



Meeting Minutes

Police Public Safety Personnel Retirement Board

Thursday, July 2, 2020

8:00 AM

City Hall - Room 117
190 N. Litchfield Rd.
Goodyear, AZ 85338

AGENDA AMENDED ON JUNE 29, 2020

MINUTES AMENDED ON JULY 13, 2020

AGENDA AMENDED TO ADD ITEM #9, CHANGE ROOM TO 117, ADDED ADDITIONAL EXECUTIVE SESSION LANGUAGE

CALL TO ORDER

Chairman Kaino called the meeting to order at 8:00 a.m.

ROLL CALL

Present 5 - Chairman Laura Kaino, Vice Chairman Michael Stewart, Boardmember Jay Mathias, Boardmember Jason Mattie and Boardmember Eric Webster

Staff Present: Board Attorney Lesli Sorensen and Board Secretary Laura Jara

APPROVE MINUTES

1. Approve the draft minutes of the May 28, 2020 Police Public Safety Personnel Retirement Board meeting.

Chairman Laura Kaino had a correction to the draft minutes. She stated she wanted to add the following verbiage to the second paragraph of Item 2 of the May 28, 2020 Police Public Safety Personnel Retirement Board (PSPRB):

- He began to cite cases and then the board interrupted Mr. Norris to advise him that the board had not received the information being referenced.

Board Attorney Lesli Sorensen also suggested to strike a word from the title of the nurse practitioner in the first paragraph of Item 2 of the May 28, 2020 Police PSPRB draft minutes.

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to ACCEPT the noted verbiage and correction to the May 28, 2020 draft minutes. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to APPROVE the draft minutes of the May 28, 2020 Police Public Safety Personnel Retirement Board meeting. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

CITIZENS COMMENTS/ APPEARANCES FROM THE FLOOR

None.

BUSINESS

[The items were not heard in the order below.]

2. Review, consider and possible action on the application and medical records for entry into the Public Safety Personnel Retirement System - Leonard Ledbetter

MOTION BY Boardmember Mathias, SECONDED BY Boardmember Mattie, to ACCEPT the application and medical records for entry into the Public Safety Personnel Retirement System for Leonard Ledbetter noting there are five pre-existing medical conditions. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

3. Review, consider and possible action on the application and medical records for entry into the Public Safety Personnel Retirement System - Christopher Villanueva

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to ACCEPT the application and medical records for entry into the Public Safety Personnel Retirement System for Christopher Villanueva. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

4. Review, consider and possible action on an Application for entry into the Deferred Retirement Option Plan (DROP) - Gregory Garner 6/27/20

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to ACCEPT the application for entry into the Deferred Retirement Option Plan (DROP) for Gregory Garner. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

5. Review, consider and possible action on an Application for entry into the Deferred Retirement Option Plan (DROP) - Eugene Dudko 6/27/20

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to ACCEPT the application for entry into the Deferred Retirement Option Plan (DROP) for Eugene Dudko. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

6. Supplemental Rehearing and Possible Action on the Application for Accidental Disability - Alison Braughton

The Board entered into Executive Session at 8:49 a.m.

The Board reconvened in open session at 8:57 a.m.

The supplemental rehearing will be rescheduled to a later date.

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to CONVENE an Executive Session. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

7. Review, consider and possible action on the application and medical records for Accidental Disability - Justin Hughes

[This item was heard before Item 6.]

The Board entered into Executive Session at 8:15 a.m.

The Board reconvened in open session at 8:44 a.m.

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to CONVENE an Executive Session. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to ACCEPT the application and medical records for Accidental Disability for Justin Hughes. The motion carried by the following vote:

Ayes: 4 - Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

Nays: 1 - Chairman Kaino

8. Review, consider and possible action on the application and medical records for Accidental Disability - Kyle Cluff

Sergeant Mattie recused himself on this matter.

Chairman Kaino discussed the application and medical records for Accidental Disability for Kyle Cluff. She confirmed with Mr. Cluff, who was present, that he continued to waive confidentiality for discussion of his medical report in open session. Mr. Cluff nodded his head in confirmation and Chairman Kaino verbally confirmed his confirmation.

Chairman Kaino stated the board was in receipt of his IME and it had been reviewed. Chairman Kaino asked if Mr. Cluff had a copy of his IME. He stated he had a copy on his phone.

Referring to the IME, Chairman Kaino asked about a gang scene Mr. Cluff was working that occurred in the City of Avondale where he was an officer. She stated he talked about flashbacks, nightmares, remembering someone's face distorted by a gunshot, blown into pieces and a gang member with an open chest and exploded heart. She stated the term exploded heart seemed new. She asked Mr. Cluff to tell the Board what an exploded heart meant. He asked for a date reference. She stated it was 2014. Mr. Cluff stated to the best of his recollection, in 2014 exploded heart was when Bobby Tallus from Avondale PD was shot in the face. After he was shot, he was able to return fire on a subject named McGinty who was fleeing the scene on a bicycle. Mr. Cluff said McGinty took one round to the back as he fled southbound. Mr. Cluff recalled that Goodyear Police had run in to McGinty's brother the day before. Mr. Cluff stated his job at the scene, once everything calmed down, was to stand guard over his body. He added the autopsy revealed that McGinty was shot approximately ten times, once by Officer Stewart and nine times by Officer Tallus. During the autopsy Mr. McGinty's heart was not found; a bullet wound to Mr. McGinty's back, according to the autopsy, caused it to explode. Mr. Cluff said he was able to see it there and examine, 1) his body on the scene, and 2) he went to the autopsy and see all that.

Chairman Kaino asked if anyone on the Board had any questions regarding that particular incident.

Boardmember Webster asked Mr. Cluff if he was at the autopsy. Mr. Cluff's responded that he was. Boardmember Webster asked if Mr. Cluff was the case officer. Mr. Cluff responded that he was not the case officer. Mr. Cluff said he was primary on what turned into the aggravated assault with McGinty's brother. Mr. Cluff said that Mike Miller was also there.

Boardmember Webster stated he remembered the call. He stated he found it interesting that

Mr. Cluff went to the autopsy if he was not the case officer.

Chairman Kaino referred to page 4 of the IME report. Under “review of psychiatric symptoms,” it stated that Mr. Cluff reported that his interests, energy, and concentration were improved. She asked for Mr. Cluff to describe to what extent. Mr. Cluff responded he had been taking medicine and he slept a lot better. Mr. Cluff said his nightmares were starting to subside, and there was a lot he had to do to keep it that way. He stated that was a key thing, he slept a lot better, he slept a lot more. Mr. Cluff stated that better sleep provided him with more energy, he can focus more, and he’s had significant weight loss. He said when he sleeps more he feels better.

Chairman Kaino referred to Page 7 of the IME report, under “Functioning,” the report indicated that Mr. Cluff had become a successful real estate agent. Chairman Kaino stated she Googled what makes a successful real estate agent and it was generally people who were organized, had attention to detail, had a polite attitude, were frequent communicators, had the ability to listen, were client motivated, and are very customer service oriented. She said the IME Doctor reported that Mr. Cluff was angry, prone to rage, easily irritated, mistrusting, suspicious, potentially assaultive, out of control, aggressive, and had blank spells with an inability to recall what was going on. She said his demeanor at Board meetings has been soft spoken and she has to lean forward to hear him. Chairman Kaino felt some disparity between to what was reported, his current career, and what has been observed as a Board. She asked Mr. Cluff to reconcile or give some insight into the description that the IME provided.

Mr. Cluff said he was not running around punching holes into walls all day, but that he has bouts and spells in his life set him off. He gave an example from the week before regarding his daughter and a dog. He shares these stories with his therapist He said these bouts are fewer and further in between, and that the medication was helping a lot as far as his ability to recognize, “oh that’s not normal, that’s not what other people deal with.”

Mr. Cluff believes his direct and upfront approach with people has helped him with his real estate career. He works with a lot of veterans and relates to them. He says he is not overly chatty with his clients, but more matter of fact. He has his spouts of rage and anger and stuff like that. He has his bad days. He said as a realtor, if he has a bad day he doesn’t go out because the schedule is flexible.

Chairman Kaino stated the IME Doctor said that Mr. Cluff had an inability to recall, and said that Mr. Cluff experiences dissociative events, but when she asked him about the exploded heart, he was very specific on names, directions, and charges. She asked Mr. Cluff to explain the dissociative events and inability to recall because she perceived his recall was very sharp.

Mr. Cluff said that during this therapy there were only a few things that he realized he does

not recall. He provided an example of a situation in Wildflower in which he recalls the details of a significant fight in which he struck a man, but only realized by watching body camera footage that he also threw two females across the front yard. Mr. Cluff found that to be very eye opening and he has been discussing it in therapy and wondering how many other things have happened that he doesn't remember.

Chairman Kaino stated that was the first time the Board had heard of that event. She asked Mr. Cluff if this event was a contributing factor.

Mr. Cluff stated it was referenced in the IME report. He stated he briefly went through the IME report and said it was one or two pages summarizing all of the hours he spent in therapy trying to get better. He has talked about the dissociative events in the IME report in therapy.

Chairman Kaino referred to page 7 of the IME report, and said the doctor determined that the rate Mr. Cluff reported problems was markedly elevated and that some people who respond this way are dramatically overreporting and exaggerating the severity of their symptoms of severe pathology. The IME doctor also said that the tests cannot determine if the person is overreporting and exaggerating. She asked Mr. Cluff if he was or had overexaggerated or over reported his symptoms.

Mr. Cluff said no. Mr. Cluff said he was upfront and honest about his symptoms. He said his experience at the IME was not great at all and he felt attacked. The doctor asked Mr. Cluff from 1-10 what his depression was or what his anxiety was and he told him. He said some days he has really bad days, but he explained that in the report. He's been upfront about everything he has said.

Chairman Kaino referred to page 9 of the IME report and read "[h]e endorsed many statements that are paranoid and persecutory in nature. For example, he stated that others are not kind to him, speak ill of him, wish to harm him, punish him unfairly and are engaged in a plot against him." Chairman Kaino said this led her to look back at the written question Mr. Cluff was given early on: "what was the impact of the personnel investigation that was underway prior to your resignation on your stress, anxiety and over all wellbeing considering the investigation could result in disciplinary action and up to and including termination." She stated his response was "the personnel investigation did not impact my stress, anxiety or over all wellbeing to any significant degree. I felt I had done the right thing" and believed he would be exonerated and continue his career.

Chairman Kaino asked what he meant by "the wrongs done to him." Mr. Cluff stated it was general question, and there were things here and there that he was referring to. Mr. Cluff said he constantly noticed his hyper paranoia and said a good example was going to the IME appointment and thinking the doctor had heard about him and had it in for him, and he was freaking out that maybe people were after him to get him. Mr. Cluff said it was a

culmination of a lot of things and that it was really hard to express one particular day. He said he was over the investigation and would love to put it to bed. He said there are other things from the past that come to mind when he talked about it. Mr. Cluff gave an example from years before when he had a blow out with his SWAT team and felt like he was betrayed. Mr. Cluff said people did not stand by him when that went down, and he received some scathing reviews from his SWAT team members. There were a culmination of different paranoid and things he had. Mr. Cluff restated that the investigation was done and over and he was ready to "put it to bed."

Chairman Kaino said that for this specific topic to come up about the wrongs done to him, it doesn't come across as a general reflection or something that happened at the SWAT team years ago. She asked if there is a possibility that it was related to all the events that were transpiring prior to his resignation.

Mr. Cluff stated he did not think so. Mr. Cluff said the IME doctor asked him specific questions about the investigation and he gave the details to the doctor, who put them in the IME report.

Boardmember Webster asked Mr. Cluff if he was on the SWAT team when he was under investigation. Mr. Cluff responded that he was a member of the SWAT Team during the investigation.

Boardmember Mathias stated that he is looking at this from the citizen's side. He stated that the IME indicated that Mr. Cluff has improved. He said the Board watches over the fund for all of the officers who have money over the years into the fund. Boardmember Mathias said that the multiple incidents that had gone on in Mr Cluff's career, that maybe this was not a job for you. He stated that as a citizen, when he sees somebody that is having these types of issues, maybe it is just not a right thing for them. He noted the IME report said he was getting better-he found a new occupation he was doing very well at. Boardmember Mathias said it was hard for him to justify giving away a lifetime amount of money to Mr. Cluff knowing he was going to go enjoy a life and be able to enjoy another occupation that may have been better suited for him 10 years ago. Boardmember Mathias said he was happy to see progress for Mr. Cluff. Boardmember Mathias asked Mr. Cluff if he felt he saw progress and was getting better from this stressful situation.

Ms. Randi Cluff, Mr. Cluff's mother, addressed the Board. She stated that Mr. Cluff would only enjoy parts of life. She stated Mr. Cluff loved his job. Now his life is sitting in a corner of a room to make sure he doesn't get ambushed. His life is cleaning his pool and hearing something that triggers his PTSD and he starts dry heaving and cannot finish cleaning his pool and has to stay home the rest of the day because he is so upset. His wife is unable to wake him up from a nightmare because she will get hit. He cannot go to a basketball game with his children because the referee buzzer in the game triggers a hot call in his head and he has to run out of the gym so he does not vomit on the floor. He'll enjoy parts of life but for

the career he loved, he has to put away. She was able to say to him recently it was good to hear him laugh again because she had not heard him laugh in several years. The job that he loved and wanted for his career changed his life. She said he will enjoy parts of his life but he has triggers where he has to go hide in his room for days on end because he can't face the world. He'll get up again and sell real estate as long as that market is good. But she did not see him ever finding a career that he loves like he loved being an officer.

Boardmember Stewart agrees that he was glad to see some improvement when it was discussed at the beginning of the IME report, which again raised his original concern about whether Mr. Cluff had been in treatment long enough and given an opportunity to progress. He said the Board's original question about the normal time frame for some sort of improvement isn't addressed. Boardmember Stewart said the job messes with people. He said he was on the job for 10 years and had to retire medically (not because of the job) and it was a great job and he still missed it. He said the profession does not do well enough exiting people from the profession, either medically or under normal retirement, and that the profession should do a better job at preparing people how to be retired.

Chairman Kaino stated her son was a police officer and there were inherent risks in the job. She does not think anyone comes out of that career without impacts from things that are seen, things that are done.

Chairman Kaino asked if anyone had anything else to discuss regarding Mr. Cluff's medical records, and no one did.

The Board entered into Executive Session at 9:29 a.m.

The Board reconvened in open session at 9:59 a.m.

Chairman Kaino said that after reviewing the application and the IME report, the Board has concerns, specifically regarding the permanence of Mr. Cluff's disability. The Board is happy to see that Mr. Cluff had improvement and is hopeful that it would continue. The Board also has concerns that the reason for separation from employment may not be because of his disability and they were unable to reconcile the statements regarding the "wrongs done to him" and the vague responses Mr. Cluff provided the Board during the meeting. The Board is concerned about Mr. Cluff's credibility and notes the inconsistency of his responses.

Chairman Kaino then asked the Board's legal counsel to provide an option to Mr. Cluff.

Ms. Lesli Sorensen stated that the Board could award a temporary disability pension, which would provide up to 12 months of benefits. At the end of the 12-month period, Mr. Cluff would be reevaluated to determine whether, at that point, Mr. Cluff had a continuing accidental or ordinary disability. Ms. Sorensen said Mr. Cluff could convert his application

into a temporary disability application as opposed to an accidental disability. Mr. Cluff would receive one half of his salary based on the one-year period directly before his disabling incident, which occurred in March 2018. She said the hope is he could recover during that time period and return to a law enforcement profession sometime in the future with the ability to have that time to improve.

Mr. Cluff stated that he wished to confer with his legal counsel. Mr. Cluff asked the Board to forgive his vague responses as he was under threat of civil litigation from people in the room for him being vocal about things that had happened to him in his paranoia. He said he cannot run the risk of having his family in a lawsuit for talking about wrongs done to him and things of that nature. He apologized for that.

Ms. Sorensen said the board would pause his accidental disability application until he had the opportunity to confer with counsel and get back to the Board if he wanted to accept a temporary disability. The Board would then put that on a future agenda.

Mr. Cluff asked what happens at the end of the 12-month period.

Ms. Sorensen stated after the 12-month period, or at any point at which the board believes he has improved enough that he was no longer disabled, it could be reviewed. The maximum amount of benefits he could receive under a temporary disability pension is 12 months of payments. After the 12 months of payments, the Board would review whether he was qualified for an accidental disability, ordinary disability or whether he was no longer disabled and no longer qualified for a disability benefit.

Mr. Cluff asked for clarification on the date.

Ms. Sorensen relayed under the statute, the monthly amount he would receive would be based on his salary for the 12-month period before his date of disability.

Mr. Cluff stated he would let the board know in writing or email of his decision.

Chairman Kaino asked if there was any reference or information to provide to him. Ms. Sorensen responded that there is information from the PSPRS website that could be provided to him. Chairman Kaino said the Board secretary would forward a link that would describe what was discussed. Chairman Kaino said the hope is that a temporary disability pension would provide a monthly income that would support his continued his treatment and have an opportunity to be reevaluated. She stated Mr. Cluff could contact the Board secretary with any questions.

Chairman Kaino asked if Mr. Cluff had any other statement or comment he would like to tell the Board.

Mr. Cluff stated he knew the Board was just doing their job. He said he guessed he was supposed to say no offense taken but to reference that maybe he was not cut out for the job was pretty insulting. He stated he was a good cop. He was sorry someone on the Board was broken too. He thought everyone in the profession gets broken a little bit. It was not acceptable as far as what the job did to the mind, the psyche, to the family. I did not recall signing on that dotted line, or being advised that hey welcome to the class of people that has double the suicide rate, as the regular population, welcome to drinking problems, welcome to the highest divorce rates out there, it's not right. He did not think he's solo in it. He thinks a lot of cops are broken most of them are. He believed the nail was hit on the head that a crappy job has been done as a police society in helping people with the problems that they have or face. No one ever told him that by going into the job he would probably get broken, probably get divorced, probably will have drinking problems and anger issues and that's not right, you have to deal with it. But he was present asking for help. He did not think it was acceptable to have the mindset of its just part of the job. He appreciated the Board making an effort to do the right thing and accommodating him.

Ms. Sorensen said the Board would postpone the determination on the accidental disability application until a future meeting.

Chairman Kaino confirmed the Board secretary would forward the link to Mr. Cluff and that the Board would look forward to hearing from Mr. Cluff about his decision.

9. Discuss and consider the alleged conflict of interest regarding attorney Steve Coleman's representation in the Braughton appeal.

Chairman Kaino stated she received a copy of the waiver but did not believe anyone else had seen the waiver. She asked if the board should go into executive session to understand the legal impacts of the waiver.

The Board entered into Executive Session at 10:11 a.m.

The Board reconvened in open session at 10:15 a.m.

MOTION BY Boardmember Mathias, SECONDED BY Boardmember Mattie, to CONVENE an Executive Session. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

MOTION BY Boardmember Mattie, SECONDED BY Boardmember Mathias, to ACCEPT the waiver of conflict of interest regarding attorney Steve Coleman's representation in the Braughton appeal. The motion carried by the following vote:

Ayes: 5 - Chairman Kaino, Vice Chairman Stewart, Boardmember Mathias, Boardmember Mattie and Boardmember Webster

EXECUTIVE SESSION

See times above.

SEPARATIONS

None.

INFORMATION ITEMS

None.

NEXT MEETING

The next meeting is tentatively scheduled for July 23, 2020 at 8:00 a.m.

ADJOURNMENT

There being no further business to discuss, Chairman Kaino adjourned the meeting at 10:16 a.m.

Respectfully Submitted by:

Darcie McCracken, City Clerk

Laura Kaino, Chairman

Date: _____