

**MINUTES OF THE LADY LAKE
SPECIAL POLICE PENSION BOARD MEETING
LADY LAKE, FLORIDA
July 14, 2014**

The Police Pension Board Meeting was held in the Commission Chambers, 409 Fennell Blvd., Lady Lake, Florida. The meeting convened at 2:00 p.m.

MEMBERS PRESENT: Chairperson Officer Vernon Wherry, Member John Schmied, Member Lt. Robert Tempesta, and Member Van Reynolds

MEMBERS ABSENT: Member Dee Dee Rountree

TOWN STAFF PRESENT: Kris Kollgaard, Town Manager/Town Clerk; Jeannine Michaud, Finance Director; Chris McKinstry, Police Chief; and Julia Wolfe, Staff Assistant to Town Clerk

ALSO IN ATTENDANCE: Scott Christiansen of Christiansen & Dehner, P.A.; Derek Schroth, Town Attorney; Commissioner Tony Holden; Mayor/Commissioner Ruth Kussard; Paul Kelley, Attorney for Randy Stienstra; Kathleen Shipes of First-Choice Reporting Services; and Randy & Theresa Stienstra

1. Call to Order/Roll Call: Chairperson Wherry called the meeting to order at 2:00 p.m. and proceeded with roll call.

2. Public Comment

Chairperson Wherry asked if anyone in the audience had any comments or questions.

Town Attorney Derek Schroth introduced himself as representing the Town of Lady Lake, and stated he would like to reserve his comments for the end of the meeting.

3. Hearing Regarding the Disability Claim for Randy Stienstra

Attorney Scott Christiansen of Christiansen and Dehner, P.A., stated this is an initial, informal hearing and as the Board met in May on another disability claim, he could forgo the entire review of procedure, criteria and records if the Board so chose. He noted for the record that Mr. Stienstra is present with his wife, Theresa, and Mr. Kelley, who is representing him.

Chairperson Wherry stated it would be helpful if Mr. Christiansen reviewed the procedures again.

Mr. Christiansen reviewed the rules of procedure, stating they are conducted under Rule #14 – Operating Rules adopted by the Board. He stated it provides for the processing of disability claims which begins with the filing of an application for a disability pension, with a letter attached from a doctor wherein the doctor indicates that the individual is totally and permanently disabled and unable to perform the duties of a police officer. Once the application is filed, the applicant is then sent an interrogatory questionnaire about the nature of the disability; when and how it occurred, and whether there was a pre-existing condition. It also includes questions about all healthcare providers.

Mr. Christiansen stated a number of medical authorization forms are also sent to the claimant which have the claimant acknowledge the fact that records will be collected and that the records will be reviewed at a public hearing and will become subject to public inspection if requested. He noted that he does not typically get requests for that information. The forms also authorize any doctors and healthcare providers to provide copies of records to the Board. All of the records are collected by the Board's attorney's office, including personnel records from the Town, and then an Independent Medical Evaluation (IME) appointment is set up for the claimant with a doctor who has expertise in the area in question; in this case, Dr. Patrick Mathias. This doctor is provided with a copy of all of the records and completes his own examination of the claimant, and then provides his opinion of the case.

Mr. Christiansen stated that the claimant is informed that he has the burden of proving the right to the disability claim. The claimant is also provided a copy of all the records, and as such, can review and notify the attorney's office if anything is missing or if the claimant feels something is not right.

Mr. Christiansen stated the doctor performing the IME is provided with a list of specific questions from his office in order to assist the Board with making a determination on the claim, and receives all of the records to review all treatment that has occurred. Once the IME report is received by the attorney's office, an initial, informal hearing is scheduled and a notice is sent to the claimant, and the Board members are provided with a copy of all the records to review. He stated that the Board has three choices at this hearing:

- 1) The Board finds that all the criteria is established by the records to grant the disability pension effective today.
- 2) The Board finds that one or more criteria has not been established by the records provided and the claim is denied. The claimant would have a right to request a formal evidentiary hearing before this board and may obtain additional statements/affidavits from a doctor, and attorneys may obtain depositions. Testimony could be heard at a formal evidentiary hearing as a result.
- 3) The Board identifies that they need additional information or explanation, perhaps from a doctor, in which case the Board would recess and come back at another time for the initial hearing.

Mr. Christiansen stated that if there was a formal evidentiary hearing, the Board would have the same three choices, and if the claim was approved at that hearing, the pension would become effective the same date. If the claim was denied again, the claimant has the right to appellate proceedings at the circuit court level and the case would be reviewed by virtue of a Petition for Writ of Certiorari. This is allowed if the claimant feels the Board did something wrong or made a procedural error, etc., and can appeal their decision in front of a circuit court judge, although no new evidence would be heard.

Mr. Christiansen reported that the burden of proof is on the claimant, even though the attorney's office collects the records, and the claimant has the right to supplement the records. He stated the standard of proof for this type of proceeding is based on a preponderance of the evidence, rather than beyond a reasonable doubt as in criminal proceedings. Mr. Christiansen stated his duties are to collect the records of documentary evidence and to advise on any legal issues or questions.

Chairperson Wherry asked about the questions given to the IME physician.

Mr. Christiansen stated that the questions may not be included in the packet, but the answers are included in the IME report. He stated he can review the questions later in the proceedings.

Mr. Christiansen read the provisions of the Plan under Section 10.5-38 is as follows: *Any member who shall become totally or permanently disabled to the extent that he is unable by reason of a medically determinable physical or mental impairment to render useful and efficient service as a police officer has a right to a disability pension.* He stated that the definition of totally disabled for the Board's purposes means unable to perform service as a police officer for this department, not whether he can work at any other job. He explained that permanent disability means that the claimant's condition is not likely to get better to the point that he can be a police officer again.

Mr. Christiansen reported that there are exclusionary factors and the claimant would *not* have a right to a disability pension from the Town's plan if the disability was caused by any of the following disqualifying conditions: a) excessive use or habitual use of any drugs, intoxicants or narcotics, b) injury or disease sustained by willfully and illegally participating in fights, riots or civil insurrections, or while committing a crime, c) injury or disease sustained while serving in any branch of the armed forces, d) injury or disease sustained by the member after his employment as a police officer with the Town of Lady Lake shall have terminated, and e) injury or disease sustained by the member while working for anyone other than the Town and arising out of such employment. Mr. Christiansen stated that in his review of the records, he did not see that any of these conditions would apply.

Mr. Christiansen stated that if the Board does find that the claimant is totally and permanently disabled, and no exclusionary factors apply, then the final decision is whether the disability is in line of duty or not in line of duty. He stated this decision is critical in this case as Mr. Stienstra did not have ten years of service in the department and is only eligible for an *in line of duty* disability pension. A member must have at least ten years in service to be eligible for a not in line of duty disability pension.

Mr. Christiansen stated that an in line of duty disability claim is through direct evidence that the injury or disease is a direct result of the claimant performing his duties as a police officer, or resulting from a provision in FS 112.18 regarding presumptive disabilities. He explained that the presumption is defined as follows: *any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence provided that the member had successfully passed a physical examination upon entering into service, including a cardiogram, and the examination failed to reveal any evidence of such condition.* Mr. Christiansen stated that the presumption is rebuttable if there is evidence from a doctor stating that the disability is definitely not the result of hypertension or heart disease. The presumption does not arise at all if the claimant had a pre-employment physical or cardiogram that showed hypertension or heart disease.

Mr. Christiansen stated that Mr. Stienstra is represented by Mr. Kelley today and he reviewed some of the highlights of the records collected. He reported that the reason for Mr. Stienstra's claim is coronary artery disease and hypertension. He stated that Mr. Stienstra was employed by the Town as a police officer from November of 2005 until January 16, 2014; for approximately nine years of service, and does not meet the ten years of service eligibility required for a not in line of duty disability. Mr. Christiansen stated that Mr. Stienstra is 60 years old and had bypass

surgery in November of 2009, and had a pre-employment physical which cleared him for duty. Mr. Christiansen stated that an EKG was done as part of the pre-employment physical and it needs to be discussed. He stated records have been collected from Dr. Lew, treating physician; Dr. Robert Richardson who assisted in Mr. Stienstra's bypass surgery at Leesburg Regional Medical Center; and from Dr. Louis Radnothy for treatment of the claimant prior to his employment in November of 2005.

Mr. Christiansen reported that Dr. Patrick Mathias, a cardiovascular specialist, completed the independent medical evaluation (IME) and Dr. Mathias indicated that he thought the specific date of the onset of hypertension was unclear, but the symptoms of coronary artery disease were evident in October 9, 2009. Dr. Mathias indicated that he felt the claimant was at maximum medical improvement for both, and that he is totally and permanently disabled from performing the job of a police officer, and it was his opinion that his duties as a police officer contributed to the development of both.

Mr. Christiansen then read the questions that were asked of Dr. Mathias for the IME:

- 1) The date of onset of the disease upon which the disability claim is based.
- 2) Is the claimant at maximum medical improvement?
- 3) Is claimant totally disabled from performing his duties of a police officer as described in the enclosed job description (provided)?
- 4) If the claimant is totally disabled, is the disability permanent?
- Mr. Christiansen read the notation to question #4 as follows: "A reference to certain disability guideline indexes which provide for a disability rating of a percentage disability of an extremity and a percentage disability of a body as a whole is not particularly relevant for the purposes of the Board's determination of disability. The Board must determine whether the claimant is permanently and totally prevented from performing the duties of a police officer as a result of his medical condition. The claimant could have a permanent disability rating, but still be capable of performing the duties of a police officer. We would ask that you carefully review the duties as described in the enclosed job description and limit your opinion to the claimant's ability to perform these duties. If the claimant can perform some, but not all of the duties, please specifically state which duties he can perform and which he cannot perform."
- 5) Are there any procedures, treatments or regimens, including but not limited to medical, therapeutic, rehabilitative, exercise or weigh reduction, that might correct or improve the condition?
- 6) Did the disease result from the claimant's duties as a police officer, i.e., was it service connected? Please discuss causation with specificity.
- 7) If you are of the opinion that the claimant has any physical limitations, please provide a specific list of what he can and cannot do. This category is especially important because if the police department can develop a limited duty position to fall within the claimant's physical limitations, the claimant will not be entitled to a disability pension. Please refer to Mr. Stienstra's job description and state with specificity his physical limitations resulting from his cardiac condition.
-Mr. Christiansen stated the last question is less relevant to the Board now because the Town had already terminated Mr. Stienstra.

Mr. Christiansen turned the floor over to Mr. Kelley.

Paul Kelley introduced himself as representing Randy Stienstra and introduced Mr. Stienstra and his wife, Theresa. He stated that Mr. Stienstra last served as a corporal in the motorcycle unit, and was employed from November 8, 2005 and worked his last day on October 27, 2013. Mr. Kelley stated that Mr. Stienstra was terminated on January 16, 2014, and that he had three cardiac events while employed by the Town; the first occurring on October 10, 2009. On that day, he was going out to his vehicle and experienced chest pain and nearly passed out. He was transported by ambulance to Leesburg Regional Medical Center where he underwent a triple bypass for three vessel coronary artery disease. On October 12, 2012, Mr. Stienstra again started experiencing severe chest pressure, difficulty breathing, and nearly passed out while on duty. He was again transported by ambulance to Leesburg Regional Medical Center and underwent catheterization and treatment for coronary artery disease. Subsequently, on June 19, 2013, Mr. Stienstra again experienced shortness of breath, chest pressure and fatigue, and as a result, underwent a stress test. It came back abnormal and revealed a 100% occlusion in one of the arteries; resulting in the placement of three stents. Mr. Kelley stated that Mr. Stienstra has on-going significant coronary artery vessel problems and disease, and has been treated all three times at Leesburg Regional Medical Center. He stated he was initially treating with Dr. Leonardo Victoris, a cardiologist, and the care was transferred over to Dr. Winnie Liu, and then to Dr. David Lew.

Mr. Kelley stated that Dr. David Lew filled out the form submitted with the application for the disability claim. In that record, Dr. Lew reported the primary disabling condition as being coronary artery disease, with hypertension, obesity, and high cholesterol issues, as well. He indicated the claimant was at maximum medical improvement as of June 2013 and that he cannot perform his duties as a law enforcement officer, but is capable of doing some other type of job. Mr. Kelley stated that Dr. Lew indicated that the claimant's primary disability was the result of an on the job injury or illness; referencing the date of 6/27/13 as the last event, and related the primary disability to the heart/lung bill due to work-related stress, with other contributing factors being high blood pressure and former smoker.

Mr. Kelley reviewed the IME completed by Dr. Mathias, who stated that he believed the onset of symptoms relating to coronary artery disease began October 9, 2009, and agreed with Dr. Lew that he was at maximum medical improvement for both conditions, and that he was totally and permanently disabled and unable to perform as a law enforcement officer. Mr. Kelley pointed out that Dr. Mathias commented that the claimant's duties as a police officer may have contributed to the development of both hypertension and coronary artery disease. He stated that all the medical evidence points to the fact that the claimant is totally and permanently disabled from doing the usual and efficient work as a law enforcement officer, and the Town determined that Mr. Stienstra was unable to effectively perform the duties of a police officer and he was terminated.

Mr. Kelley stated the big issue that the Board needs to address today is whether the disability is in line of duty or not in line of duty as Mr. Stienstra was about half a year short of meeting the ten year vested period. He stated it is his position that the line of duty disability has been proven by both the medical opinions of doctors stating this was caused by his work and by the presumption under the heart/lung bill. Mr. Kelley stated that under the pre-employment physical, there are four criteria an individual has to meet for it to be applicable: 1) be a member of the four covered classes – law enforcement officer, corrections officer, corrections probation officer, and firefighter; 2) has to have developed a covered condition – hypertension, coronary artery disease, and/or tuberculosis; 3) pre-employment physical, and 4) disability developed as a result of the claimed or covered condition.

Mr. Kelley stated that although the claimant has hypertension, the disabling condition is coronary artery disease. He stated that the pre-employment physical is the one item that the Board may be most interested in as the claimant clearly meets the other three criteria. The criteria is that the pre-employment physical has to fail to show evidence of the claimed condition, and the claimant is claiming coronary artery disease. He stated Mr. Stienstra underwent a pre-employment physical on October 25, 2005 and an EKG was performed at that time. Mr. Kelley stated that it showed borderline and unconfirmed results. He stated this does not mean it is abnormal; it could be electrical rather than plumbing, and could just mean that a lead is not hooked up properly.

Mr. Christiansen asked Mr. Kelley if he was giving medical opinion.

Mr. Kelley stated he was giving an argument.

Mr. Christiansen clarified that Mr. Kelley was giving argument, not testimony.

Mr. Kelley stated that he was pointing out that the EKG was not saying abnormal, but that it says unconfirmed. He stated other problems from it can be left ventricular hypertrophy for a variety of reasons and that it is important because Dr. Louis Radnothy followed up on Mr. Stienstra's pre-employment physical, stating he was "clear medically to participate in activities related to employment as a police officer". Mr. Kelley pointed out that the results of the chest views for the pre-employment physical stated there was "no acute cardiopulmonary process". He stated it was their position that the claimant meets the eligibility for two criteria: 1) Dr. Lew relates it to this and Dr. Mathias' IME states that stressors related to his work are contributing factors; and 2) that he meets all four criteria under the presumption as the EKG showed something that needed to be confirmed, but was not actual evidence of coronary artery disease, and that did not develop until 2009-2010. Mr. Kelley stated that none of the exclusionary factors were evident either, and based upon the preponderance of the evidence, he asked that the Board find in favor of the in line of duty disability pension for Mr. Stienstra. He asked if there were any questions.

Member Van Reynolds noted that Mr. Stienstra's hypertension was diagnosed in 2000, five years before he was employed by the Town, and hypertension was also noted in his pre-employment physical. He stated that Mr. Stienstra's Workers' Compensation claim was denied because his medical condition was deemed personal and not related to his employment or alleged accident, and they ruled that the presumption doctrine did not apply. Records show that Mr. Stienstra had worked at seven other police department for 29 years prior to employment with the Town. Mr. Reynolds observed that Mr. Stienstra's bypass surgery was in 2009, only four years after beginning employment with the Town, and that he was a smoker who continued to smoke after the bypass surgery, and did not quit until 2013. He stated the IME pointed out that the claimant has a family history with both his father and brother having premature coronary heart disease, and the pre-employment physical is marked as abnormal under the heart. Mr. Reynolds stated he was curious as to how these factors may effect the determination.

Mr. Kelley stated that the pre-employment physical was marked abnormal until cleared by primary physician.

Mr. Kelley addressed Mr. Reynolds observations, stating that Mr. Stienstra's father and brother did have coronary heart disease; that his brother was also a law enforcement officer and could fall under the presumption, and his father had late onset coronary heart disease that occurs after

age 55, and is not relevant to family history. He pointed out that Dr. Mathias does not note family history as a factor, but instead notes that psycho-social stressors as a law enforcement officer may have contributed, and he also did not note smoking as a cause of the coronary artery disease. Mr. Kelley stated that he has heard that coronary artery disease can come on in seconds, rather than just weeks or months, and can happen within four years according to the physicians. He stated that Mr. Stienstra had no issues with coronary artery disease during the 29 years he worked at other police departments and that as Mr. Kelley pointed out, the pre-employment physical did state abnormal heart until cleared by cardiologist and primary care physician. Mr. Kelley stated that Mr. Stienstra was on medication for hypertension when he began working for the Town, but the disability claim is for coronary artery disease, not for hypertension. He reported that there was no ruling or finding by Workers Compensation and the case has been mediated; that it was the position the Town and adjusters took, but it has since been settled. Mr. Kelley thanked Mr. Reynolds for bringing up these observations.

Member Reynolds asked Mr. Kelley his position on the cause of the coronary artery disease.

Mr. Kelley replied he does not know what caused it and there is no way to objectively and scientifically state that one issue caused coronary artery disease in one person or another. Physicians will state what they think are contributing factors like Dr. Lew and Dr. Mathias did, and there are five typical risk factors: hypertension, family history, obesity, smoking and diabetes. Psycho-social stress has subsequently been added as a risk factor and this is what both doctors are stating are contributing factors.

Member Reynolds stated that it appears that Dr. Mathias did not know when the condition began, but the symptoms first occurred when the event resulted in bypass surgery.

Mr. Kelley agreed with that, but stated that Dr. Mathias did not state that the condition began before his employment.

Member Lt. Tempesta asked if Dr. Mathias' reply to question #6 in the IME stating, "his duties as a police officer *may have* contributed..." should be taken as a presumption.

Mr. Christiansen replied that it should be taken as direct evidence, not the presumption as it applies whether there is evidence for it or not. He stated the clean pre-employment physical is key.

Mr. Kelley stated that was why he pointed out that in connection with the form that was completed and submitted by Dr. Lew where he indicates the heart/lung presumption and the work-related stress, and it is their argument that he meets the direct connection there.

Mr. Christiansen clarified that Dr. Lew said it was heart/lung bill from stress; but it does not clearly say one or the other. He stated the Board needs to look more closely at the pre-employment physical as the doctor checked abnormal subject to another doctor giving the claimant the okay to be employed. Mr. Christiansen stated that because the doctor gave him the okay to be employed does not mean the claimant had a clear pre-employment physical, and the question is did he meet the criteria that he must have successfully passed the physical examination upon entering into such service, including cardiogram, *which examination failed to reveal any evidence of such condition*. He stated it is important for the Board to look at that closely. Mr. Christiansen also noted the fact that the claimant already had hypertension when he

began work, and the doctors did not address how it is related to the development of the coronary artery disease at some later point, as it was borderline at the time of hire.

Chairperson Wherry asked if this would be an appropriate time to hear from Town Attorney Derek Schroth.

Mr. Christiansen pointed out to the Board that the operating rules and procedures do not provide for comment from anyone else at this hearing. He stated it is up to the Board as to whether they want to hear the Town's comments on this case.

Mr. Kelley stated on his client's behalf that Mr. Stienstra would object to any comments from the Town at this point.

Town Attorney Derek Schroth stated in response to that objection that the Board needs to decide whether they would like to give the Town the opportunity to speak or not because it would be reviewable upon appeal depending on the Board's decision.

Mr. Christiansen stated that although there is a provision for public comment on the agenda, this is a quasi-judicial hearing and is not subject to the legislation requiring the public be heard.

Mr. Schroth did agree that it is an exception under 286.0114 which requires public comment at any board or commission meeting, but noted that public comment is on the agenda.

Mr. Christiansen reiterated that it was up to the Board, and that Mr. Schroth's comments could be heard after the hearing as well.

Member Reynolds stated he would like to hear what he has to say, but clarified that what he had to say would not be considered evidence.

Chairperson Wherry stated he liked the idea of hearing Mr. Schroth after the hearing was over, but asked for a vote of the Board.

It was the consensus of the Board to allow Mr. Schroth to make comments but to provide no evidence.

Mr. Schroth introduced himself as representing the Town. He noted that there were no objections when he initially requested to reserve his comments to the end of the hearing. Mr. Schroth stated he was going to reiterate what has already been noted in the record, the first being the presumption applying if there is evidence of a clean physical. He stated that the Board has evidence of an abnormality with both heart, lung, hypertension shown on the form. Mr. Schroth stated the presumption does not apply if there is any evidence of the condition on the application, and there is evidence, and includes abdomen as well. He stated Mr. Kelley brought up the five factors that include obesity, family history, smoking, and hypertension, and all of these factors were demonstrated prior to Mr. Stienstra's employment with the Town. Mr. Schroth asked that the Board does not give the presumption because the Town does not think it applies as there is evidence in the application, and furthermore, that the burden of proof lies with the claimant. He stated that the Board asked what caused this, and the claimant has to prove to the Board that this was somehow done in the line of duty when the presumption is gone, and they have not done it. Mr. Schroth stated the medical testimony states that line of duty *may have* contributed, but it does not say definitively that it was a factor. He stated the Board can deny the claim and the

claimant will still have the opportunity to go forward with the full hearing and conduct more discovery on these issues, and that it does not close the door on the claimant to seek a full hearing. Mr. Schroth thanked the Board for allowing him to comment.

Chairperson Wherry thanked Mr. Schroth and asked if there were any further comments or questions by the Board.

Member Schmied asked Mr. Christiansen if he felt the full criteria had been met for the presumption.

Mr. Christiansen replied that the Board should be the judge, but that he thinks the main focus should be whether the in line of duty presumption applies.

Member Reynolds stated he believes the evidence is clear that the claimant is totally and permanently disabled and cannot function as a police officer again, but that it appears the previous medical history makes the presumption unclear.

Member Lt. Tempesta agreed.

Chairperson Wherry asked for a motion.

Upon a motion by Member Reynolds, with a second by Member Schmied, the Board denied the disability claim by Randy Stienstra because the criteria for the presumption has not been met due to pre-existing conditions, by a vote of 3-1 (Wherry).

Mr. Christiansen stated that he will now complete an order indicating the action taken by the Board today, and a copy of the order will go to Mr. Kelley. He and the claimant can then decide whether they want to request a full formal evidentiary hearing, and they have 90 days to request it. If they do request it, the Board will then have 90 days to hold the hearing. Mr. Christiansen stated that if Mr. Kelley does request a full hearing, he will most likely take depositions, and that he would like to attend those if the Board so approves.

It was the consensus of the Board that Mr. Christiansen may attend any depositions in regard to this case.

4. Adjourn

With no further business to discuss, Chairperson Wherry adjourned the meeting at 3:06 p.m.

Kristen Kollgaard, Town Clerk

Chairperson Officer Vernon Wherry

Transcribed by Nancy Slaton, Deputy Town Clerk