

**MINUTES
SPECIAL BOARD MEETING
CITY OF DELRAY BEACH POLICE OFFICERS' RETIREMENT SYSTEM
THURSDAY, MAY 20, 2021**

1. Call to Order, Roll Call

Chair Weber called the meeting to order at 9:07 a.m.

Board Members present: Chair Paul Weber, Secretary Jeffrey Rasor, Meer Deen, and Scott Privitera. Vice-Chair Jim Hoesley was absent.

Also present: Board Attorney Janice Rustin (Lewis, Longman & Walker as designated by City Attorney) and Pension Administrator Lisa Castronovo.

Guests present: Michael Barbire, Marques Brown, Vincent Gray, Michael Moschette, Eddie DeMicco.

2. Agenda Adoption

MOTION made by Mr. Privitera, seconded by Mr. Rasor, to adopt the May 20, 2021 Agenda. In a voice vote of the members present, **Motion** passed 5-0.

3. Comments

a. Public Comments

None

b. Board of Trustees of Police Officers' Retirement System

None

c. Active and Retired Members of the System

None

4. Initial Disability Hearings

Ms. Rustin reviewed the general ground rules for initial disability hearings informing them that since only four of the five trustees were present, three of the four must approve or deny the disability application. Further, the trustees needed to remember that workers' compensation requirements were different than pension disability requirements and thus the trustees did not have to base their pension disability decision on anything determined or awarded by workers' compensation. Both disability applications before the Board were for line-of-duty disabilities. Finally, the date of disability could be the date of the initial hearing, the date of the injury, the date when sick and vacation pay were exhausted, or the date it was determined the officer could no longer do his job.

a. Michael Barbire

Mr. Barbire addressed the Board and explained that the probability of his recovery from his disability was slim with the prognosis that it likely would get worse. Mr. Barbire stated he likely could shoot a gun but probably would fail the defensive tactics training classes that were required to stay employed by the City as a police officer. Mr. Barbire concluded by stating he did not want to give up his career especially considering he recently had been promoted to detective.

Ms. Rustin said the independent physician's opinion was that the stroke suffered by Mr. Barbire most likely happened due to hardening of the arteries which would in turn be covered by the Florida's Heart and Lung Bill.

When asked by Mr. Privitera when and where the stroke occurred, Mr. Barbire said it was on an airplane in flight on June 11, 2019. Mr. Barbire explained that about two weeks before the flight, he had a weightlifting incident in which he felt a pop in his hip but after which he had no residual pain. When asked how the doctor linked the two incidents, Mr. Barbire stated the doctor did so based on all submitted evidence. The City's Risk Manager Eddie DeMicco said there was enough evidence for Risk Management to link the stroke and the weightlifting incident and make Mr. Barbire's worker's compensation claim compensable.

Mr. Barbire continued his summary of the stroke stating that prior to it he had been a regular smoker, but since the stroke occurred, he stopped smoking, was eating right and exercising regularly, which he intended to do for the rest of his life. He said his prognosis for recovery was not good with the neuropathy expected to only get worse. Mr. Barbire stated the doctors had not suggested any operation or corrective procedures other than possibly attaching an electrode to his spinal cord, which he was not sure he wanted to try since the procedure would be experimental with no guarantee of relief.

Chair Weber asked how was the Board to make the distinction between a line of duty and a non-line of duty disability. Mr. Barbire said that since the City had made his worker's compensation claim compensable, he was pursuing a line of duty disability retirement under the pension plan. Mr. Barbire added that it had been proven that he had hardening of the arteries with ortho-sclerosis in place, though undetected, before the weightlifting incident and stroke.

Ms. Rustin reminded the Trustees that just because the City found Mr. Barbire's disability to be in the line of duty for worker's compensation, such decision was not binding on them. Ms. Rustin also reminded the Trustees that they could grant Mr. Barbire a disability benefit if they found him to be totally and permanently disabled. She added that the independent physician hired by the Board said that Mr. Barbire was totally and permanently disabled under Florida's Heart and Lung Bill.

MOTION made by Mr. Privitera, seconded by Mr. Rasor, that Mr. Barbire satisfied the conditions of the disability application as required by Ordinance Section 33.64(E)(2) and thus his application was proper. In a voice vote by the members present, **Motion** passed 4-0.

Per Ordinance Section 33.62(E)(1), disability is as "an injury, disease or condition which totally and permanently incapacitates a member, either physically or mentally, from his regular and continuous duty as a police officer." Further, the minimum standard under Section 185.18(2), Florida Statutes, provides that a police officer is considered totally and permanently disabled if he or she is wholly prevented from rendering useful and efficient service as a police officer and is likely to remain so disabled continuously and permanently. In general, the rule of thumb is that if, as a result of injury, an officer cannot perform those actions required to be certified as a police officer, he or she is most likely disabled.

MOTION made by Mr. Deen, seconded by Mr. Privitera, that Mr. Barbire satisfied the definition of disability as defined in Ordinance Section 33.62(E)(1) and Section 185.18(2), Florida Statutes. In a voice vote by the members present, **Motion** passed 4-0.

MOTION made by Mr. Deen, seconded by Mr. Rasor, that Mr. Barbire's disability was a service incurred disability. In a voice vote by the members present, **Motion** passed 4-0.

MOTION made by Mr. Privitera, seconded by Mr. Deen, to approve Mr. Barbire's disability application. In a voice vote by the members present, **Motion** passed 4-0.

Pursuant to Ordinance Section 33.62(E)(4), the date of disability may be the date of injury causing the disability, the date when the member can no longer perform his or her regular and continuous duties, the date when his sick pay and vacation pay are exhausted, or such other date as determined by the Board.

MOTION made by Mr. Rasor, seconded by Mr. Deen, that Mr. Barbire's disability date for benefit purposes was May 20, 2021, with the monthly disability benefit to start June 1, 2021. In a voice vote by the members present, **Motion** passed 4-0.

b. Marques Brown

On Officer Marques Brown's behalf, Police Lt. Vincent Gray summarized his disability application. Lt. Gray explained that Officer Brown's medical reports clearly showed his injury was duty-related due to an incident on December 21, 2018. On that date, while scaling a wall, Officer Brown injured his knee, finding out in 2019 that he had suffered a posterior meniscus tear requiring surgery. Since the date of the injury, doctors determined Officer Brown could no longer perform all his duties as a police officer. Officer Brown was at 10% maximum medical improvement (MMI). Officer Brown's worker's compensation doctor reported Officer Brown was no longer able to pursue suspects, get in and out of cars, do heavy lifting, and many of the other duties required of police officers.

When asked, Officer Brown said meniscus tear surgery was not successful and that he was told as he was being released after the surgery that his knee was pretty bad and he would not be able to run normally again for pleasure, but he could run if he had to for work. When asked by Mr. Rasor what he did after the surgery knowing it wasn't successful, Officer Brown replied he went to physical therapy and received steroid injections. Mr. Rasor noted that Officer Brown did not seek medical services immediately after the injury. Officer Brown said he initially thought the injury was a sprain thus explaining the delay. He did not have the surgery until December 2019. After the surgery, he was out of work for three months. Upon returning to work, he was assigned sedentary duty. Officer Brown said that at no point was a second surgery recommended. Officer Brown concluded by stating a follow-up MRI in June 2020 showed the meniscus tear was still present indicating the first surgery did not repair it.

Risk Manager DeMicco said there was concern in his office about the competency of the first surgeon. Both the City's worker's compensation attorneys and Officer Brown's attorneys were negotiating if the pain Officer Brown continued to experience was due to arthritis or the result of a bad surgery.

Chair Weber said he would like to see more information regarding the surgery and all follow-up visits, procedures, scans, MRI's in order to be able to make a fully educated decision in this case. Mr. Rasor asked if a motion could be made to table Officer Brown's initial disability hearing until all information mentioned by Chair Weber was provided to the Board's independent physician (who had stated that he would like to see more detailed reports). Ms. Rustin reminded the Trustees they could deny the application sending the application to a formal hearing at which more evidence could be presented or they could table the initial hearing until all information had been thoroughly reviewed by the Board's independent physician and presented to the Board.

Discussion ensued. The Trustees voiced their collective concern that Officer Brown had an MRI in June 2020 that showed the tear was not repaired but that Officer Brown had only found out the results of that MRI in the last couple of months.

MOTION made by Mr. Privitera, seconded by Mr. Rasor, to table Officer Brown's initial disability hearing until after the films and corresponding medical reports from Officer Brown's January 2019 MRI and June 2020 MRI were provided to the Board's independent physician along with a new MRI (to be paid for by the Retirement System) for the independent physician to thoroughly review and provide an updated report. In a voice vote by the members present, **Motion** passed 4-0.

ADJOURNMENT

MOTION made by Mr. Privitera, seconded by Mr. Deen, to adjourn the meeting. Meeting adjourned at 11:55 a.m.

I, Paul Weber, the undersigned, am the Chair of the Board of Trustees of the City of Delray Beach Police Officers' Retirement System ("Board"). The information provided herein is the Minutes of the May 20, 2021 special meeting of said body. These Minutes were formally approved and adopted by the Board on September 22, 2021.



Board of Trustees, City of Delray Beach
Police Officers' Retirement System

NOTE TO THE READER: If the Minutes you have received are not complete as indicated above, this means these are not the official minutes of the Board of Trustees of the City of Delray Beach Police Officers' Retirement System. Minutes will become official only after they have been reviewed and approved, which may involve some amendments, additions or deletions to the Minutes as set forth above.

NOTE: upon official approval by the Board of Trustees, the Minutes will be posted on the City of Delray Beach website at: www.delraybeachfl.gov.