

**October 20, 2010**  
**Regular Meeting Board of Fire Commissioners**

The regular meeting of the Board of Fire Commissioners was held on the above date.

President Rosenberg called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance to the Flag.

Present: President Rosenberg, Vice President Garcia, Commissioners Gaskin, Klein, Lee and Meszoros

Absent: Fire Chief Rooney

1. Request a moment of silence in remembrance of FF Frank A. Norris, Sr. who passed away on September 24, 2010.

A moment of silence was held in remembrance of FF Frank A. Norris, Sr.

Motion was made and seconded to dispense with reading the minutes of the previous meeting.

**Old Business**

1. Local 834 – Grievance 2010-16; Dianne Micalizzi, Widow's Pension.

Attorney Mitola represented that this was a request for a legal opinion regarding what type of a Widow's Pension Dianne Micalizzi was entitled to and provided the background.

Joseph Micalizzi was a Bridgeport Fire Fighter. He held a bona fide rank of Lieutenant although when he left the Department, he was a Provisional Fire Marshal. He retired from the Department in 1999 with a service related disability based on heart and hypertension and the medical documents and the related Bridgeport Fire Department records indicate that in 1988, while he was on duty, he suffered a heart attack. His retirement in 1999 was covered under the provisions of Pension Plan A, specifically Section 2E. He was given a service related disability under Pension Plan A.

Attorney Mitola represented that it took some time to get all of the records and do some research, but they found that there was evidence that Mr. Micalizzi had an accepted 20% permanent partial impairment of the cardiovascular system which was an award from Workers' Compensation back in January of 1992 and conversations that he had directly with Berkley Administrators indicated that there was an accepted hypertension claim because of his condition. When he had his heart attack back in 1988 he didn't go back to the actual line, he could not work as a fire fighter. At the time of his heart attack, he was Provisional Captain and he believed that he had his heart attack after fighting a fire. The medical records indicated that he could not do that job anymore because of his condition, so from that point on, he was Fire Inspector and then he became the Provisional Fire Marshal. That is just further evidence that he had a significant heart condition back in the late 80's and early 90's.

Mr. Micalizzi passed away of a heart attack on March 28, 2010. They received the information from St. Vincent's Medical Center, EMS and documented that it was a massive heart attack. Death certificate indicates cause of death. Based on that, it is the

recommendation of the City Attorney's Office that Mrs. Micalizzi is entitled to the pension that she is seeking which is a Line of Duty Widow's Pension pursuant to Pension Plan A and that is based on the evidence of the Workers' Compensation claim that was accepted by the City that resulted in 20% permanent partial impairment of the cardiovascular system, there was an accepted hypertension claim that he was retired with a service related disability pension and that the records that he indicated to the Board showed that he died of a heart attack in March of 2010.

Attorney Mitola recommended that the Board grant the pension that Mrs. Micalizzi was seeking.

Commissioner Klein asked if she was seeking 50%. Attorney Mitola explained that normally the widow gets half of what the retired fire fighter would be getting. When the death is related to the job, she receives the same thing that he was receiving.

Commissioner Klein motioned to grant the grievance so that Mrs. Micalizzi is awarded the pension that she is seeking to be effective March 29, 2010, the day after date of death; and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Meszoros seconded and the Board passed it unanimously.

2. Entertain a motion to change the status of Wanda McNeil's Widow's Pension to a Line of Duty Widow's Pension and refer to the Board of Trustees, Pension Plan B for implementation.

Attorney Morrissey and Wanda McNeil were not present. The matter was passed over.

### **New Business**

1. Communications:

a. None.

2. Swearing in of Probationary Fire Equipment Mechanic Thomas Allen.

President Rosenberg swore in Probationary Fire Equipment Mechanic Thomas Allen and he was congratulated by all.

3. Commissioner Klein motioned to grant a Widow's Pension Request to Kathy A. Serca, Widow of Retired Firefighter Louis W. Serca, effective August 20, 2010, and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Lee seconded and the Board passed it unanimously.

4. Commissioner Lee motioned to remove Retired Fire Captain James J. Sullivan, deceased September 29, 2010, from the Firefighter's Pension list, and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Klein seconded and the Board passed it unanimously.

5. Commissioner Lee motioned to grant a Widow's Pension Request to Brenda Norris, widow of FF Frank Norris Sr., effective September 25, 2010, and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Klein seconded and the Board passed it unanimously.

6. Commissioner Klein motioned to grant a Widow's Pension Request to Debra Ann Shevlin, widow of Retired Deputy Fire Chief Patrick J. Shevlin III, effective September 10, 2010, and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Meszoros seconded and the Board passed it unanimously.

7. Commissioner Lee motioned to grant a Regular Pension request to PE Glenn Bardinelli upon retirement, effective 2400 hours, October 8, 2010, and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Meszoros seconded and the Board passed it unanimously.

8. Commissioner Meszoros motioned to remove Muriel DeRoche Stonoha, deceased October 6, 2010, from the Widow's Pension list and refer to the Board of Trustees, Pension Plan A, for implementation; Commissioner Klein seconded and the Board passed it unanimously.

9. Executive Session for attendance review of the following individuals:

a. FF Ronald Reed (B) – Attorney Tom Bucci representing FF Ronald Reed waived executive session.

Commissioner Meszoros represented that he is a NAGE employee and Mr. Bucci is representing NAGE in contract negotiations. He has no problem with Mr. Bucci handling the matter and he doesn't feel it is a conflict. President Rosenberg stated that he didn't feel it was a conflict either.

Attorney John Bohannon introduced himself on behalf of the Bridgeport Fire Department.

Attorney Thomas Bucci introduced himself representing Ron Reed, Fire Fighter.

Attorney Bohannon wanted to bring to the attention of the Commissioners that Kimberly Estes, Physical Therapist who conducted the Functional Capacity Examination for Mr. Reed was in attendance this evening and he would like to present testimony from her to the Commission.

President Rosenberg asked if everyone had a Functional Capacity Report. Attorney Bucci responded yes and stated that he wanted to submit the medical opinion of Mr. Reed's treating Orthopedic Surgeon, Dr. Patrick Kwok, along with the Functional Capacity Examination that was performed in September of 2010 that shows that Fire Fighter Reed is perfectly capable of performing his duties.

President Rosenberg responded that the date of the evaluation that he had in front of him was August 5, 2010. Attorney Bucci stated that he had a doctor's reported dated September 13 and a Functional Lift Capacity Test Summary dated August 31, 2010. President Rosenberg asked if that was from Dr. Kwok and Attorney Bucci responded yes. Attorney Bucci distributed those documents and entered them into the record and Attorney Bohannon responded that he had no objection.

President Rosenberg stated that it was his understanding that the first evaluation was done as a result of an IME that the Fire Department ordered. He asked if that was correct. Attorney Bohannon stated Functional Capacity Examination. President Rosenberg responded yes. Attorney Bohannon responded yes. President Rosenberg stated that it was an Independent Medical Exam and the second one that they have is a

report done by the Fire Fighter's physician of his choice. Attorney Bohannon answered yes, that was correct.

Attorney Bucci stated that there was no Independent Medical Examination done of Fire Fighter Reed. He went to a therapist that the City sent him to. That is not a medical examination. Attorney Bohannon responded that that was why he clarified it that it was a Functional Capacity Examination. Attorney Bucci stated a Functional Capacity Exam done by a therapist without any medical degree whether this doctor is Mr. Reed's treating physician or not he is an Orthopedic Surgeon not to say therapist. President Rosenberg wanted to clarify it for everybody else here that one was the result of the Fire Department ordered and Attorney Bucci was clarifying it to the extent that it is not a physician. Attorney Bucci took exception to the term independent also, the Fire Department sent him to. President Rosenberg stated that customarily what they have done and they call it an Independent Medical Exam and that is what they've done for several years and the point is that he was trying to establish it is one thing to go to your own physician and it is another thing to go for an Independent Medical Examination is suppose to be somebody who is independent. Attorney Bucci took exception to that. Attorney Rosenberg stated that what he was saying was that one was what the Fire Department ordered and your exception is noted because you are stating that this person who did the evaluation is not an MD or a surgeon, but one was what we call an IME which is customary here and has been ordered for many, many other people throughout the years. He wanted to clarify it for everybody else. You are certainly free to make your case and I'm sure you're going to.

Attorney Bohannon stated that he thought it would be appropriate for the Department to go forward. Attorney Bohannon called Kim Estes, Physical Therapist who conducted the Functional Capacity Examination for the Bridgeport Fire Department.

Attorney Bohannon asked everyone if they had a packet of information with a cover sheet Rehabilitation Associates, Inc., Functional Capacity Evaluation Report.

Attorney Bohannon: Good Evening Miss Estes.

Miss Estes: Good Evening. I am a Physical Therapist with Rehabilitation Associates, Inc. in Stratford.

Attorney Bohannon: What does Rehabilitation Associates do.

Miss Estes: We are an outpatient company, rehabilitative clinic where we perform outpatient services, both physical therapy, occupational therapy, nutrition, social work for adults and children.

Attorney Bohannon: Would you explain to the Commissioners please what it is you do as a physical therapist.

Miss Estes: As a physical therapist we treat out-patient orthopedic and neurological issues and help people to return to their maximum function, both in the community and at work.

Attorney Bohannon: And what training or certification do you have in the field of physical therapy.

Miss Estes: I am a Workers' Compensation Specialist. I am a certified Ergonomic Evaluation Specialist, so I am trained to go out into work environments and analyze those environments in an objective manner using the Department of Labor Standards and then comprise the information and make a physical demands analysis which is basically a job description, but it is the physical requirements of the job so that you have an objective list of the requirements of those jobs. I am also a functional capacity evaluation certified and then I am certified to perform functional capacity evaluations based on those job descriptions.

Attorney Bohannon: Do you have any particular knowledge of the physical capacity necessary to perform the job of Bridgeport Fire Fighter.

Miss Estes: I do.

Attorney Bohannon: How did you acquire that knowledge.

Miss Estes: I was commissioned by the Bridgeport Fire Department to analyze the job of a fire fighter and I spent a significant amount of time conducting ergonomic analyses of the job of fire fighter including all of the equipment on all of the trucks, all of the equipment that the fire fighters use whether it is contained on the truck or not, the ergonomic forces and physical abilities required to perform the job of a firefighter including use of charged hoses, etc.

Attorney Bohannon: And when did you perform that analysis.

Miss Estes: I believe it was in 2006.

Attorney Bohannon: Now you use the term ergonomic analysis. What does the term ergonomics entail.

Miss Estes: Ergonomics is the study of the body's interaction with its environment and it could be any environment and that's where the specifics then come in, so in this case it was the study of the human body's interaction with all the equipment and the requirements of a fire fighter.

Attorney Bohannon: Are you familiar with the Bridgeport fire fighter requirements and how is it you first came to be aware of Mr. Reed.

Miss Estes: I met Mr. Reed on August 5, 2010 in which I conducted the first of two functional capacity evaluations.

Attorney Bohannon: First of all, who asked you to conduct the functional capacity evaluation for Fire Fighter Reed.

Miss Estes: The City of Bridgeport.

Attorney Bohannon: And where was your functional capacity examination conducted.

Miss Estes: In our Stratford office which is 2900 Main Street.

Attorney Bohannon: Over the course of what days.

Miss Estes: Two days, August 5<sup>th</sup> and the 6<sup>th</sup>. Two hours each day.

Attorney Bohannon: Would you please explain to the Commissioners what your functional capacity examinations of Fire Fighter Reed entailed.

Miss Estes: Functional capacity evaluation entails, it's an examination which entails a head to toe body mechanical analysis of what someone is able to do and then can then be compared to a job description. So it is physically what someone is able to do and then we compare it to the job description of what they are required to do for that job. So a functional capacity evaluation is composed of a musculoskeletal examination and this is in page one of two of your packet. Dynamic Grip Strength Testing, an entire Lift Circuit and Positional Tolerance such as standing, balance, sitting, kneeling, squatting, crawling, stair climbing, ambulation, ladder climbing and then there is also if needed an analysis of any pain behavior present during that examination.

Attorney Bohannon: Now did you judge Mr. Reed's physical capacity to perform functions on objective criteria or subjective criteria.

Miss Estes: Objective criteria.

Attorney Bohannon: I point out to the Commissioners the objective criteria by which she assessed Mr. Reed's physical capacity.

Miss Estes: The Physical Demands Analysis is the objective data in which I used to assess whether or not he was able to achieve or able to perform the physical functions of a fire fighter. This is the document that I was contracted to create on behalf of the City of Bridgeport.

Attorney Bohannon: In your packets Commissioners, there is a document about half way through that says, Physical Demand Analysis at the top of the page. When was this document prepared.

Miss Estes: July 25, 2006.

Attorney Bohannon: All right. And what does it entail.

Miss Estes: It entails an ergonomic analysis, so an analysis. All of the tools and all of the vehicles within the Fire Departments down to and including forced, required, open and close doors, all of the equipment and all of the different containers within the Fire Departments, within the fire trucks and also it contains an analysis of all of the equipment that the Fire Fighters wear such as the SCBA's in detail including not only the tool and the equipment, but the specifications under which those tools or pieces of equipment were used, such as the pounds that the tool would weigh, at what point they would have to put it away or to retrieve it and the forces required to use that tool and it goes through all of the equipment for each of the vehicles for the Fire Department.

Attorney Bohannon: How did you obtain the information in the report.

Miss Estes: I went out with several Fire Fighters that were chosen by the Department to represent and to assist me in this function and I used a forced gage to measure the forces where it says pounds of force or I used a scale to measure the weights and used tape measures to measure the heights, all listed there so that we could have the information in terms of how much a piece of equipment weighs, where it is stored and the forces to use it.

Attorney Bohannon: What were you trying to achieve in relationship to the physical requirements necessary to perform those steps.

Miss Estes: I was trying to achieve the most accurate possible picture of objective information in terms of what a Fire Fighter is required to perform physically.

Attorney Bohannon: Now this Physical Demands Analysis Report you conducted which is dated July 25, 2006 are those physical demands against which you measured the physical capacity of Fire Fighter Reed.

Miss Estes: That is correct.

Attorney Bohannon: Can you explain to the Commissioners exactly what it means you did with Fire Fighter Reed in order to assess his physical capacity.

Miss Estes: Yes. Functional Capacity Evaluation is broken down into several different categories. First there is an entire history taken, then there is a full musculoskeletal evaluation where I measure the person's range of motion and their strength, it is called manual muscle testing, a manual muscle to test their strength, then I go to dynamic grip strength testing so I test their grip strength, then I perform the lift circuit, okay, floor to waist lifting, shoulder, waist, overhead lifting, right hand carry, left hand carry, two hand carry and push, pull testing. Then the positional tolerances are measured during those tests and in addition as needed on day 2, the musculoskeletal examination is repeated, the lift circuit is repeated and then I specifically on day 2 test balance, kneeling, squatting, crawling, stair climbing and ladder use.

Attorney Bohannon: Now, in terms of the report, did Mr. Reed demonstrate any ability to pass the sitting, kneeling, sustained squatting, crawling, stair climbing, ambulation, ladder or pain behavior test.

Miss Estes: He passed all of those. There were no issues.

Attorney Bohannon: What if any areas of concerns did you identify with regard to Mr. Reed's physical capacities.

Miss Estes: The areas of concern are actually easiest found by the last several pages of the entire packet where you see Lifting Requirements, specifically page number 5. I'm sorry it's on page. There's no page number on that.

Attorney Bohannon: Excuse me if I may invite counsel's attention and the Commission's attention, there is a document with a heading of "Lifting Requirements" at the top.

Miss Estes: At the bottom, it is page number 16 out of 23 and page numbers are upside down at the bottom.

Attorney Bohannon: Thank you.

Miss Estes: So on actually page 17 where it goes into waist to overhead, these are the following items where Mr. Reed did not meet the demands based on the examination that I did. Waist overhead and the 1, 2, 3, 4<sup>th</sup> column over, he lifted 50 lbs with me waist overhead, so that would then say he would be unable to waist overhead lift the torch or the fan. And in the next column over. What happens during the functional capacity

evaluation is that as the patient lifts more and more weight, I'm monitoring the vital mechanics and I'm rating those authorities in accordance with the Department of Labor Standards. So then I can then pacify what weights they can lift at what frequencies of the day, okay those words coincide with specific percentages of an eight hour workday. Okay. So what you have there in your four columns are the headings a couple of pages back is constant, frequent, occasional and rare. Those are your four columns. So we're only looking at the occasional and rare columns here. And, Mr. Reed lifted waist overhead, he waist to overhead lifted 60 lbs rare and 50 lbs. occasional. So in comparing that 50 lbs. occasional and 60 lbs rare to this list here which is the equipment that I analyzed and in talking and meeting with the fire fighters and in going over this determined how often they would have to use that piece of equipment on any given day.

Attorney Bohannon: If I may, where it says occasional and you listed all of this equipment, it is my understanding that you are telling the Commissioners that the only two pieces of equipment that he could not lift on an occasional basis would have been a torch and a fan.

Miss Estes: That's on the floor to waist. No. Just the fan. I'm talking about waist to overhead here actually.

Attorney Bohannon: Okay.

Miss Estes: On the first page, the floor to waist, he occasional lifted 70 lbs and the fan is 73 lbs. So there is only a 3 lb discrepancy there. So while that is a difference, the waist to overhead and the two hand carry and the other measures thereon have more significant difference.

Attorney Bohannon: All right. Now to be fair to Fire Fighter Reed would you have failed your functional capacity analysis because he could only lift 70 lbs and you have a fan that weighs 73 lbs.

Miss Estes: Ah, no. What I would have done then is put in a proviso that what the only item in the entire test that he did not pass and I would ask if reasonable accommodations could be made for him on his behalf.

Attorney Bohannon: What other lifting requirements did you analyze.

Miss Estes: The waist to overhead I analyzed and he did not meet the 82 lb force, the 82 lb force required for raising the 1000 watt mounting weight. And then the two hand carry which is the next column down and again the fan, the fan repeats throughout the entire exam.

Attorney Bohannon: First can you explain to the Commissioners what the fan is.

Miss Estes: The fan is literally a large fan used for ventilating areas, but it is a very large fan. Industrial.

Attorney Bohannon: What about the 1000 watt mounting light.

Miss Estes: Okay. The 1000 watt mounting light is literally a very large light that is mounted on the side, you need to be able to push it up and reach up overhead and it is very thick and stiff, so that requires 82 lbs of force.



Attorney Bohannon: Okay. What is it mounted to the side of what.

Miss Estes: The side of the fire truck. So then under two hand carry the items which he did not meet the demands for which is probably the best way to phrase this would be rope sack, torch and the fan which are all down at the bottom under the occasional column and then again the fan under the rare column.

Attorney Bohannon: All right. Can you tell the Commissioners first of all what is a two hand carry.

Miss Estes: A two hand carry is carrying in front of you with both of your hands. Then on the next page we go to.

Attorney Bohannon: Before we go to the carrying. With regard to the lifting, floor to waist, waist to shoulder and waist to overhead.

Miss Estes: Floor to waist, waist to shoulder and waist to overhead.

Attorney Bohannon: With regard to lifting restrictions, did that in your opinion prevent Fire Fighter Reed from performing the functions of a line fire fighter.

Miss Estes: Yes.

Attorney Bohannon: Okay. In total regard or limited regard.

Miss Estes: I. Well. I'm saying total regard because it's more than just the fan. It is also the torch and it's also the wall mounting. I would say at this point, since there are multiple items under those that I would say in total regard.

Attorney Bohannon: Okay. With regard to the report, what about any other physical restrictions did you observe that could prevent Fire Fighter Reed from performing as a line fire fighter.

Miss Estes: Under the page number 18 out of the 23, again the page number is on the bottom upside down. Okay. There are multiple items in both the left hand and the right hand carry which Fire Fighter Reed did not lift enough in order to be passed in these sections.

Attorney Bohannon: Now, can you identify what those items are please.

Miss Estes: Okay. So we'll go through left hand carry and that was the spare hose bag, the step chuck, the brake pedal cutter, the hydrant bag, the high rise bag, the air pack, the irons, the dry chemical container, the water can, the torch, the fan and I measured numerous saws weighing between 22 and 36 lbs.

Attorney Bohannon: Now, why specifically did you determine that Fire Fighter Reed could not perform functions with those tools.

Miss Estes: Because on his lift testing his occasional abilities for his left hand carry were 15 lbs. So, according to the Department of Labor Standards, I determined that on occasional basis he could not lift anymore than 15 lbs. with his left hand. So this is the occasional column in terms of what is required for a fire fighter with this equipment so

anything more than 15 lbs. in that column would be items that he would not be able to lift.

Attorney Bohannon: What other deficiencies did you identify with regard to left hand carry.

Miss Estes: In the next column which is under the rare, okay, Mr. Reed lifted 20 lbs., okay, rare, 20 lbs. with his left hand and that was, so then anything over 20 lbs. would then be some more than what he should physically be safe to do which would be the spare hose bag, the airbag controller, the high rise bag, again the dry chemical container, the water can, the rope sack, the torch, the fan and again the saws, so all of those items exceeded his physical abilities that I observed.

Commissioner Klein: How do you test for occasional versus rare.

Miss Estes: In the training to perform this examination for every single movement of the human body in terms of in reference to any activity, so we'll take this left hand carry for occasional. There is a certain set of body mechanics that we would expect to see and certain things that we would not see. I've been trained to observe those and to document those and to pick those out for each of these activities for each part of the body. So when he is performing or anyone is performing the left hand carry, I'm observing multiple things and in terms of their body position and the muscles that are functioning and I'm taking that action and I'm putting that into a certain category based on what I see body mechanically.

Commissioner Klein: So you're making one observation and you can categorize it differently for occasional and rare.

Miss Estes: Correct. Correct. You'll see the body position and react differently in occasional versus rare. So if you pick up something really light your body will tell me and if you pick up something that is very heavy for you your body will look differently to someone from the outside and that's what this is all about.

Commissioner Klein: Is that a subjective observation which may differ from evaluator to evaluator, therapist to therapist.

Miss Estes. No. No.

Commissioner Klein: Okay.

Attorney Bohannon: Miss Estes, these categories at the top. Constant, Frequent, Occasional and Rare. Could you explain to the Commissioners what you mean by the term Occasional where it says 7-33%.

Miss Estes: Okay. According to the Department of Labor Standards, occasional means 7-33% of the 8 hour work day or an 8 hour work day. Rare is 1 to 6%, Frequent is 34-66%, etc. according to those that you have there on the chart. So, there are body mechanics associated just like I had said with each of those classifications and each activity.

Attorney Bohannon: Are you saying that the body mechanics that are demonstrated under floor to waist, I'm sorry, left hand carry, would be 7-33% of the time you would be expected to do those during the course of his work day.

Miss Estes: Yes.

Attorney Bohannon: All right. Now, the left hand carry, those items that you are identifying, where does the fire fighter use those items.

Miss Estes: Where.

Attorney Bohannon: Yes.

Miss Estes: Well that would be in the line of duty at a fire.

Attorney Bohannon: So what percentage of the time that a fire fighter is out on the line performing a job fighting a fire is he actually performing these functions.

Miss Estes: It would be between 7-33% of their day while they are there.

Attorney Bohannon: Is it essential that a fire fighter be able to perform those functions that are listed in the left hand carry that you identified Fire Fighter Reed had deficiencies with.

Miss Estes: Yes.

Attorney Bohannon: Why is that.

Miss Estes: I was informed when I conducted the Physical Demands Analysis that these were the actions that they need to perform in order to be able to perform their job of fighting a fire.

Attorney Bohannon: Well, why not have somebody else perform those functions for Fire Fighter Reed at a fire so that he can keep his employment.

Miss Estes: Well, because when he is at the fire, there may not be someone else available to perform those functions for him.

Attorney Bohannon: Now, did you identify similar deficiencies with regard to the right hand carry.

Miss Estes: Yes I did.

Attorney Bohannon: Which deficiencies did you identify there?

Miss Estes: Airbag controller, hydrant bag, again the dry chemical container, the rope sack, the torch, the fan and the saws.

Attorney Bohannon: What was the problem with Fire Fighter Reed's observed performance that you felt caused him to fail in those categories.

Miss Estes: Okay. When I did the right hand carry for example Fire Fighter Reed, I observed that his left upper extremity as he carried progressively what I saw that made me write these weights and his limitations is I progressively saw as he was carrying with his right hand, he lifted up his left hand some to counterbalance. Okay. And then he side bent his neck to the left which again according to the training that I went through as

a certified functional professional evaluator tells me that that is a sign that someone is acting occasional lifting ability and then as those symptoms progress or those, I shouldn't say symptoms, as those body mechanics progress we then write it as rare and then I stop when I feel that it is no longer safe to advance. So it was basically left upper extremity abduction and side bending to the left which is very typical for someone when they are trying to carry something heavy in their right hand, their opposite hand goes out and your neck side bends away to counter balance.

Attorney Bohannon: Now if I have your attention back to the first page of your report. There is a heading there "Musculoskeletal Examination" – The patient was limited in left upper extremity range of motion. See enclosed forms for details. Both ranges of motion and manual muscle testing were consistent with the demonstrated performance. First of all, what is the left upper extremity.

Miss Estes: Okay. Left upper extremity includes the left shoulder, elbow, wrist and hand.

Attorney Bohannon: How many different types of range of motion did you assess with regard to the upper left extremity.

Miss Estes: Well, with the left shoulder joint alone, I analyzed six and with the elbow I analyzed four and with the wrist I analyzed four.

Attorney Bohannon: All right. Was there any problem with the wrist.

Miss Estes: No. No.

Attorney Bohannon: Was there any problem with the left elbow.

Miss Estes: No.

Attorney Bohannon: What, if any problems with the left shoulder range of motion.

Miss Estes: The patient, Mr. Reed, was limited in flexion which is lifting your arm up in front to 148 degrees. He was limited in.

Attorney Bohannon: Stop right there. First of all, what is normal flexion of the left shoulder.

Miss Estes: 180 degrees.

Attorney Bohannon: All right. Can you stand up please and just demonstrate for the Commission.

Miss Estes: 180 degrees.

Attorney Bohannon: Yes.

Attorney Bohannon: All right. And, according to your analysis what was it that Mr. Reed was able to do.

Miss Estes: 148 degrees which would be approximately in this area.

Attorney Bohannon: Well, how do you measure it to be, that's an exact number 148 degrees, how did you come to that number.

Miss Estes: I use a goniometer which is a tool which measures degrees and its degrees on two circles which are attached to each other and two long arms and through training physical therapy we learned how to measure the two joints with that tool.

Attorney Bohannon: All right. Then explain exactly what it is you asked Fire Fighter Reed to do for you with regard to the left hand and exactly what you did to measure that.

Miss Estes: Okay. I asked Fire Fighter Reed to raise his left arm up in front of him as high as he can and then I take one arm of the goniometer, it goes along the upper bone, then the pivoting point which is right here in this joint and then the other arm which is called the long arm goes down the side along the ribs.

Attorney Bohannon: What if any problems did you identify with 148 degrees of the left, in other words, why is that not sufficient to be a fire fighter.

Miss Estes: Well, in order to reach overhead say to assist someone from coming down from a ladder, lifting someone or reaching up to use a pike pull to pull down ceilings, you need to have 180 degrees of range motion in your shoulder.

Attorney Bohannon: How do you know that.

Miss Estes: Through my job demands analysis, the physical demands analysis that I did for the Bridgeport Fire Department.

Attorney Bohannon: Did you measure the left shoulder abduction.

Miss Estes: I did.

Attorney Bohannon: Okay. Can you explain to the Commissioners what left shoulder abduction is.

Miss Estes: Left shoulder abduction is raising your arm up to the side.

Attorney Bohannon: All right. Can you stand up please. What's the best that somebody can do on left shoulder abduction.

Miss Estes: Again 180 degrees.

Attorney Bohannon: All right. And what was Fire Fighter Reed able to do.

Miss Estes: The exact he did was 150 degrees.

Attorney Bohannon: Can you demonstrate what that looks like.

Miss Estes: Approximately here. Again, I don't have a goniometer here so to give an exact representation.

Attorney Bohannon: What if any concern do you have for 150 degrees in abduction with regard to performing the essential functions of a fire fighter.

Miss Estes: Again, it's the reaching overhead out to your side not all the functions of a firefighter are directly in front of them, there's actions and things involving off to the side and if Fire Fighter Reed needed to be able to reach something or lift something up off to the side all the way out, he would not be able to do that.

Attorney Bohannon: Okay. What if any measurements you did take, other measurements did you take with regard to the left shoulder.

Miss Estes: Internal rotation and external rotation which.

Attorney Bohannon: Explain first of all what is internal rotation.

Miss Estes: Internal rotation which is abbreviated IR is the rotation of the shoulder backwards such as this. You're internally rotating when you go to reach to your back pocket.

Attorney Bohannon: Okay. What is the best that somebody could do with regard to internal rotation.

Miss Estes: 80 to 90 degrees.

Attorney Bohannon: Okay. Can you stand up please Miss Estes and show what 80 to 90 degrees looks like. All right. And what was it that Fire Fighter Reed demonstrated with regard to his capacity on internal rotation.

Miss Estes: We start measuring from here, so he performed 57 degrees, so this would be 45, so a little bit more like this.

Attorney Bohannon: Now how could in any way did you feel with that limited disability perform essential functions of a Bridgeport fire fighter.

Miss Estes: In order to put on and off the SCBA with unit you need to be able to have full internal rotation to put your hands through the straps in the back.

Attorney Bohannon: Okay. What about the external rotation.

Miss Estes: External rotation is this direction here.

Attorney Bohannon: Okay. And what is the best that someone could do on external rotation.

Miss Estes: Again, 80 to 90 degrees.

Attorney Bohannon: All right. And what was it that you physically asked Mr.

Commissioner Klein: Can I please ask something.

Attorney Bohannon: I'm sorry.

Commissioner Klein: The best one is 80 to 90 degrees, but reaching behind you, you're not reaching 80 to 90 degrees.

Miss Estes: That's because you're combining the motion with other joints. Okay. You're combining that motion of extension of the shoulder and horizontal abduction so there are other joints involved in doing that, but I'm isolating out that motion, but it's just an example of how internal rotation affects us.

Attorney Bohannon: First of all, could you stand up and just demonstrate the external rotation.

Miss Estes: So again, external rotation.

Attorney Bohannon: What did you ask Fire Fighter Reed to do for you.

Miss Estes: Okay. To measure internal and external rotation, I had Fire Fighter Reed lay down on the table and I brought his arm out or asked him to bring his arm out to this position, so he is laying on his back with arm out like this and I asked him to bring his arm back like this, which he achieved 45 degrees.

Commissioner Klein: So he couldn't lay flat on the table.

Miss Estes: No sir.

Commissioner Klein: That would have been 90 degrees.

Miss Estes: Correct.

Commissioner Lee: I have a question. Most of the examinations that you gave him you used some kind of instrument or like if you test your heart you are going to use that thing, did you use or you just looked at him and said you know that's how you came to the conclusion that he wasn't passing or whether he was failing or whatever. Did you have some type of instrument.

Miss Estes: Well, I used the goniometer to get the exact degrees of the measurement. All the weights are standardized because I use plate weights okay that are calibrated, okay for the push and pull force I use a calibrated force, it's a force gage that literally measures the force in pounds, so where it is referred to in terms of pounds of force for pushing and pulling, okay, it's pounds of force to push and pull, not how much that object weighs when you are pushing and pulling, so I use a calibrated force gage, steel weights and goniometer.

Attorney Bohannon: The external rotation was limited to 45 degrees. Demonstrate what that looks like.

Attorney Bohannon: Okay.

Attorney Bohannon: Was Fire Fighter Reed able to bring his arm any higher than what you demonstrated.

Miss Estes: In this direction for external rotation. No. No he was not.

Attorney Bohannon: Did you examine the right shoulder.

Miss Estes: I did.

Attorney Bohannon: Okay. Did you find any limitations in Fire Fighter Reed's right shoulder.

Miss Estes: Yes. I found a limitation of 153 degrees of flexion. So.

Attorney Bohannon: Okay. Now once again can you stand up and Fire Fighter Reed was able to go to 153 degrees. What does that look like.

Miss Estes: About right here.

Attorney Bohannon: Now when you compare the limitation of 148 degrees in the left and 153 degrees on the right, what if any concerns did you have for Fire Fighter Reed's ability to perform the essential functions of a Bridgeport Fire Fighter.

Miss Estes: Again, he would not be able to reach completely overhead if he needed to perform any tasks.

Attorney Bohannon: What I would like you to do is assuming that Fire Fighter Reed had no lifting problems floor to waist, waist to shoulder, waist to overhead, okay, were the deficiencies that you identified in the two hand carry, the left hand carry, the right hand carry and the restrictions in his left and right shoulder mobility sufficient to disqualify him for performing the functions of a Bridgeport Fire Fighter.

Miss Estes: Yes.

Attorney Bohannon: Now.

Miss Estes: There are two push, pull sections also.

Attorney Bohannon: Oh, I'm sorry.

Attorney Bohannon: At the back of this report.

Miss Estes: The last two pages.

Attorney Bohannon: There are push and pull sections. Can you explain to the Commission what those are please.



Miss Estes. Well, literally I did push, pull testing at various heights and I put weights in it and I measured the force required to push and pull and I compared those to the measurements that I took in the field with the same force gage. So it's the same force gage used in the field as measuring the force prior to push and pull in the clinic and Fire Fighter Reed had a push pull force occasional of 30 lbs. of force again not that the object weighed 30 lbs but something requiring 30 lbs of force to push and 30 lbs of force to pull and then 35 lbs rare to push and pull so there is multiple items both in the push and the pull columns under rare for push and under occasional and rare for pull which do not meet those criteria.

Attorney Bohannon: Well, how many of the push criteria did Fire Fighter Reed fail.

Miss Estes: Of the push criteria.

Attorney Bohannon: Yes.

Miss Estes: There was 1, 2, 3, 4.

Attorney Bohannon: And what were they.

Miss Estes: They were hydrant wrench, tap, a turntable access area intake valve, and then under Ladder 5 there was a different turntable access area intake valve, but it was the same thing, so actually 3 things, not 4.

Attorney Bohannon. Okay. So those are functions that a Bridgeport Fire Fighter would be expected to perform on a rare basis. Is that right?

Miss Estes: That is correct.

Attorney Bohannon: But, nevertheless, essential functions at a fire.

Miss Estes: Correct.

Attorney Bohannon: Okay. How about the pull category.

Miss Estes: The pull category, there were multiple objects.

Attorney Bohannon: What specifically did Fire Fighter Reed fail to perform during the pull examination.

Miss Estes: Okay. Under occasional it was pulling the left side hose off which is a requirement of 75 lbs, on the rare side again it was left side hose, the control panel, the 2.5" hose, 2.5" hose lift and charge and then a static pull holding it while it is charged, the 2.5 hose control to open it, on the 5" hose to un-kink while charged, 1.75" hose dragged not charged, the 1.75" hose hold static pull, stinger, hose flakes, the overhead pick, the rear ladder, the right sided cabinets, the doors themselves, under Engine 1, the side hose, the rear hose, the ladder side handle, the auxiliary hose, the 24 foot ladder and under Ladder 5, the valve, turntable access area intake valve.

Attorney Bohannon: Based upon Fire Fighter Reed's inability to perform those pull motions, did you feel that he was qualified to perform the essential functions of a Bridgeport Fire Fighter.

Miss Estes: No.

Attorney Bohannon: Now. Are you familiar with the Dr. Patrick Kwok.

Miss Estes: I am.

Attorney Bohannon: Okay. Do you work with Dr. Kwok.

Miss Estes: Yes.

Attorney Bohannon: Have you had a chance to take a look at Dr. Kwok's report on behalf of his analysis on Ronald Reed.

Miss Estes: Briefly. Yes.

Attorney Bohannon: Okay. Do you see any assessment of Fire Fighter Reed's left shoulder flexion, abduction, internal or external rotation in that report.

Miss Estes: In the back of the report where they do the lifting analysis, no I do not.

Attorney Bohannon: All right. What about the right shoulder flexion.

Miss Estes: No I did not. No. I do not see range motion analysis in any of these.

Attorney Bohannon: All right. Who was it based upon, the Doctor's report, who actually performed a physical capacity analysis for Dr. Kwok.

Miss Estes: It was Rebecca Bartlett, an Occupational Therapist.

Attorney Bohannon: Okay. What is an Occupational Therapist.

Miss Estes: An Occupational Therapist is another kind of therapist just like a physical therapist. They tend to deal more with upper extremity and fine motor issues along with they can also work in the psychological setting in hospitals.

Attorney Bohannon: Okay. Do you see anything attached there that would indicate to you that Dr. Kwok actually did any of the functional capacity tests that he references in this letter.

Miss Estes: No. It is signed by Rebecca Bartlett, Occupational Therapist.

Attorney Bohannon: What if any other items did you take note of when you read Dr. Kwok's report.

Miss Estes: Several.

Attorney Bohannon: Can you tell the Commissioners what they are please.

Miss Estes: I noticed that the Occupational Therapist that performed the examination found much different results than I did in terms of the lifting.

Attorney Bohannon: Okay. Specifically how so.

Miss Estes: Well, all of hers exceeded all of mine.

Attorney Bohannon: Okay. With regard to what type of lifting.

Miss Estes: I'm just going to double check against my graph before I say something that is incorrect here. The floor to waist she found occasional at 125 lbs and I found it 70 lbs. She found 50 lbs. frequent, I found 60 lbs frequent. Waist to shoulder lift she found 100 lbs. occasional and I found 60 and we actually agreed on the waist to shoulder lift which we both found 50 lbs. Waist to overhead she had 75 lbs occasional and I had 50, frequent I had 40, she had 50, 2 handed carry she had 120 lbs where is I had it at 50 lbs for occasional and then she had frequent at 50 lbs where is I had frequent at 40 lbs. Right hand carry she tested at 75 lbs for occasional and I got 25 lbs. Left hand carry I found 15 lbs, she also found 75 lbs and then occasional push pull she found 132 lbs and then for occasional push and 260 lbs for occasional pull. The constant job requirements were not assessed on hers and frequent was not assessed on 4 of the tests and she did not test the rare capabilities.

Attorney Bohannon: Suffice to say some significant differences in the weight lifting analyzed by you and the Occupational Therapist in Dr. Kwok's office.

Miss Estes: Correct.

Attorney Bohannon: How do you account for that.

Miss Estes: I really have no explanation. I am firm and I believe wholeheartedly in the body mechanical changes that I saw in my exam so I don't know how just several days later this test was conducted on 8/31 and my test was conducted on 8/5, August 5<sup>th</sup>, so how three weeks later he improved to that extent, I don't know.

Attorney Bohannon: We know what you did to assess Fire Fighter Reed's lifting capacity. Do you know what tests were performed by the therapist at Dr. Kwok's office to assess his lifting capacity.

Miss Estes: I don't know under what parameter she did these tests, using what equipment and under what guidelines she reached those determinations of occasional, frequent and constant. The body mechanical analysis is not included. I can say that on my Lift Circuit which is page 11 out of 23 each category has a body mechanical analysis that justifies why I made the decision that I made.

Attorney Bohannon: Okay. Can you tell the Commissioners how long did you spend with Fire Fighter Reed conducting physical examination test.

Miss Estes: I spent a total of 4 hours spread out over 2 days. Two hours one day and 2 hours the next day.

Attorney Bohannon: Can you tell from the report how long the physical therapist was with Fire Fighter Reed.

Miss Estes: I am looking to see. It looks like she spent one hour and fifteen minutes. The start time and the end time on that date is there and there is only one date given so I would assume that that start and ending was on that one day instead of a two day test.

Attorney Bohannon: Okay. You studied the Bridgeport Fire Department position of line Fire Fighter and you understand that the opinion you are giving here this evening can end Fire Fighter Reed's career. In other words, you are saying he is not physically capable of being a fire fighter and he should no longer hold this job. Do you understand that.

Miss Estes: I understand that.

Attorney Bohannon: All right. Are you confident in your opinions with regard to his capacity to say that.

Miss Estes: Yes I am.

Attorney Bohannon: Do you believe that Fire Fighter Reed would pose a danger to himself or others fire fighting in the line.

Miss Estes: Yes I do.

Attorney Bohannon: Okay. And why do you say that.

Miss Estes: I say that because my concern is that with the limited range of motion, the limited strength and the body mechanics changes that I saw during my functional capacity evaluation that he could injure himself or not be able to assist someone else while fighting a fire.

Attorney Bohannon: Commissioners, I have nothing further for this witness.

Commissioner Meszoros: I have a question. When you do your rehab on a fire fighter, how do they come into your office. Sweat pant shorts or do you give him his uniform to do the exercises.

Miss Estes: He was not in full turnout gear during the exam. No he was not.

Commissioner Meszoros: So if he did have his uniform on, full gear, would it be different than what we have right now.

Miss Estes: One would surmise then at that point that the performance would be even less than what we saw here because full turnout gear including SCBA, depending on the helmets and the varying which tank you have could be up to 70 lbs.

Commissioner Meszoros: Okay. Thank you.

Miss Estes: Thank you.

Commissioner Lee: I think and no reflection on anyone, I think that there is such a discrepancy and this report and this report right here and we are all talking about a man's future you know, the fact of the matter is I think that my personal opinion is my job and anything else was on the line, I wouldn't had neither one of you to do the test on me because of the fact that I want somebody that's really, really medically inclined to do that test. The second thing is that I was thinking when you were saying and I'm a stickler for people being harmed to themselves and to other people too and you can't do the job, you just can't do it, but I was thinking about if either one of you ever done one of these tests on a female fire fighter.

Miss Estes: Yes.

Commissioner Lee: You have and they were lifting 180 something pounds.

Miss Estes: In all honesty, I don't look at whether someone is male or female when doing the test, it's the demands of the job that I base it on. I don't recall the results of that, it was awhile ago. I don't recall. I can tell you that I've been doing functional capacity evaluations for 13 years and have done hundreds upon hundreds of them.

Commissioner Lee: I'm sure that you're good at what you are doing. I'm not saying, it just bothers me and I could just call some concern that it seems like some real machine should have been there somewhere to pick up some things in someone's body. You know we can study body language and I know that you use some machines to test whether he could do, I'm sure that you use whatever you all use to test someone's strength and how far they could reach up and all that stuff, it seems to me like some real machine should have been someplace in order to pick up what you were trying to find. Do I make sense to you.

Miss Estes: I'm not sure in terms of what machine you are referring to. I'm looking at someone's. I understand your concern and frankly this document is new to me tonight, so I'm concerned that there is such a discrepancy too. But I rest confident in knowing, I understand the gravity of the situation. Every time I do a functional job capacity evaluation I understand the gravity of the situation. It is someone's career and I would not like that feeling myself. So, I approach these with the utmost amount of respect and the second thing that I can say is that there are no machines that do a fire fighter's job, so you know I guess, so in order to look and see if someone can lift, it's got to go on our training and our study of the human body because there is no machine that exists to give a green light or a red light in terms of without the human interpretation whether or not someone can safely lift that.

Commissioner Lee: I have one other question. I was looking at the reports you know what he failed, the lifting, when you look at it, it seems like he failed a whole bunch of stuff, but I saw a lot of repetition, as far as the test is concerned. I kept seeing the torch and the fan. He failed the torch and the fan and the torch and the fan and to me it looked like it was about twelve things, but it was the same thing that he failed. You know I guess I was trying to keep up to see exactly how much of the test that he did fail.

Miss Estes: Because different tools can be used in different frequencies they are put in repetitive columns. So, I tried as best as I can to say even with the fan okay the fan showed up again, okay the torch showed up again, you know the different saws showed up again, I tried to repeat that and say that again the saw, again the fan. Absolutely, there is some repetition in there and that shouldn't be counted as separate items in terms of what he passed and didn't pass. Just make sure that you are looking also in the different categories of what he was doing because he could lift it, push it and pull it and it will show up three times.

Commissioner Lee: What is a dry chemical container.

Miss Estes: A dry chemical container is literally, it is a container that contains dry chemicals that you use for different purposes.

Commissioner Lee: And about how heavy is that.

Miss Estes: I don't have it memorized. What does it say on the.

Miss Estes: It is 37.5 lbs.

Commissioner Lee: He could lift that. What is that.

Deputy Chief Petrucelli: It's a fire extinguisher.

President Rosenberg: Attorney Bucci you wanted to.

Attorney Bucci: I would like to do some inquiry of.

President Rosenberg: Go ahead.

Attorney Bucci: Miss Estes you have been referred to as an Independent Medical Examiner. You don't have a medical degree do you.

Miss Estes: I'm not a doctor. No.

Attorney Bucci: You don't have a medical degree.

Miss Estes: I am a physical therapist. I have a bachelor of science, but I am not a physician. No, I don't have a medical degree.

Attorney Bucci: You don't have a medical degree. Now, what is your education background. How long did you go to school to get a physical therapy license.

Miss Estes: I went 4 1/2 years of schooling at Quinnipiac University.

Attorney Bucci: And what did you take at Quinnipiac.

Miss Estes: What classes did I take. Anatomy, physiology.

Attorney Bucci: What degree did you get from Quinnipiac.

Miss Estes: Bachelor of Science.

Attorney Bucci: You mentioned that to the question Mr. Bohannon said whether Dr. Kwok indicates whether he was present during the functional capacity examination that his office conducted on.

Miss Estes: I think he asked me if he performed it.

Attorney Bucci: It does state in that report that after having witnessed Mr. Reed fully complete the exam, it is within medical probability that he meets the critical demands of a fire fighter based on his performance of the functional capacity evaluation done of August 31<sup>st</sup>. You can't make that opinion one way or the other based upon medical probability because you don't have a medical degree. Correct. Do you question Dr. Kwok's credentials.

Miss Estes: Dr. Kwok's credentials.

Attorney Bucci: Yes.

Miss Estes: No. I don't question Dr. Kwok's credentials. I would like to know more about this examination that was conducted.

Attorney Bucci: Are you inferring that Dr. Kwok would misrepresent to this Fire Board.

Miss Estes: No.

Attorney Bucci: Let me finish the question. As to the ability of Fire Fighter Reed to perform the essential functions of a fire fighter.

Miss Estes: No I'm not inferring at all that Dr. Kwok.

Attorney Bucci: Well, I just wanted to make that clear. You testified that you were hired by the City of Bridgeport to conduct the examination of Fire Fighter Reed.

Miss Estes: Correct.

Attorney Bucci: Who from the City of Bridgeport.

Miss Estes: I believe it came through Deputy Chief Grace.

Attorney Bucci: Did you speak with Deputy Chief Grace.

Miss Estes: Briefly. Yes.

Attorney Bucci: What do you recall of that conversation.

Miss Estes: Just getting the details to contact Fire Fighter Reed.

Attorney Bucci: And how often have you conducted functional capacity exams of Bridgeport fire fighters.

Miss Estes: I don't have the exact number. I've done several. I don't have the exact number off the top of my head. Sorry.

Attorney Bucci: Under what circumstances did you conduct those examinations.

Miss Estes: Similar circumstances. Seeing if someone is ready to go back to work.

Attorney Bucci: And when do you recall was the last time you performed one of those functional capacity exams.

Miss Estes: In all honesty, I would have to check. I can do up to five or six a month from various employers, so I can't give you an accurate answer to that.

Attorney Bucci: I'm concerned with the Bridgeport Fire.

Miss Estes: I know, but I'm saying because I do so many from so many different employers, I am concerned that I can't give you an accurate answer to that at this point.

Attorney Bucci: And your services for doing this examination are paid by the City of Bridgeport.

Miss Estes: Yes.

Attorney Bucci: And you also did work for the City of Bridgeport in 2006.

Miss Estes: That is correct.

Attorney Bucci: And that was paid for by the City of Bridgeport.

Miss Estes: Yes it was.

Attorney Bucci: And you get referrals from the City of Bridgeport on a regular basis.

Miss Estes: What would you define as a regular basis. They are intermittent as needed.

Attorney Bucci: But you do get work from the City of Bridgeport.

Miss Estes: I do.

Attorney Bucci: You mentioned that the results from Dr. Kwok's office differed from the results of your examination.

Miss Estes: That is correct.

Attorney Bucci: And do you have any explanation how that occurred.

Miss Estes: I mean I can say that my examination was 4 hours long and theirs was 1 hour and a half, 1 hour and 15 minutes. The only thing that I can say is that I spent more time studying Mr. Reed.

Attorney Bucci: So and for instance observing the waist to shoulder lift, it is your testimony that because you observed it longer, the results could come out differently.

Miss Estes: I don't know if it was longer or not. I don't know the breakdown. I don't have the details of the test except for what is here in terms of the time. There is no breakdown on time. I mean, I can tell you that I observed his lifting over 2 days, I did the exact same lifting to test for 2 day consistency and there was 2 day consistency there and I spent overall more time analyzing his body mechanics then was done on this test.

Attorney Bucci: In analyzing body mechanics you mention something that, for instance a change in his gage or something like that, that calls for an interpretation based upon your experience. Correct.

Miss Estes: Well, no it is not interpretation if someone leans to the left side, then that's objective, someone is leaning to the left side.

Attorney Bucci: That's objective. Leaning to the left side, but then don't interpret the reason he is leaning to the left side. You make that interpretation that somebody else may not make.



Miss Estes: Well, in this document I didn't make an interpretation based on why he is leaning to the left side, I documented that he was leaning to the left side.

Attorney Bucci: And you came to a conclusion as to what that meant.

Miss Estes: In terms of the Department of Labor Standards, not in terms of what actually caused it.

Attorney Bucci: Did the Department of Labor say that if you lean to the left side it means this.

Miss Estes: Yes it does. Actually based. Its correlated. The functional capacity evaluation training takes the body mechanics changes at each of those Department of Labor Standards and classifies them so literally we go off of charts that have body parts and changes for activities under each of those categories.

Attorney Bucci: In addition when you say he couldn't lift the torch, you didn't actually see him not lift the torch.

Miss Estes: Correct.

Attorney Bucci: Or a fan.

Miss Estes: Correct.

Attorney Bucci: You again based upon what he demonstrated in these lifting tests came to these conclusions he wouldn't be able to do that.

Miss Estes: Correct. I use steel weights in a box, so it's a box with handles that you put your hands in and I add weights in increments.

Attorney Bucci: Do you see anything in Dr. Kwok's report that renders it invalid.

Miss Estes: You mean in the lift test done by the OT.

Attorney Bucci: Dr. Kwok's opinion that medical probability that he meets the critical demands of a fire fighter.

Miss Estes: Well in that statement no I wouldn't find that, I wouldn't find anything in there no.

Attorney Bucci: I have nothing further.

President Rosenberg: Okay.

Commissioner Gaskin: I have a question. You stated that Dr. Kwok's therapist did, took an hour.

Miss Estes: An hour and 15 minutes.

Commissioner Gaskin: And you took about 4 hours.

Miss Estes: I took 4 hours.

Commissioner Gaskin: Are you paid by the hour.

Miss Estes: No.

Commissioner Gaskin: How are you paid.

Miss Estes: I am paid directly. It doesn't matter how much time. If it took 5 hours, I would have done 5 hours, if it took 3 hours, we're paid by the test.

Commissioner Gaskin: By the test.

Miss Estes: There is approximately 2 hours of paperwork time in terms of comprising the test so it takes about 6 hours in total to perform the test and comprise the work for it.

Commissioner Gaskin: Okay. Would I be out of order to ask Ronald Reed to lift his arm.

President Rosenberg: You wouldn't be out of order, but I don't know what you are trying to achieve.

Commissioner Gaskin: I just want to see how high he could lift his arm.

Commissioner Klein: That's without any weight.

Commissioner Gaskin: That's without any weight. Okay. Can your arm go behind you. I just want to see that because when you tested him, did you have weights on him.

Miss Estes: I did not.

Commissioner Gaskin: So what you saw is what I'm seeing right now.

Miss Estes: I would want him, in all honesty, I would take him out of these clothes so that there are no restrictions from the jacket, so that I could watch to make sure that he wasn't extending his trunk and that he wasn't side bending or I would make sure it was true shoulder flexion. So what I am saying is I can lift my arm like this and then if I arch my back some exaggerated way, then that would look like it increases it so I would take him out of these clothes to measure that so I would get a true measurement of his shoulder flexion. I'm not making any judgments on what he's doing right now, I'm just saying how I measure.

Commissioner Gaskin: I just wanted to see where his arms would go with his jacket on because sometimes when you have your clothes on you can't lift as high as you want to because of your jacket. Now he does have a jacket on and he's able to go that 90 degrees that you said he could not go with that arm.

Attorney Bohannon: Commissioner I respectfully disagree, I would like to see him take off the jacket and extend his arm up to 180 degrees because I don't believe he could do it. I saw him go back in the chair, he's adjusting his body to make the arm go higher. I think 180 degrees, if he could do that and it's the easiest thing in the world to do, let's see him do it.

Commissioner Gaskin: Let's see him do it.

Attorney Bohannon: Maybe he could take his jacket off and we'll see that arm go up.

Commissioner Gaskin: Let's see the arm go up.

Commissioner Garcia: We're not medical. We're not doctors.

Attorney Bohannon: You don't have to be. You are going to know whether that arm can go up to 180 degrees.

Commissioner Garcia: What I'm saying. Why should he be doing that because we're not trained for that. Even if he does that, we're not going to be able to make any opinion.

Commissioner Gaskin: Just the point that I wanted to see it.

President Rosenberg: I think the fact that the Commissioner wanted to see it, then if you want to see it then you want to see it accurately and I think the Attorney Bohannon suggestion that he take his jacket off and do that.

Attorney Bucci: I have no objection to that if we have a medical certainty, I want to see Mr. Bohannon's medical degree.

President Rosenberg: We're not talking about a medical degree.

Attorney Bohannon: I will tell you this. I don't think you have to be a doctor to see that. Okay. I think 180 degrees, 180 degrees, you don't have to go to med school to know it because that's all that's being asked.

President Rosenberg: I think that it's a pretty.

Commissioner Meszoros: And, it is the opinion of this functional, this therapist, no disrespect that if you do 178 degrees you are not qualified.

President Rosenberg: Attorney Bucci, do you have a problem with taking his jacket off. Are you objecting to that.

Attorney Bucci: I don't think it's proper to do it here in front of a Board, but if my client wants to do it.

Attorney Bohannon: Well if he can't do it in front of a Board, how can he do it at a fire. Fair is fair. You ought to know. You don't have an answer.

President Rosenberg: I think the Commissioner asked a fair question and I think somebody else pointed out that he has his jacket on and I think to clarify it, I think it is perfectly fair now. Certainly, if he doesn't want to do it or you object to it, I don't have a problem with that but the point is and the record will show that, but I don't think you need a medical degree for him to do that.

Commissioner Gaskin: She doesn't have a medical degree.

President Rosenberg: As you pointed out Tom.

Miss Estes: I don't have a medical degree as in a physician and I am not a physician. Do I have a degree in physical therapy, a bachelor of science in the human body, yes I do.

President Rosenberg: Okay.

Commissioner Meszoros: Another question. When other people come into your office, say a baseball player, you get directions from the coach, do you do the same exact scope with the ball with the, what is it called.

Miss Estes: Goniometer.

Commissioner Meszoros: Goniometer. A picture range, is it different to of him getting hurt, say a rotator cuff.

Miss Estes: You mean clearing him to go back to work.

Commissioner Meszoros: Yes. Yes.

Miss Estes: Okay. Yes, it would be different demands, but goniometry is goniometry, it's a science in terms of having reach joint and it's very specific reach joint and it's whether or not, you know, to externally rotate for a pitcher, my God, it's disgusting what they can do, you know, so.

President Rosenberg: Both of his sons are pitchers; that is why he is asking.

President Rosenberg: Getting back, is this something that you want we want to do or is it something that you object to or is it something that Fire Fighter Reed objects to.

Attorney Bucci: It's my objections. If you want him to go through a test of that sort, I think it has to be under controlled conditions.

President Rosenberg: Well Tom, you didn't have a problem with him raising his arm with his jacket on, so why would you have a problem raising his arm with his jacket off.

Attorney Bucci: I didn't have a chance to.

President Rosenberg: You object to it then, so that's the end of it. Okay.

Commissioner Klein. I have some questions. Part of your training and certifications is to perform this functional capacity test. Correct. To your knowledge are occupational therapists trained to perform functional capacity tests also.

Miss Estes: Absolutely. I would like to say I don't know Rebecca and I don't know her training. I don't know anything about it, so I don't want to make any comments on her personally here. I can tell you yes, there is training from different schools or from different companies; they all conduct schooling for courses that you go to, to get educated. Occupational therapists, physical therapists, doctor of osteopaths can all go to do this.

Commissioner Klein: What I'm having trouble reconciling here is and tell me if I'm reading this wrong, for example with floor to waist occasional category, you found him to be able to lift 70 lbs and Dr. Kwok's office he lifted 125 lbs.

Miss Estes: That's correct.

Commissioner Klein: That's a huge gap.

Miss Estes: Again, this is the first time I'm seeing this document. I saw it one half hour ago, so I agree with you. It's a huge gap.

Commissioner Klein: I'm at a complete loss to explain that kind of a discrepancy.

Attorney Bucci: Mr. Commissioner, I would just like to point out that I didn't hold on to this report until tonight. I did send it out.

Commissioner Klein: And floor to waist lift is pretty straight forward type of a movement. You are also at a loss to explain that kind of a discrepancy.

Miss Estes: I am and I can only tell you that I sit here 100% confident in what I saw and what I find. Every time I do an FCE, I write up the report so that I can be 100% confident in what I see, what I find and what I write down, so I can tell you that I rest on what I found.

Commissioner Klein: Do you know whether or not at the time you conducted your evaluation that he could reach maximum medical improvements of those injuries.

Miss Estes: I did not conduct. First of all, it is not a physical therapist's determination to determine MMI.

Commissioner Klein: Do you know whether his treating physician had made that determination.

Miss Estes: I was not aware one way or the other at that point.

Commissioner Klein: That's all I have.

President Rosenberg: Does anybody else have any other questions. Does anybody care to make a motion on this.

Commissioner Lee: I don't want to make a motion because in actuality, I'm not satisfied with what I'm finding. The discrepancy is too wide and you don't know which one to believe, so I don't know. I feel very uncomfortable with the finding. I just do.

Commissioner Klein: I would agree. Miss Estes clearly knows what she is talking about, well qualified, articulate, but I just, I cannot reconcile these two different test results.

President Rosenberg: Let me suggest this. Maybe since we have two different discrepancies here and it would appear that Board members are not comfortable with this, that a third test should be done because I think that if a third test is done, you would have two out of three, at the very least, regardless of which way it went, whether it was two that said he is fit or two that said he was unfit and I think in that case people would be more comfortable here and certainly the Chair would welcome a motion toward such a thing.

Commissioner Klein: Okay. I would move that we have a third test done and it should be done by a Licensed Physical Therapist.

President Rosenberg: I would amend it and say that, I would want a full Independent Medical Examination done by a licensed physician.

Attorney Bohannon: Can I be heard on that. The licensed physician just from the Department's perspective, the functional capacity analysis that's being done requires knowledge of the functions of the Bridgeport Fire Department and the physical capacity you need to perform those functions. Likewise, with all due respect to a medical physician, this is not what they do on a daily basis conducting physical capacity.

President Rosenberg: But, a medical physician could obviously be there with a person, physical therapist that does it, at least then we will have a third conclusive test, number one, and number two, I don't think anybody will question which the question was brought up by Attorney Bucci and I think other people brought up the question that neither one of these people that did these tests were physicians, so I think to lend that credential to it would lend some integrities to the findings.

Commissioner Klein: I think Attorney Bohannon is probably right. A physician wouldn't do these tests. You would have an occupational therapist or a physical therapist do it under his supervision. I think we should have it done by a physical therapist under the supervision of a physician and it should be someone who is selected and agreed upon by both the Department and Fire Fighter Reed's attorney so that we do have an "independent" examination, hopefully, we will all be able to rely on.

President Rosenberg: Is that your motion John.

Commissioner Klein: Yes, that's my motion. Commissioner Garcia seconded and the Board passed it unanimously.

b. LT Giovanni Sanzo (B) – Light duty until December.

10. Commissioner Klein motioned to accept the Report of Sick and Injury; Commissioner Meszoros seconded and the Board passed it unanimously.

11. Commissioner Meszoros motioned to accept the Payroll Register; Commissioner Klein seconded and the Board passed it unanimously.

12. Policy and Procedure review.

a. Approval of CPAT, Candidate Physical Ability Test, to be used for next Fire Fighter Entrance Exam.

Commissioner Klein motioned to approve the implementation of the CPAT, Candidate Physical Ability Test; Commissioner Meszoros seconded and the Board passed it unanimously.

13. There being nothing further to come before the Board, Commissioner Meszoros motioned to adjourn the meeting; Commissioner Klein seconded and the Board passed it unanimously.

The meeting was adjourned at 7:45 p.m.