

DRAFT

MINUTES OF THE SPECIAL MEETING PUBLIC SAFETY RETIREMENT BOARD TOWN OF CHINO VALLEY

MARCH 30, 2022
1:00 P.M.

CHINO VALLEY COUNCIL CHAMBERS
202 N. STATE ROUTE 89, CHINO VALLEY, AZ

Present: Jack Miller, Chair; Amy Chamberlin, Board Member; Dean Keller, Board Member;
Cheri Romley, Board Member; Deana Winn, Board Member

Staff Present: Bill Whittington, Board Attorney; Laura Kyriakakis, Human Resources Director

Attendees: Gary Bruso, Applicant, Judith Abramson, Attorney for Gary Bruso, Georgiana Bruso,
Gary Bruso's Wife

1) CALL TO ORDER

Chair Miller called the meeting to order at 1:02 p.m.

2) ROLL CALL

Chair Miller directed that the record reflect a modification in the Agenda, changing the date in Item 7(a) to state January 25, 2022.

3) APPROVAL OF MINUTES

- a) Consideration and possible action regarding the January 25, 2022, regular meeting minutes.

MOVED by Board Member Cheri Romley, seconded by Board Member Amy Chamberlin to accept the January 25, 2022, regular meeting minutes with the modification that Board Member Winn seconded the motion to approve the minutes, not Board Member Chamberlin.

AYE: Chair Jack Miller, Board Member Amy Chamberlin, Board Member Dean Keller, Board Member Cheri Romley, Board Member Deana Winn

5 - 0 PASSED - Unanimously

4) **CALL TO THE PUBLIC**

Call to the Public is an opportunity for the public to address the Board concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 15 minutes per meeting. Board action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

5) **OLD BUSINESS**

6) **EXECUTIVE SESSION**

The Board may vote to recess the Regular Meeting and hold an Executive Session, which will not be open to the public, for the following purposes:

- a) Possible vote to go into executive session for legal advice pursuant to A.R.S. §38-431.03(A)(3); for personnel matters pursuant to A.R.S. § 38-431.03(A)(1) and pursuant to A.R.S. Section 38-431.03(A)(2) for discussion and consideration of records exempt by law from public inspection regarding Gary Brusco's disability application.

MOVED by Chair Jack Miller, seconded by Board Member Cheri Romley to go into executive at 1:07 p.m.

AYE: Chair Jack Miller, Board Member Amy Chamberlin, Board Member Dean Keller, Board Member Cheri Romley, Board Member Deana Winn

5 - 0 PASSED - Unanimously

Chair Miller reconvened the public meeting at 2:25 p.m.

7) **NEW BUSINESS**

- a) Discussion and possible action regarding Gary Brusco's application for disability and direction given to the Board Secretary to seek more information, at the July 25, 2022 meeting.

Board Members discussed the following:

- Members discussed whether they could get clarification on questions, either in writing or verbally, from Dr. Segal regarding his summary and report dated December 27, 2021. Members did not think that conflicting statements could be clarified without talking to Dr. Segal. One conflicting statement in the IME included:
 - Mr. Brusco's statement regarding his loss of interest in most things, avoidance of people and places, triggered memories and thoughts, feelings of life being effectively over, a bleak future, loss of relationships, ineffectiveness at work, and lack of joy for life.
 - Mr. Brusco had some of those feelings, but many of the statements were interpretations based on what he said to the doctor and were not specifically stated.

- The summary stated that Mr. Brusio was experiencing moderate depression, post-traumatic stress, and thoughts of killing himself, but in the answers to the questions that followed, Dr. Segal had reported that Mr. Brusio was diagnosed with major depressive disorder and traumatic stress disorder. It also stated that his mental condition totally and permanently prevented him from performing a reasonable range of his job classification duties. Members did not understand the distinction between moderate and major and if both led to permanent disability.
- Members discussed that Mr. Brusio's opinion was that his depression was moderate, but Dr. Segal's opinion was that his depression was major. Members questioned how Dr. Segal made that determination.

Ms. Abramson, representing Mr. Brusio, would speak on his behalf as allowed in the Administrative Procedure Act.

- It was confirmed that a letter was not sent to Dr. Segal and police records were not collected, as discussed at the January meeting because the Board had not provided the necessary direction to the Board secretary.
- Mr. Brusio's income level could not be a factor in a determination according to Public Safety Retirement System's policy decision, which the Board had already been advised on. This policy had been a revision from a previous policy that had limited subsequent income.
- The Board had statutory powers in discharging their duties. ARS Section 38.847(D) outlined the duties, one of which was determining benefits and ARS Section 38.859, allowed the board to appoint the Medical Board. The local Board's power was limited by ARS Section 38.847(E), which stated the Board could not add to, subtract from, modify, or waive any of the terms of the system, change or add to any of the benefits provided by the system, waive, or fail to apply any requirements of eligibility or benefits under the system. This meant the system controlled the process even if the Board did not agree.
- Accidental Disability was defined as the physical or mental condition which the local board found totally and permanently prevented an employee from performing a reasonable range of duties within the employee's job classification and was incurred in the performance of the employee's duties (ARS Section 38.847.1). The requirements for retirement benefits and disability pensions (ARS Section 38.844 Subsection B) stated that members were eligible for accidental disability pension if the member's employment was terminated by reason of accidental disability. The purpose of a medical board was to evaluate a member's eligibility for an accidental disability pension. A finding of accidental, ordinary, temporary, or catastrophic disability should be based on medical evidence by a designated physician or physician working in a clinic appointed by the local board that established the disability. The findings of the Board needed to be based on the Medical Board Report (IME).
- In this particular case there were two IMEs, and both qualified Mr. Brusio for an accidental disability retirement pension. There were three questions traditionally asked of the IME Board:
 - If the person had a physical or mental condition that totally and permanently prevented them from performing a reasonable range of duties within the employee's job classification.
 - If there was a preexisting condition (a condition that existed before the claim and date of membership in the system).
 - Whether the disabling condition or injury was incurred in the performance of the member's duty as a police officer.

Both reports answered the question that supported accidental disability retirement. Under the Statute, the appropriate action for the Board was to grant Mr. Brusio his accidental disability retirement pension.

Board Members and Ms. Abramson discussed the following:

- Members questioned Ms. Abramson in an earlier comment claiming Dr. Parker always denied an application the first time. Ms. Abramson disagreed with the comment and explained that Dr. Parker always said a condition was temporary and a determination that was permanent could not be made, but in the case of Mr. Bruso, he had seen him three times and he was now stating the post-traumatic stress disorder was permanent. She explained that the Board had not been happy with the first report from Dr. Parker and subsequently sent him to Dr. Segal, who determined that Mr. Bruso's physical and mental condition totally and permanently prevented him from performing a reasonable range of duties within the employee's job classification. That was the definition of accidental disability retirement under the Statute, and there were two IMEs that claimed he was qualified for accidental disability retirement. Ms. Abramson explained that the Board could not ignore the reports and rule contrary to them.
- Members were concerned that Dr. Parker's first report from May 18, 2018, had the opposite answers to each question than the last two IME reports. That made it difficult for the Board to determine why the answers were different, so they were asking for clarification which they thought was acceptable in this particular situation. Ms. Abramson explained that when Mr. Bruso had applied for accidental disability, the May 11, 2021, and the December 27, 2021, IME reports were the only two reports that addressed the application for accidental disability retirement that had been filed in August 2020. Members explained that they were never told that those were the only reports that they could consider, and they were trying to iron out the discrepancies they found and do their due diligence. Ms. Abramson explained that it was common sense to use the most recent medical reports, not a report that predated Mr. Bruso's application. There were two subsequent reports that stated he met the criteria for accidental disability retirement that were written by the same person as the first report, and she did not understand why it was causing a problem.
- Members questioned what made Mr. Bruso's condition permanent. Ms. Abramson explained that it had been two-years and Mr. Bruso still had post-traumatic stress syndrome, and the doctor's opinion was that his condition would totally and permanently prevent him from doing his job. She said there was also a 13-page report that had the backup information as to why he made those conclusions.

Board Members discussed the following:

- Board Members wanted to review the ARS Statutes Ms. Abramson had quoted.
- Members wanted to get clarification on the IME report they were not supposed to use. It stated there had been childhood trauma, but the next IME stated there was no childhood trauma. The 2018 IME had stated that he denied being the victim of any substantial violence, but Mr. Bruso was involved in seeing two homicides and a shaken baby. Members asked Mr. Bruso why those incidents were not mentioned in the first two IMEs. Mr. Bruso explained he could not remember what he did and did not talk about, what he had been asked, or what he was triggered by, and he explained there were many things that bothered him that he did not share. Members thought that if there had been any difficulties linked to a homicide, it would be relevant for the doctor to document, and they questioned Ms. Abramson as to whether she thought it would be important to document. She declined to answer the question, saying she thought it was a red herring. Whatever had been said during the interview, and based on medical records, he had been diagnosed with post-traumatic stress disorder, whether or not the homicides had been mentioned. Members thought it was different if it was a shaken pillow or a homicide that troubled him. Ms. Abramson explained the Board did not get to decide what episodes could cause a person post-traumatic stress disorder. Members thought it was a competency issue for the doctor if specific incidents had been mentioned but not documented.
- Members pointed out that the reports claimed Mr. Bruso's memory was grossly intact, and he could remember things. In the first IME, he had claimed that he was depressed as a child, but later when asked about it during a meeting, he said he had not been. Members questioned why

there was a difference. Mr. Brusco could not answer the question.

- Members asked Mr. Brusco if he had been honest with the Board about everything. Mr. Brusco said he had been and that he had gone to every meeting and appointment the Board asked him to go to. He had been told by every doctor that if he tried to fool them, they would know. He was still going to counseling and still taking medication. He said he had been completely honest. He said he had been injured on the job and thought it was the Town's responsibility to take care of his retirement. Members said he had not retired, but instead had resigned after being demoted. Mr. Brusco said that was correct.
- Members questioned Mr. Brusco if he had certain triggers that brought up specific memories. Mr. Brusco said there were some, including smells and driving to Town. Members asked why, if the homicides were a specific trigger, they were not mentioned. Mr. Brusco could not answer for four years ago, but said it bothered him now. He went to the meetings and answered the doctor's questions honestly, and that was his report.
- Ms. Abramson explained that his letter of resignation was in the record, and it stated he was leaving due to his post-traumatic stress disorder diagnosis. State statute gave one year to apply for accidental disability retirement. Mr. Brusco explained that he had taken three months of FMLA and then subsequently resigned. Members said that he had not informed the Town of his resignation, but they graciously let him resign later.
- Ms. Abramson provided a timeline to the Board.
- Members questioned if Mr. Brusco was diagnosed with the condition when he went to "Fit for Duty" with Patricia Johnson. Mr. Brusco did not think he was. Ms. Abramson said her report stated that on a clinical syndrome scale, he exhibited some symptoms of post-traumatic stress and depression. The report also stated that he did not feel capable of functioning as a police officer. It also noted he had been treated for depression in the past for marital and family reasons, and he felt he was developing some emotional instabilities. Ms. Abramson explained that the topic had been specifically addressed in Joel Parker's May 11, 2021, report regarding conflicts of medical evidence. He reported that he had issues with his divorce in 2017, but he concluded that his course of illness and treatment was most consistent with legitimate post-traumatic stress disorder.
- Members reviewed the timeline. He resigned in 2018. In 2017, he fell asleep on the job and went through Internal Affairs. Coworkers remember that Mr. Brusco was having the most difficulty in his family life and began taking medication, which made him fall asleep at work. He was demoted in September, after that episode. At that point he went on leave and then resigned. Members thought the timeline showed that it was the demotion that pushed him to resign. Mr. Brusco said he could have gone back on patrol, but it would not have been good for him, which is what he told the Chief. Members asked why it had taken so long to resign and apply for the disability if it was problematic. Mr. Brusco did not know, but he said he was not scheming.
- Mr. Brusco had gone through treatments that were paid for by the Town through Dr. Gelber, and then he went on his own. He then reapplied for temporary disability and continued to go to counseling and was still going.
- With Patricia Johnson, Mr. Brusco had admitted to being suicidal seven years ago and that he had experienced childhood trauma. Members said they wanted to do the right thing but wanted to make sure they were covering their bases. Mr. Brusco was asked why certain doctors reported there had been childhood trauma, that he had felt suicidal and guilt, but Dr. Segal reported issues with homicides and shaken babies, but no childhood trauma. Mr. Brusco could not answer the questions and explained the reports were based on the questions they asked him.
- Mr. Brusco was frustrated that it had been two months to get the questions clarified by the doctor and they still had nothing. Ms. Abramson explained that the doctors that did report on his childhood trauma did not connect it to his post-traumatic stress disorder. She felt the Board's concern was a red herring because it did not affect whether he had post-traumatic stress disorder. Dr. Parker had all that information and still reported that his condition was not a result

of prior or existing conditions. Both doctors reported his condition was related to his job as a police officer.

- Mr. Brusio explained his regular physician had diagnosed him with post-traumatic stress disorder in 2017, and he continued to work but his condition never improved.

MOVED by Board Member Amy Chamberlin, seconded by Board Member Deana Winn to have the Board secretary clarify questions from Dr. Segal on reports, conflicting statements, childhood trauma, involvement in homicides, and personnel training documentation.

AYE: Chair Jack Miller, Board Member Amy Chamberlin, Board Member Dean Keller, Board Member Cheri Romley, Board Member Deana Winn

5 - 0 PASSED - Unanimously

Members explained to Mr. Brusio that they had not given direction to the Board Secretary at the previous meeting, as required, to follow up with Dr. Segal to get clarification on their questions. Ms. Abramson wanted a copy of any response received from the doctor. She did not think the questions the Board wanted answered would have a bearing on what the reports stated or the job of the Board. The reports supported his accidental disability retirement. Members explained that they wanted their questions clarified before deciding. Ms. Abramson explained that the doctor had all the reports with the information that the Board was questioning and was able to make his determination. Members said that no one knew if he actually reviewed the information.

The Board secretary would take her direction straight from the minutes once they were transcribed, and then she would send a letter to Dr. Segal.

- b) Discussion and possible final action regarding Gary Brusio's application for disability.

Item not discussed. No action taken.

8) ADJOURNMENT

The meeting was adjourned at 3:23 p.m.

Submitted: April 7, 2022.

By: *Sara Burchill, Deputy Town Clerk*

Approved: MONTH DAY, 2022.