

**MINUTES OF THE LADY LAKE
SPECIAL POLICE PENSION BOARD MEETING
LADY LAKE, FLORIDA
October 19, 2016**

The Police Pension Board meeting was held in the Town Hall Commission Chambers at 409 Fennell Blvd., Lady Lake, Florida.

MEMBERS PRESENT: Chairperson/Member Capt. Jason Brough; Member Capt. Robert Tempesta; Member Leonard Cieciek; Member Pete Chiasson; and Member John Schmied

TOWN STAFF PRESENT: Kris Kollgaard, Town Manager; Pam Winegardner, Finance Director; Tia O'Neal, Human Resource Director; Chris McKinstry, Police Chief; and Nancy Slaton, Deputy Town Clerk

ALSO IN ATTENDANCE: Kevin Stone of Stone & Gerken, P.A.; Attorney Tonya Oliver; Rita Boice, Claimant; Mayor Ruth Kussard and Commissioner Tony Holden

1. ROLL CALL/CALL TO ORDER: Chairperson Brough called the special meeting to order at 3:30 p.m. and Roll Call showed that all members were present.

2. PUBLIC COMMENT

Chairperson Brough asked if anyone in the audience had any comments or questions. There were no questions or comments.

3. Hearing Regarding the Disability Claim for Rita Boice

Kevin Stone of Stone & Gerken, P.A. stated that this is the continuation of the disability hearing for Rita Boice that was originally held on September 22, 2015.

Mr. Stone stated this is a quasi-judicial proceeding, and any testimony given today will be given under oath. He stated the claimant is the only person permitted to testify in this proceeding and Ms. Boice was sworn in.

Mr. Stone stated that he reviewed the detailed minutes from the initial hearing and understands that Mr. Christiansen provided the Board members with a set of standards they will be using to make a determination at the initial hearing. He stated the Board may make findings that lead to the approval of the disability retirement, or may find that one of the elements that is required has not been met, and deny the claim for today's purposes. If that is the case, the claimant has the opportunity to request a full hearing and will come back with testimony. Another choice is what has occurred today wherein the Board continued the hearing and collected more information. He reported that two additional documents have been added to the Pension's documentary file since the initial hearing; a deposition transcript, and a report from Southeast Health Psychology, dated April 25, 2016, by provider Dr. Bulcourt.

Mr. Stone recommended that the Chair give the claimant or her representative an opportunity to make a brief presentation to describe the items that have been added and make comments on them.

Attorney Tonya Oliver introduced herself as counsel on behalf of Ms. Boice. She stated she has had an opportunity to read the previous minutes and hear the audio from the initial hearing. She stated

that she and Mr. Stone are in a unique position in that neither one of them were the attorneys present previously. She gave a brief summary/presentation as follows.

Ms. Oliver stated that Ms. Boice was hired by the Town of Lady Lake in December of 2002 as a law enforcement officer. She had two accidents; one on July 9, 2007 and another on July 30, 2014, resulting in injuries or accidents at work. As a result, she developed a syndrome called Complex Regional Pain Syndrome and was treated consistently through Workers' Comp. Ms. Boice was eventually separated from employment on November 14, 2014.

Ms. Oliver stated that one of the questions from the previous hearing was the confirmation of the termination, and Tahia O'Neal's deposition was taken and she confirmed the termination. She stated additional medical records support Ms. Boice and her inability to return to useful and efficient service as a law enforcement officer with the Town of Lady Lake. She invited the Board members to direct any questions to Ms. Boice.

Chairperson/Member Captain Brough asked the Board members if they had any questions or comments.

Member Chiasson stated he had many comments. He stated that he has spent many hours reviewing the data, including doctors' records, work-related records such as performance review, time spent at work, merit and pay increases, promotional opportunities, etc. He stated he tried to track them in a timeline and some items perplexed him, including:

- The injury in question occurred in July of 2007, and prior to that, the claimant worked approximately 1,800 hours a year. After the injury, the claimant worked over 2,000 hours a year.
- From 2008 until 2013, the claimant received five performance reviews indicating an above average rating in each case, and received seven pay raises (mostly for merit, several for cost of living, and one for promotion).
- In this same timeframe, the claimant qualified with her weapon two to three times.
- Apparent conflicting doctor's reports; from normal to not trying to chronic pain syndrome.
- The report from the surveillance video.

Mr. Chiasson stated these and other information provided in the documents are a problem for him and he does not know how to resolve them.

Mr. Stone responded to Mr. Chiasson's comments by stating the Board members are relying on their review of the evidence presented in the documents, not on other Board members' characterization of the evidence. He pointed out that a disability claim can be in the line of duty or not in the line of duty. There will be three determinations to make; whether there is a total disability, whether it is permanent, and whether it occurred in the line of duty. He stated there is a possibility of a non-line of duty disability based on the years of service.

Member Cieciek asked if the Board will be liable for any further legal expenses in this case if they deny the claim in conflict with the Town's termination of the claimant. He commented that the statement "unable to perform the duties of a police officer" is pretty broad.

Mr. Stone replied that the standard normally accepted under the statute is that the person is *wholly unable to render useful and efficient service as a police officer*; and it should be compared to the Town's job description to determine whether the disability renders the person unable to perform

that service. He stated that with respect to the Town's termination of the employee; there is an estoppel from a 30 plus year-old case that occurred in the City of Hollywood, Florida that states that, as a matter of fairness, a city's termination of someone because they are disabled means they are disabled, and the pension cannot say the person is not disabled. Mr. Stone stated the Board can render a different determination regarding the permanence of the disability and whether the functional capacity of limitations arose from the same accident and injury that is the basis of the line of duty claim.

Member Chiasson commented that he did not understand if the Human Resource representative knowingly understood at the time that the choice of words in the termination letter would be establishing some kind of precedent. He stated he hoped this would have been resolved in the deposition, but the deposition did not address his key questions about it.

Member Captain Tempesta clarified that the Board is supposed to review the evidence presented and if the injury is deemed Workers' Comp, if all the presumptions are met, and there are no violations that would exclude the claimant from receiving the benefit, they should base their finding on this.

Mr. Stone agreed that this is the evidence the Board should be considering.

Ms. Oliver asked to respond to the Board members' comments. She reiterated that the claimant's actual injury occurred in 2007 and Ms. Boice continued to work for five years after that; stating it is to her credit because she was continuously in pain while she was working.

Ms. Oliver stated the Board should take into consideration that while she did have the injury and continued to perform at high standards for the citizens of Lady Lake, she was in pain and it is documented and supported by Workers' Compensation records. She pointed out that in Dr. Cox's report on page 213, it clarified that there are *objective abnormalities*, which is objective medical evidence, not just self-reported pain. It states that "as she has developed RSD over the years, at the onset of this 2007 injury, she is unable to perform her job duties as a law enforcement officer". Ms. Oliver stated several doctors of record indicated Ms. Boice is no longer and will no longer be able to render useful and efficient service as a law enforcement officer. Dr. Stephen Pyles' report on page 21 reaffirms his position that she will not be able to return to work as a result of this complex regional pain syndrome (RSD). Dr. Robert Hasfield (on page 129) indicates the primary diagnosis is RSD; a secondary diagnosis is depression as a result of the RSD because she cannot do her job anymore. Ms. Oliver stated Ms. Boice is a young lady who was dedicated to performing her duties and developed depression; this was the basis for the supplemental records provided to counsel. The Pension's IME on page 120 confirms Ms. Boice "is as good as she is going to get", and shows she is at MMI (maximum medical improvement) on page 121. It shows that as of July 30, 2014, "she has chronic pain syndrome and she is not going to be able to return to work".

Ms. Oliver stated that the records from other physicians and facilities all support the objective injuries, and reiterated that it is to Ms. Boice's credit that she continued to work an additional five years while she was in pain, with subsequent issues developing since leaving work. She stated that as a result of this injury, Ms. Boice is asking that the Board find: 1) that the injury developed at the inception of her accident in 2007, as it is confirmed by the doctors that the RSD developed as a result of this accident; 2) that she can no longer render useful and efficient service as is supported by the deposition by Tahia O'Neal; and 3) that Ms. Boice is totally and permanently disabled as a result of her work-related injury.

Member Cieciek asked how the notice of termination was given to Ms. Boice.

Mr. Stone confirmed it was by letter and was attached to the claimant's application for disability, and was included in the documents provided to the Board.

Member Cieciek commented that he had reservations, but did not want to prolong this legally.

Member Cieciek made a motion to find in favor of Ms. Boice for disability. Attorney Stone stated that this motion implies there is a finding by this Board that there is a total disability; that the total disability is permanent, and that the disability was a direct result of Ms. Boice's duties. Member Capt. Tempesta seconded the motion, and the Board approved the disability claim by Rita Boice by a roll call vote of 4 to 1:

<i>Member Chiasson</i>	<i>NO</i>
<i>Member Schmied</i>	<i>YES</i>
<i>Member Captain Brough</i>	<i>YES</i>
<i>Member Captain Tempesta</i>	<i>YES</i>
<i>Member Cieciek</i>	<i>YES</i>

4. ADJOURN: With no further business to discuss, the meeting was adjourned at 3:53 p.m.

Kristen Kollgaard, Town Clerk

Chairperson/Captain Jason Brough

Transcribed by Nancy Slaton, Deputy Town Clerk