutes

Of a special meeting of the Board of Trustees
Meeting at 6739 Adams Street, Police Station,
New Port Richey, Florida 34652
Wednesday, the 22nd day of March 2017, at 10:00 A.M.

The meeting was called to order by Mr. Pratt at 10:22 AM.

Trustees Present:

Mr. Glen Pratt
Mr. Edward Beckman
Mr. William Bennett
Sergeant Christopher Trapnell

Trustee monitoring by phone:

Officer Steve Wade

Consultant(s) Present:

Mr. Lee Dehner

Administrator:

Mr. T. Scott Baker

Other(s) Present:

Mr. Nicholas Kaller
Ms. Jaclyn Kaller
Mr. Jason Fox
Ms. Tonya Oliver
Ms. Jeanine Shaffer

ITEM #1 -- Open Public Comment

There was no public comment.

ITEM #2 -- Initial Disability Hearing – Nicholas Kaller

Mr. Dehner said he was going to discuss the procedures to be followed, the sustenance of plan provisions pursuant to which the claim was filed, and the three principals of general law that apply in consideration of this matter. He said first the proceeding is being conducted under the plan's claim's procedure, Rule 14, with this being the Initial Hearing

phase, designed to be an informal discussion format. He said it is an opportunity for the Claimant and his Attorney to have input to the Board and for the Board to ask any questions and discuss any documentary evidence that has been submitted to this point.

Mr. Dehner said the burden of proof is on the Claimant to establish by the greater weight of substantial competent evidence that he is entitled to the in-line of duty disability claim for which he has applied. He said, should the Board find that there is not enough weight of evidence at this point, one of two things can be done. Either continue with this informal procedure or the Board could issue a denial, state the reasons why, and what additional evidence would be needed to consider the claim favorably. He said should the Board deny the claim at the conclusion of this proceeding, then Mr. Kaller would have 90 days to request a full formal hearing before the Board. Mr. Dehner said should it end up in the full hearing procedure and the Board still finds the burden of proof is not carried at the conclusion of that proceeding, then the avenue from there for Mr. Kaller if he wished to pursue it would be to file a petition for review with the Circuit Court. There the Circuit Judge would review the record developed before the Board and determine whether to affirm the Board's action or to remand it back to the Board.

Mr. Dehner said the three legal principles that are applicable for the Board's consideration to this matter are the same ones, should it ever go to a Judge that the Judge would look to determine whether to affirm your action or not. He said first your decision has to be supported by substantial and competent evidence, second you are required to comply with the essential requirements of law, and third you are required to accord procedural due process to the Claimant (basically meaning having your rules in writing and following the rules).

Mr. Dehner said the application for disability is filled pursuant to Section 17-58(a) of the Pension Ordinance. He said the first issue that needs to be established by the greater weight of the evidence, by the Claimant, is that he is totally and permanently disabled to the extent that he is unable to render useful and efficient service as a Police Officer. He said if the Board finds in the affirmative on this issue, then the next issue would be whether or not you find that the injury was caused in the performance of duty or not. Mr. Dehner said on the issue of totally and permanent disability he said it must be established on record that not only is the Claimant not able to perform specific duties he may have been able to perform prior to the injury, but also he would not be able to perform any limited or light duty that is made available to him. Mr. Dehner said under the rules the Claimant now has the opportunity to address the Board affirmatively for 15 minutes, and then it would be open for Board questions and discussion.

Mr. Jason Fox said he was an attorney representing Mr. Kaller and said the records will show that he is totally and permanently disabled. He said Mr. Kaller is 33 years old and began his career with the New Port Richey Police Department on October 2, 2005 and had this accident on January 4, 2014 while on duty. He said he was conducting a K-9 track for a criminal suspect through a heavily wooded area and ended up injuring his back. He said as a result a Workers Compensation case was opened up and he received care and treatment with Workers Comp doctors, and will go into it in further detail. He said the injury was reported immediately and he had seen authorized doctors. He said Mr. Kaller saw Dr. Nucci and Dr. Ronzo and independent medical exams with Workers Comp doctors, Dr. Mazer and Dr. Hayes. He said ultimately what was diagnosed was an annular tear with disc bulge and herniation's in his lower back at L4-5. Mr. Fox said Mr.

Kaller was also diagnosed with disc bulging at three cervical levels, C-3/4 through C-6/7. Mr. Fox said that Dr. Hayes, who was the initial Workers Comp independent medical examiner, and later began treating Mr. Kaller, submitted a qualifying letter.

Mr. Fox said there has been absolutely no doubt or contradiction to the injury that Mr. Kaller had. He said both Workers Comp doctors, Dr. Nucci and Dr. Ronzo, recommended a discectomy, laminectomy, and fusions and wanted to put hardware in him at multiple levels. He said the Workers Comp then sent Mr. Kaller to an independent medical exam with Dr. Maser. He said this is usually done to cut off care/treatment and Dr. Maser even indicated that Mr. Kaller was a surgical candidate. Mr. Fox said all these doctors had provided significant restrictions (with needing a fusion) and have him on light duty. Mr. Fox said ultimately they had an independent medical exam with Dr. Hayes and he indicated that Mr. Kaller needed the same procedure and recommended it, but said it is a very invasive and aggressive procedure for a 31/32 year old. He said even though it was being recommended Workers Comp was not authorizing it at the time, so he continued working light duty. He said Mr. Kaller was ultimately terminated by the city because there was no permanent light duty available to him. He said there was no alternative for the city to keep Mr. Kaller employed.

Mr. Fox said the questions they have are, is the injury permanent. He said Dr. Hayes indicates on pages 380-383 of the reports that Mr. Kaller could not work secondary to his severe pain and said he was permanently and totally disabled and due to the chronicity of his symptoms that he had a component of chronic nerve damage. Mr. Fox said the surgery that was recommended is something that will fix the compressing space in his back, but does not undue nerve damage. He said the nerve damage is totally debilitating to Mr. Kaller as he cannot perform the duties of a Law Enforcement Officer. Mr. Fox said that Dr. Hayes also indicates on page 383 that Mr. Kaller is having worsening numbness and paralysis and there is a component of right sided chronic nerve damage which will not improve, therefore saying he is permanently and totally disabled despite the fact that he is still a surgical candidate. Mr. Fox said the surgery is to prevent Mr. Kaller from getting worse, the damage has already been done.

Mr. Fox said the IME, Dr. Glasser, selected by the Board disagreed that surgery would be helpful, but basically agreeing with Dr. Hayes that it would not fix Mr. Kaller's symptoms. He said that all doctors therefore agree that Mr. Kaller has permanent nerve damage. He said the difference is in what Mr. Kaller is able to do, as Dr. Hayes said Mr. Kaller can't work as he has permanent damage, Dr. Glasser said basically Mr. Kaller is limited to 50 pounds at max, and if he lifted more than 50 pounds it would aggravate or worsen his injury.

Mr. Fox said that on the job description page it indicates there is an occasional 50 pound, 20 pound frequent, and indicates you may need to lift more than 50 pounds on occasion. He said he has to exit a car quickly while wearing a 15-20 pound duty belt, there is excessive sitting and standing, and climbing fences, walls and ability to subdue a suspect. Mr. Fox said that all of these when looking at the restrictions that were assigned by Dr. Hayes, and all the other doctors: Dr. Masser, Dr. Ronzo, Dr. Nucci, there is no possible way that Mr. Kaller can do the full range of duty that is required. Mr. Fox said that they believe Mr. Kaller is totally and permanently disabled from being a Law Enforcement Officer. He said there is also no dispute that this injury was a result of the job accident and Mr. Kaller has not been able to recover. Ms. Oliver asked if there were any questions.

Sgt. Trapnell said he was up to date from the medical records and the additional information provided by Mr. Fox filled in any blanks he had and therefore had no questions. Mr. Pratt asked how the injury occurred and Mr. Kaller explained he was tracking a suspect with his K-9 in a thick wooded area with vines. He said he was bending and turning and was on his knees being pulled by the K-9. He said there was a clearing in the woods and when he went to stand up he felt a sharp pain in his back and collapsed. Mr. Bennett asked if there was any other duty at the department that he could do. Mr. Kaller said they were not willing to offer him any other work, and therefore he was medically terminated. Sgt. Trapnell said that the department in the past has allowed Officers to be in a light duty status until they recover, however said the department does not have any permanent light duty work. Mr. Pratt asked if Mr. Kaller had any previous back injuries. Mr. Kaller said he had a few sprangs but always recovered without problems.

Mr. Beckman asked Mr. Kaller if he was going through any other type of benefits such as Social Security Disability. Mr. Kaller said he was not and was looking forward to surgery, however that was a matter of when he is financially able to. Ms. Oliver said there are different standards for Social Security and pension. She said Social Security there is no gainful employment and here we're under a standard of no Law Enforcement work. Mr. Beckman said he could see that Mr. Kaller has the passion and wants to work, however believes the injury is legitimate.

Mr. Pratt said his only concern is that it appears all doctors concur that Mr. Kaller is at maximum medical improvement, however said the independent doctor's comment is that he did not think Mr. Kaller was disabled from performing the duties as a Police Officer. Mr. Dehner said in that regard Dr. Glasser states on page 3 of his report that he does not believe that Mr. Kaller is disabled from performing the duties of a Police Officer, but goes on to say he believes that lifting repetitively greater than 50 pounds would pose a risk of recurrent injury and would recommend avoidance of heavy lifting. Mr. Dehner said the job description says he may have to lift objects in excess of 50 pounds. Sgt. Trapnell said he thinks what the doctor is saying is that he believes that Mr. Kaller can do Police work if he had a desk job, and not do street work. Sgt. Trapnell said they don't have that opportunity. Mr. Pratt asked Mr. Dehner if there was a conflict with the way Dr. Glasser wrote those two sentences. Mr. Dehner said he though it can be read so they are not inconsistent as he indicates he can do some of the duties of a Police Officers but not lift over 50 pounds. Mr. Pratt asked Mr. Dehner if it was his opinion that Mr. Kaller could not be able to do the duties here at this agency, and Mr. Dehner said: "that's what the doctor tells us". Further discussion took place.

Mr. Pratt asked Mr. Dehner on the next step. Mr. Dehner said the Board needed two motions: 1. Whether or not the Board finds that Mr. Kaller is totally and permanently disabled to the extent that he is unable to render useful and efficient service as a Police Officer, has to be yay or nay; and 2. Should you find in the affirmative on that, then the second motion would be whether or not you find the injury was directly caused by performance of his duty as a Police Officer.

Mr. Bennet asked what the Board' recourse is if the disability is granted and then 6 months down the road he is doing things he shouldn't be and could have done at the Police Department. Mr. Dehner said that the disability benefit is not necessarily a lifetime benefit, it's until death or recovery. He said with that being the case the Board should

periodically re-examine and the procedure he recommends for that is have a disability affidavit submitted annually.

Motion: Sgt. Trapnell made a motion that the Board finds that Mr. Kaller is totally and permanently disabled to the extent that he is unable to render useful and efficient service as a Police Officer. Mr. Beckman seconded the motion. The motion passed without opposition.

Motion: Mr. Beckman made a motion that the Board finds the injury was directly caused by performance of his duty as a Police Officer. Mr. Bennett seconded the motion. The motion passed without opposition.

Mr. Dehner said the effective date of the pension is today, and from here Mr. Baker will contact the Actuary to calculate the benefits, as he will have a few options to choose from. He said whenever the check is received the payment will be retroactive to today. Mr. Kaller and his attorney's thanked the Board.

ITEM #3 -- Any other business

There was no other business.

Motion: Mr. Beckman made a motion to adjourn. Mr. Bennett seconded the motion. The motion passed without opposition. The meeting was adjourned at 10:59 AM.