

CITY OF ST. CLOUD
POLICE & FIRE PENSION BOARD SPECIAL MEETING
MINUTES
Tuesday, February 12, 2019 - 5:40 P.M

Members Present: Vincent Shepard, Don Miller, Fran Rinehart, Claude Campbell and John Jones

Members Absent: None

Plan Attorney: Scott Christiansen

Plan Administrator: Shelly Baumann

City Staff: None

Also in attendance: Anthony Romero – Claimant

CALL TO ORDER / ROLL CALL

Chairman Shepard called the meeting to order at 5:40 p.m. There was a quorum with five (5) members present.

Attorney Christiansen stated that the reason for this meeting is to hold a *Continuance Hearing* on Mr. Anthony Romero's initial disability claim. The Board at the last hearing of November 13, 2018 recessed that hearing until such time as the Board could get an answer from the city as to why Mr. Romero was out on FMLA leave and the reason for his termination.

Attorney Christiansen noted that all records previously collected are still a part of this hearing. He then reported that additional records have been received since the first hearing and they are a part of this hearing as well. Attorney Christiansen said that additional information received from the city states that the basis for the FMLA was the worker's compensation claim that Mr. Romero had. The worker's compensation documentation was the documentation the city used to support Mr. Romero's FMLA absence.

Chairman Shepard said that his original question was to find out why there was a gap in time between when Mr. Romero exhausted his FMLA and when he was terminated.

Attorney Christiansen stated that one of the issues is the criteria of total and permanent disability. There is case law that provides that if someone is terminated by the city for medical reasons then we as a Board have to find him to be totally disabled. That does not mean that he is permanently disabled. Attorney Christiansen said he thought the reason the Board wanted more information from the city was to answer a question if at the end of Mr. Romero's FMLA was he terminated because of a medical issue. Chairman Shepard noted that the city still has the termination listed as exhaustion of FMLA and it did not specifically state medical. Member Jones stated that "exhaustion of FMLA" is what the city usually says when it is a medical reason. Attorney Christiansen noted that all of the additional records he received showed Mr. Romero was out on FMLA due to his knee problem and when he got to the end of his FMLA and could not come back to work then the city terminated him.

Member Jones noted that Mr. Romero was injured on the job and went to the city's worker's compensation doctor who said he is totally and permanently disabled. Member Jones asked Mr. Romero if he is still under treatment with that doctor to which Mr. Romero stated yes he is.

Mr. Romero said he only saw the IME for about three (3) minutes. The IME said there was nothing wrong with the gaps in his knee; however he is still getting injections for the gaps. Attorney Christiansen stated in fairness to the IME doctor you were not there for treatment, you were there for him to ask you questions, and he had already reviewed all of your medical records.

Chairman Shepard referred the Board to page 6, Section 7 of the IME report which stated that the IME does not have any medical reason to consider Mr. Romero to be disabled for the purpose of being a paramedic/firefighter. Chairman Shepard said that he can't discount the IME's report.

Attorney Christiansen mentioned that some of the medical records stated that the injury was 70% job related and 30% other.

Member Jones noted that the city terminates almost everyone who goes on FMLA and workers' compensation after they have exceeded the allowable FMLA time. Attorney Christiansen said that is what they are allowed to do by law because they need to fill the firefighter position. Member Jones then said that he is leaning towards the worker's compensation doctor's diagnosis.

Member Miller said that he can understand why the IME did not see anything because he himself is dealing with a knee issue and while he thought he was ready for surgery the doctor up until recently did not.

Member Rinehart addressed page 7 of the IME report where the IME stated that he does not see anything significantly different now two (2) years later than it was shortly before his injury.

Mr. Romero stated that he still has pain and needs to ice his knee daily. Mr. Romero also reported that previous departmental physicals never noted any problem with his knee even though the IME said that it is a pre-existing issue.

Member Jones moved to find Mr. Anthony Romero totally disabled and that it is an In-Line-of- Duty disability; Member Miller seconded the motion. The motion failed on a 2 to 3 vote. Ayes: Jones and Miller, Nays: Shepard, Campbell and Rinehart.

Chairman Shepard stated that he does not think there is enough evidence for a permanent disability.

Member Campbell moved to deny Mr. Romero's claim based on the IME report of Dr. McShane that Mr. Romero is not totally or permanently disabled; Member Rinehart seconded the motion. The motion passed on a 3 to 2 vote. Ayes: Campbell, Rinehart, and Shepard, Nays: Miller, and Jones.

Attorney Christiansen informed Mr. Romero that he can submit back to the Board in 90 days with additional information to be presented at a Formal Evidentiary Hearing.

Adjournment - There was no further business and the meeting was adjourned at 6.30 p.m.

Respectfully Submitted:


Shelly Baumann, CMC
Plan Administrator

Approved:


Vincent Shepard
Chairman