

# **DRAFT**

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

**NOVEMBER 8, 2022  
1:00 P.M.**

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

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

Absent: Amy Chamberlin, Board Member

Staff Present: William Wittington, Board Attorney; Laura Kyriakakis, HR Director

Attendees: Gary Brusco, Applicant, Judith Abramson, Attorney for Gary Brusco

**1) CALL TO ORDER**

Chair Miller called the meeting to order at 1:01 p.m.

**2) ROLL CALL**

**3) APPROVAL OF MINUTES**

MOVED by Board Member Cheri Romley, seconded by Board Member Dean Keller to approve the October 4, 2022, special meeting minutes.

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

**4 - 0 PASSED - Unanimously**

- a)** Consideration and possible action to accept the October 4, 2022, special meeting minutes.

**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) NEW BUSINESS**

**7) 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) 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 with regard to:

Andrea Mixon – DOH September 6, 2022; Certified Police Officer in the State of Arizona October 12, 2022, and her acceptance into the Public Safety Personnel Retirement System.

- b) 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. § 38-431.03(A)(2) for discussion and consideration of records exempt by law from public inspection regarding Steve Jones disability application.
- c) 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. § 38-431.03(A)(2) for discussion and consideration of records exempt by law from public inspection regarding Gary Brusco disability application.

**8) NEW BUSINESS RESUMED**

*After the Executive Session, the Board will reconvene the Regular Meeting.*

The Regular meeting was reconvened at 1:17 p.m.

- a) Discussion and possible action to accept Andrea Mixon in the Public Safety Retirement System, effective October 12, 2022.

MOVED by Board Member Cheri Romley, seconded by Board Member Dean Keller to accept Andrea Mixon into the Public Safety Retirement System.

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

**4 - 0 PASSED - Unanimously**

- b) Discussion and possible action regarding Steven Jones application for disability.

MOVED by Board Member Deana Winn, seconded by Board Member Cheri Romley to send Steven Jones for an IME (Independent Medical Exam).

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

**4 - 0 PASSED - Unanimously**

- c) Discussion and possible action regarding Gary Brusco application for disability.

Gary Brusco's Attorney, Judith Abramson, presented the following:

- The public safety personal retirement system was created to provide a uniform, consistent, and equitable statewide retirement program for all public safety personnel regularly assigned hazardous duty from employment with State of Arizona or a political subdivision. The system was administered by local boards as it applied to the employer's members in the system. The local board had certain duties, obligations, and powers as set forth in Arizona Revised Statute Section 38-847. The following sub-statutes were reviewed for the Board:
  - Subsection (c) – required each member of the board to take an oath of office to administer the affairs of the local board diligently and honestly, and not knowingly or willingly violate any laws applicable to the system;
  - The local Board had the obligation to make determinations on accidental disability retirements and appoint medical boards per section 38-859.
  - Subsection (e) - the local board did not have the power to add to, subtract from, modify, or waive any of the terms of the system, or change or add to any of the benefits provided by the system, or waive or fail to apply any requirement of eligibility of membership or benefits under the system.
  - Section 38-844(b) addressed accidental disability retirements and section 38-842(1) specifically defined what accidental disability was. Accidental disability was defined as a physical or mental condition which the local board found totally and permanently prevented the 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.
- After an application for accidental disability was submitted with the relevant medical records, the system was designed to send the applicant to a medical board for an examination. The purpose of the board was to evaluate the member's eligibility for an accidental disability pension. It required the findings to be based on medical evidence by a designated physician appointed by the local board.
- The public safety website explained the process for an accidental disability. It required the local board to consider the application and determine whether the condition or injury, based on the IME doctor's report, met the statutory requirements for potential approval. That meant the decisions made by the Board must be based on the doctor's IME reports, not on the personal opinion of the board member. If a board member could not make their decision based on the

IME report instead of their personal opinion, the member needed to recuse themselves, or they would be violating their oath and ARS 38-847(e).

- If a board member thought an officer was lying, but the IME did not support that suspicion, the board member would be violating their oath and the public safety statutes if they voted on their suspicion and not on the IME report.
- A board member would be violating their oath and public statutes mandating the board's decision must be based on the IME records of the board, if that board member voted on a personal opinion because they believed that they had experienced similar situations as the officer but were still working and questioned why the officer would get a retirement benefit when they were not.
- Gary Brusco's IME record reports from Dr. Joel Parker, dated May 11, 2021, summarized his process of review, personal interviews, notes, and medical tests administered. The medical tests given had question safeguards to determine if a person was exaggerating or overreporting. Mr. Brusco's test showed he was consistent in his answers without overreporting or exaggeration. Dr. Parker's diagnosed Mr. Brusco with post-traumatic stress disorder. Dr. Parker determined the following: Mr. Brusco could no longer perform a reasonable range of duties within his employer's job classification; his condition was not preexisting before entering the system; his condition was incurred in the performance of Mr. Brusco's duties as a police officer; Dr. Parker found there were conflicts in the medical evidence, but he had explained them all away, and found that his medical condition and illness was most consistent with legitimate post-traumatic stress disorder. All answers were consistent with granting Mr. Brusco an accidental disability retirement. There was nothing in the report that would substantially support a denial of Mr. Brusco's application for disability retirement.
- The Board required a second evaluation, which was completed by Dr. Ronald Seigal. After reviewing all Mr. Brusco's records, including the prior IME reports, and after giving the necessary medical tests, he found that there was no evidence of untruthfulness or exaggeration on the tests. Dr. Seigal concluded that: Mr. Brusco could no longer perform a reasonable range of duties within his employer's job classification; his condition was not preexisting before entering the system; his condition was incurred in the performance of Mr. Brusco's duties as a police officer; he found there was not any conflicts in the medical evidence that would support denying Mr. Brusco's application for accidental disability.
- The Board required more clarification and sent a letter to Dr. Seigal asking specific questions they had regarding the various doctors' reports. Dr. Seigal responded and reiterated that he stood by his initial report that Mr. Brusco had a condition that was permanently and totally disabling, that there were no preexisting conditions, and that his injury was incurred at work.
- This was their third or fourth time in front of the Board, and Ms. Abramson hoped the Board did the right thing.

The Board discussed the finalization of the P5 detail, which they had not previously specifically voted on. The Board had to make their own findings, which went on top of the P5. A copy of the P5 was given to Mr. Brusco and his attorney.

The Board went through the P5 questions:

1. Did the employee file the application timely and after the incident: Yes
2. Did or would the employee terminate by reason of disability: Yes
3. Did employment terminate based on a disciplinary issue: No
4. If the member's period of DROP had ended, if applicable, did or would the employee terminate by a reason of disability: N/A
5. Is the employee still working a position within their job classification the local board considered a reasonable range of duties position: No
6. Had the employee refused a position within their job classification that the local board considered a reasonable range of duties: No

7. Did the injury or condition occur prior to the current PSPRS membership date: No Note: Members discussed their own thoughts concerning this question, with some believing there were conditions that did occur prior to the PSPRS membership date. They would vote on the final answer.

8. Was the injury or condition the result of an event incurred during the performance of the employee's duties: Yes Note: There was a conflict of opinion amongst board members.

MOVED by Chair Jack Miller, seconded by Board Member Cheri Romley to accept the P5 questions as read (questions and answers were read aloud).

AYE: Chair Jack Miller, Board Member Cheri Romley, Board Member Deana Winn

**3 - 0 PASSED**

MOVED by Chair Jack Miller, seconded by Board Member Deana Winn to adopt the P5 findings issued by Dr. Seigal, in conjunction with the application for disability retirement, filed by Gary Brusco, and the findings and conclusions, of Dr. Seigal as set forth in the IME prepared by Dr. Seigal, dated 12/21/2021 and the follow up on 8/01/2022.

AYE: Chair Jack Miller, Board Member Cheri Romley, Board Member Deana Winn

**3 - 0 PASSED**

MOVED by Chair Jack Miller, seconded by Board Member Deana Winn to award the accidental disability to Mr. Brusco.

AYE: Chair Jack Miller, Board Member Cheri Romley, Board Member Deana Winn

**3 - 0 PASSED**

The Board discussed the effective date of the accidental disability. It was determined that Mr. Brusco's retirement would be effective September 1, 2020.

MOVED by Chair Jack Miller, seconded by Board Member Deana Winn to become effective as of 09/01/2020.

AYE: Chair Jack Miller, Board Member Cheri Romley, Board Member Deana Winn

**3 - 0 PASSED**

## 9) **ADJOURNMENT**

Chair Miller adjourned the meeting at 1:49 p.m.

Submitted: November 16, 2022.

By: *Sara Burchill, Deputy Town Clerk*

Approved: MONTH DAY, 2022.