

November 17, 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 6:02 p.m. and led the Pledge of Allegiance to the Flag.

Present: President Rosenberg, Commissioners Klein, Lee, Meszoros  
and Fire Chief Rooney

Absent: Vice President Garcia and Commissioner Gaskin

Commissioner Lee motioned to dispense with reading the minutes of the previous meeting; Commissioner Meszoros seconded and the Board passed it unanimously.

Old Business

1. 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.

Associate City Attorney Mitola requested the Board to deny this request without prejudice and the reason was that he did research and it is his understanding that there is a Workers' Compensation case that is currently pending and he spoke with Frank May, outside counsel, who handles the City's Workers' Compensation. The history is that years ago this Fire Fighter had hypertension, heart disease and cardiomyopathy, but apparently those claims were dismissed by Workers' Compensation. However, Workers' Compensation, at the time, found that the individual had a right coronary disease and he got Workers' Comp benefits based on right coronary disease. The question becomes, which is still unclear, whether or not the right coronary disease was the cause of this individual's death and if it was, the widow is entitled to not only Workers' Compensation death benefits, but would more likely than not be entitled to Widow's Disability Pension.

President Rosenberg asked why they wouldn't be able to table the matter. Attorney Mitola responded that it will come up on the Agenda each month, but if it is denied without prejudice, you are not saying that it can never come back. A comp case could take awhile, so if the comp case is resolved, and there is a finding that it is related, then she would be entitled to the benefit that you would grant and she would get some retroactive monies, but if it is tabled, it will come up every month.

Attorney Mitola stated that if it is tabled pending the outcome of the Workers' Compensation case, he could monitor the case. From an administrative standpoint, if you deny without prejudice, you are not precluding this individual from coming back before the Board.

Commissioner Klein stated that he would move to deny without prejudice on the basis that it is premature. Commissioner Lee stated that she felt it should be tabled until they had an outcome from Workers' Comp.

Commissioner Klein withdrew his prior motion and motioned to table a request to change the status of Wanda McNeil's Widow's Pension to a Line of Duty Widow's Pension until the Workers' Compensation case is decided upon; Commissioner Lee seconded and the Board passed it unanimously.

### New Business

1. Communications:
  - a. None.
2. Commissioner Meszoros motioned to remove Retired Fire Fighter Kenneth E. Farrar, deceased October 26, 2010, from the Firefighter's Pension list and refer to the Board of Trustees, Pension Plan B, for implementation; Commissioner Klein seconded and the Board passed it unanimously.
3. Executive Session for attendance review of the following individuals:
  - a. FF Ronald Reed (B) – Waiting for a report. Deputy Chief Grace stated that it was up to the attorneys to get together and get someone they both agree on. Chief Rooney responded that they did, all information was faxed and they should be working on it very shortly.
  - b. Lt Giovanni Sanzo (B) – Full duty.
  - c. FI Hiram Velez (B) – Light duty.
  - d. FF Douglas Coy (B) – Will be back on full duty November 21.
  - e. Lt Marc Strickland (B) – Executive Session was waived.

President Rosenberg had a letter from the Center for Orthopedics and it appeared that Lt Strickland was overdue to see the doctor and, therefore, the doctor was unable to evaluate him. He asked Lt. Strickland when he was going to see the doctor.

Lt. Strickland responded that he saw the doctor on the 16<sup>th</sup>, he gave the letter to Deputy Chief Grace. Commissioner Klein read from the doctor's letter that this patient is totally disabled from work until next appointment. Lt. Strickland stated that his next appointment is December 13.

Deputy Chief Grace gave a time frame on Lt. Strickland. On 8/4/10, Lt Strickland and two other fire fighters or inspectors were involved in a motor vehicle accident which resulted in them seeking medical attention. Lt. Strickland visited the walk in clinic on 8/18. He did not work from 8/4 until 8/18 and the Department had no medical documentation keeping him out of work. On 8/18 he went to the walk in clinic and they said the employee could return to work on 8/19, light duty, with restrictions. Lt. Strickland came into the office on 8/19 and he instructed his supervisor that he had back pain and dizziness and he went off duty. Lt. Strickland has been off duty since 8/19 with no medical documentation putting him off. He never did his light duty. Deputy Chief Grace changed it to sick leave since 8/19 because he never received any status of change keeping him off duty. On 9/14 the Department received documentation stating that he is to stay out of work until he sees a specialist in orthopedics.

President Rosenberg asked the Lieutenant why he went off on 8/4 and didn't say anything about an injury until 8/18.

Lt. Strickland reported that after the accident he went to the emergency by ambulance and then he was driven to Immediate Health Care and was turned away. He distributed a time line of his actions that he took since the accident.

Commissioner Klein asked if it was a line of duty injury. Deputy Chief Grace responded that the accident happened while they were working. The claim is accepted but all medical treatment is denied because he is not seeing any doctors. He is being carried on sick leave. On 8/19, Workers' Comp said he could do light duty.

Commissioner Klein read from the Return to Work Form from Central Orthopedics dated November 16<sup>th</sup>, it said RTW, return to work, permanency unable to determine at this time.

Commissioner Meszoros asked Lt. Strickland what hospital he was taken to by ambulance. His reply was St. Vincent's. Lt. Strickland explained that the policy is to go to Immediate Health Care when you have any injury even if you are leaving the hospital. Commissioner Meszoros was unaware of that policy.

Deputy Chief Grace responded that even though you go to emergency you still have to go to the walk in clinic. This is from Berkley and within 24 hours from going to the emergency, you are required to go to a walk in clinic.

President Rosenberg reported that on the Lieutenant's time line, it says that on September 27, 2010, Dr. Sumner determined that he was temporarily totally disabled and authorized physical therapy at the Center for Orthopedics twice a week for three weeks and a return visit in four weeks in his office. He did not go to these. Lt. Strickland responded that he was not approved by Berkley. President Rosenberg responded that in the meantime the doctor told you to go in and take the physical therapy. Couldn't you have gone ahead and done the physical therapy. Lt. Strickland replied that CIGNA covers the orthopedic doctor, but does not cover their physical therapy. President Rosenberg stated that the Lieutenant hasn't made the effort to help himself. Lt. Strickland stated that he has over \$1,000.00 in bills.

Union President Whitbread stated that this has also happened in the past. You end up with what is happening here. He wanted everyone to understand the difficulty. At times everyone stops paying.

President Rosenberg stated that he didn't understand why the doctor authorized physical therapy and the Lieutenant didn't go and take the physical therapy. The bill would be generated after physical therapy, but in the meantime he would have the physical therapy.

Commissioner Meszoros asked why the Lieutenant didn't go back to Immediate Health Care and complain to them that he still had pain in his neck, under Workers' Comp, if you go back to work and you still have the same pain, you are suppose to go back to Immediate Health Care, St. Vincent's and tell them you need to have someone check it.

Deputy Chief Grace stated that he tells his members that if the Walk In tells them they could go back to light duty, they call and tell him they don't think they could do light duty, he advises them to go back and tell them that they can't do the light duty and go back to get a change of status. The Lieutenant did not call Chief Grace, he didn't know anything about the Lieutenant's situation and he always tells the member to inform him so he could call Berkley and help them out. The Lieutenant put himself off duty on the 19<sup>th</sup> without any medical documentation.

President Rosenberg stated that the Lieutenant was out in 1999 for six months with a back injury and he certainly has been out enough times with enough incidents that he knows the proper protocol on how this is done. So for him to handle this the way he did to be out since 8/4 and not to handle this properly, there is a problem.

Attorney Matthew Lascelle introduced himself and stated that he was representing Mr. Strickland in the ongoing Workers' Compensation case. While there does seem to be an issue of a period of time where it appears that he did not return to perhaps the Immediate Health Care Center where it seems that the fire fighters are lined up to go, he did return for treatment with his own primary care physician on September 3, and he made repeated attempts to try to get the diagnosis of his primary care physician to Mr. James regarding his diagnosis that he see a specialist.

President Rosenberg read from the Lieutenant's own doctor's report dated November 1, 2010, that on September 27, 2010 he was disabled at that point and time, additional therapy was requested and a return visit was also requested. At this point in time, he has not returned, so his work status remains disabled until he could re-evaluate him. The fact that he didn't return to the doctor when the doctor told him to go back it seems that whatever his injuries are he has made them a lot worse and has denied himself care as much as anybody else has denied him care.

Attorney Lascelle stated that dealing with Workers' Compensation can be a long and drawn out process.

President Rosenberg responded that they had no control over the Workers' Comp process and that the Lieutenant has an obligation to the Department to seek and get the proper care so that he could return back to work and to just stay out of work and not go to the doctor and says because somebody didn't return his calls is not right.

Attorney Lascelle stated that he speaks with Mr. Strickland on almost a daily basis in the process of trying to get the treatment that he needs. On September 15, Mr. Strickland had his first Workers' Compensation hearing where they did authorize the treatment for not a physician that they chose, not a physician of Mr. Strickland's, but rather a Berkley approved physician, Dr. Sumner. Attorney Lascelle's experience with Dr. Sumner is that he has a reputation of being an extremely conservative physician especially in terms of when talking about Workers' Compensation and the disability ratings that he gives out. On September 27 when he was finally able to get that appointment that was paid for and approved by Workers' Compensation, he diagnosed him as being totally disabled for the time being.

President Rosenberg responded that he also stated in his letter on the 27<sup>th</sup> that he should go back and he's sure that Dr. Sumner would have gotten paid to see him a second time where he could have made that evaluation which would have cleared things up and he chose not to go.

Attorney Lascelle represented that the evaluation authorized from Berkley was for only a one time evaluation and any other treatment with Dr. Sumner has been under CIGNA which Mr. Strickland has been asked to pay for himself.

Commissioner Lee asked why was it that from September 27 up until November 1, he did not go back to the doctor.

Lieutenant Strickland informed the Board that he has a Workers' Compensation hearing scheduled for November 23, 2010 and he tried to work with Berkley and felt that Berkley was stringing him along.

Attorney Lascelle stated that preapproval to see the doctor is needed from Berkley. He further stated that they have an emergency Workers' Compensation hearing on November 23 for authorization for physical therapy and they anticipate, at that time, that they will have a decision based on whether or not he is going to be authorized to return to physical therapy. A Commissioner would make a decision that day provided that they do not move to get an independent medical examination to undermine the recommendations of Dr. Sumner, at that point he would have to have another doctor's examination, the doctor's examination would be compared against the doctor who they already did suggest Dr. Sumner and they would have to wait to see that doctor's recommendation.

Commissioner Lee motioned to table to the December 15 meeting and readdress this and at that point and time they would have a finding from the Workers' Compensation hearing on November 23; Commissioner Klein seconded and the Board passed it unanimously. President Rosenberg stated that at that time they should have the results from the November 23<sup>rd</sup> Workers' Compensation hearing, and hopefully assuming they would authorize the physical therapy and the doctor's visits that they would come back to the meeting next month with a report from his doctor and the fact that he was receiving therapy, etc.

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

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

6. Policy and Procedure review.

None.

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

The meeting was adjourned at 6:45 p.m.