

CITY OF SURPRISE
Public Safety Personnel Retirement System – Police Meeting
16000 N. Civic Center Plaza
Surprise, AZ 85374
Wednesday, August 12, 2020 @ 9:45 AM
COUNCIL CHAMBERS



NOTICE: In an effort to protect health and safety of city employees, residents, and visitors, the Council Chambers will be closed to the public during this meeting. The public may access the meeting by viewing a live stream or broadcast of the meeting. To watch live, please visit www.surpriseaz.gov/surprisetv, the Surprise City Gov Facebook page at www.facebook.com/cityofsurprise. Cox channel 11 and Century Link channel 8513 will also carry the meeting live.

For instructions on how to comment on agenda items and public hearings, please go to <https://bit.ly/2Yflf6D>

- A. Call To Order
- B. Roll Call
- C. Pledge of Allegiance
- D. Current Events and Reports
- E. Staff Reports
- F. Public Safety Retirement Commission- Police Agenda

CALL TO THE PUBLIC:

Public comment will be taken through email or via phone. To submit email comments, including Call to the Public for non-agenda items, please email publiccomments@surpriseaz.gov. Comments for Call to the Public must be submitted prior to the start of the meeting. To comment on agenda items, emails must be submitted prior to the time(s) designated for public comment by the Board Chair during the meeting or before the agenda item has otherwise concluded.

To comment live by phone for Call to the Public for non-agenda items or for agenda items, please call 623-222-3542 prior to, or during, the meeting to have your name placed on a callback list. If you reach voicemail, please leave your name and phone number. The Board Secretary will call those wishing to comment from the dais during the meeting, and the call will be streamed through the Council Chamber audio system. Only calls received before Call to the Public for non-agenda items or before or during the time(s) designated for public comment by the Board Chair during the meeting on the subject agenda item will be accepted and streamed. No calls will be accepted after the time(s) designated by the Board Chair for public comment or after an agenda item has otherwise concluded.

CONSENT AGENDA:

- 1. Internal Considerations and possible action pertaining to the review and approval of the July 15, 2020 PSPRS Local Police Board Executive Session Meeting Minutes Human Resources
- 2. Internal Considerations and possible action pertaining to the review and approval of the July 15, 2020 PSPRS Local Police Board Meeting Minutes Human Resources

REGULAR AGENDA ITEM - NON-PUBLIC HEARING:

- | | | | |
|----|----------|--|-----------------|
| 3. | Internal | Possible action to enter Executive Session to receive legal advice regarding the reevaluation process for accidental disability recipients pursuant to A.R.S. § 38-844(E) | Human Resources |
| 4. | Internal | Further review, consideration and possible action to adopt a reevaluation process and criteria pertaining to accidental disability recipients pursuant to A.R.S. § 38-844(E) | Human Resources |
| 5. | Internal | Summary and discussion of Arizona Supreme Court case as it relates to accrued leave vacation payouts for pension benefits | Human Resources |
| 6. | Internal | Consideration and possible action pertaining to the review of medical examination and the acceptance of three (3) new police officer (recruits): Andrew Harding, Taylor Knight, and Heather Lynn into the PSPRS system pursuant to A.R.S. § 38-859 | Human Resources |
| 7. | Internal | Consideration and possible action pertaining to the acknowledgement of end of DROP period for Police Officer Craig Scartozzi who will separate from employment effective September 1, 2020 and start collecting retirement pension benefit | Human Resources |
| 8. | Internal | Consideration and possible action regarding the application for Accidental Disability Retirement of Glenn Cannon | Human Resources |
| 9. | Internal | Considerations and possible action for the Police Board to finalize RFQ process for Independent Legal Counsel after receiving recommendation from selection panel review | Human Resources |

G. Other Business and Future Agenda Items

H. Executive Session

For information purposes: Upon a public majority vote of a quorum of the Public Safety Personnel Retirement Commission ("Commission"), the Commission may hold an executive session, which will not be open to the public, but for only the following purposes: discussion or consideration of records exempt by law from public inspection (A.R.S. §38-431.03(A)(2)); or discussion or consultation for legal advice with the Commission's attorneys (A.R.S. §38-431.03(A)(3)).

Confidentiality Requirements: Pursuant to A.R.S. §38-431.03(C)(D), any person receiving executive session information pursuant to A.R.S. §38-431.02 shall not disclose that information except to the Attorney General or County Attorney or by agreement of the Commission, or as otherwise ordered by a court of competent jurisdiction.

The Commission may vote to hold an executive session for the purpose of obtaining legal advice from the Commission's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

I. Adjournment

POSTED: August 6, 2020 at 12:50 PM

SPECIAL NOTE: PERSONS WITH SPECIAL ACCESSIBILITY NEEDS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETER, SHOULD CONTACT THE CITY CLERK'S OFFICE @ 623.222.1200 OR TTY 623.222.1002, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: Yes Regular: No Public Hearing: No Report/Discussion: No

Agenda Wording:

Considerations and possible action pertaining to the review and approval of the July 15, 2020 PSPRS Local Police Board Executive Session Meeting Minutes

Motion:

I make a motion to approve the July 15, 2020 PSPRS Local Police Board Executive Session Meeting Minutes

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: Yes Regular: No Public Hearing: No Report/Discussion: No

Agenda Wording:

Considerations and possible action pertaining to the review and approval of the July 15, 2020 PSPRS Local Police Board Meeting Minutes

Motion:

I make a motion to approve the July 15, 2020 PSPRS Local Police Board Meeting Minutes

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:

1. PSPRS - Police Board Meeting Minutes (DRAFT)7.15.2020
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**PUBLIC SAFETY RETIREMENT SYSTEM
CITY OF SURPRISE LOCAL BOARD – POLICE**
Minutes, Wednesday, July 15, 2020
16000 N. Civic Center Plaza, Surprise, Arizona 85374

The following are the minutes from the PSPRS City of Surprise Police Board Meeting held at 9:45 a.m. Wednesday, July 15, 2020. The meeting was held in City Hall, Council Chambers. Due to COVID-19, the public was able to stream meeting live.

A. Call To Order

Chair Hall called meeting to order at 9:45 a.m.

B. Roll Call:

Skip Hall, Chairperson – Present
Chandler Brown, Citizen Board Member – Present
James Conner, Citizen Board Member - Present
Severin Hall, Police Department – Present
Ian Murton, Police Department – Present

In attendance:

Connie Welsch, Human Resources Manager
Carrie O'Brien, Board Attorney (*conference bridge*)
Eric Boyles, Procurement Manager (*conference bridge*)
Ariana Reyna, Sr. Human Resources Analyst

C. Pledge of Allegiance – Completed

D. Current Events Reports - None

E. Staff Reports – PSPRS Board Secretary stated that James Conner went through the reappointment process as set forth by the City of Surprise City Clerk's office. He was presented by the Nominations Committee to City Council during the June 16, 2020 meeting and he was approved to be reappointed with the PSPRS Fire Board with a term of 07/01/2020 – 06/30/2024.

F. Call to the Public – None

Consent Agenda:

- 1. Considerations and action pertaining to the review and approval of the June 10, 2020 PSPRS Local Police Board Executive Session Meeting Minutes - APPROVED**

Motion to Approve: Chandler Brown

Second: James Conner

Opposed: None

Regular Agenda:

2. Considerations and action pertaining to the review and approval of the June 10, 2020 PSPRS Local Police Board Meeting Minutes - APPROVED

Motion to Approve: Ian Murton

Second: James Conner

Opposed: None

3. Consideration and possible action to approve the selection panel to review responses of RFQ for Independent Legal Counsel – APPROVED

Chair Skip Hall addressed the Board mentioning that both Ian Murton and James Conner have agreed to be the selection panel to review responses for the RFQ.

Motion to Approve: Chandler Brown

Second: Severin Hall

Opposed: None

Chair Skip Hall asked Eric Boyles to provide an update on the RFQ process for the Board. Eric Boyles stated that he sent out the request for solicitations with a due date of July 6, 2020. Out of the six solicitations that were sent out, three were received for the panel to review. Two of the firms advised that they had a conflict of interest and one of the firms was based out of Tucson and didn't have an office in the Phoenix area.

Ian Murton asked Eric Boyles if he could share the names of the firms who responded to solicitations. Eric Boyles responded that Gust Rosenfeld P.L.C., Ryan Rapp Underwood & Pacheco PLC, and Goering, Roberts, Rubin, Brogna were the three that responded to solicitation requests and they are all out of the Phoenix area.

4. Consideration and possible action pertaining to the enrollment of Police Officer Jason M. Kulfan into the Deferred Retirement Option Plan (DROP) effective 8/28/2020 – APPROVED

Motion to Approve: James Conner

Second: Chandler Brown

Opposed: None

The PSPRS Board Secretary provided the following as background information: Police Officer Jason M. Kulfan filled out a DROP application and submitted all documentation as required by PSPRS. As of 08/28/2020, Officer Kulfan is eligible to enter the DROP with an accumulated 20.003 years of service, all with the City of Surprise. Officer Kulfan has designated a 60-month period to participate in DROP, which establishes his

separation date from employment on or before 08/31/2025.

5. Consideration and possible action pertaining to the approval of the application for normal retirement for Police Sergeant John C. Vance effective 8/23/2020. – APPROVED

Motion to Approve: Ian Murton

Second: Chandler Brown

Opposed: None

The PSPRS Board Secretary provided the following as background information: Police Sergeant John C. Vance filled out an application for normal retirement and submitted all documentation as required by PSPRS. As of 08/23/2020, Sgt. Vance will retire with an accumulated 20.027 years of service, all with the City of Surprise.

G. Other Business and Future Agenda Items – None.

H. Executive Session

Consideration and possible action to enter Executive Session to review records exempt from public disclosure and/or legal advice related to the Accidental Disability application for Glenn Cannon - TABLED.

Carrie O'Brien and the PSPRS Board Secretary provided background information as follows: The PSPRS Local Police Board met on May 13, 2020 to receive a status update from Glenn Cannon in relation to his pending disability application. The Board requested medical records from Glenn Cannon pertaining to his recovery of injury and a timeline of his return to work to be presented during the July meeting. Glenn Cannon provided the Board Secretary with updated medical notes following his appointments with his treating physician on May 21, 2020 and July 7, 2020. PSPRS Legal Counsel received applicant's request for continuance on 7/8/2020, due to applicant's legal counsel being unable to attend, and requesting the Police Board to reconvene on the matter after August 10, 2020.

Ian Murton made a motion to exit Regular Session and enter Executive Session at 9:56 a.m.

Motion: Ian Murton

Second: Chandler Brown

Opposed: None

DISCUSSION ENSUED DURING EXECUTIVE SESSION



**PUBLIC SAFETY RETIREMENT SYSTEM
CITY OF SURPRISE LOCAL BOARD – POLICE**
Minutes, Wednesday, July 15, 2020
16000 N. Civic Center Plaza, Surprise, Arizona 85374

Ian Murton made a motion to exit Executive Session and resume Regular Session at 10:07 a.m.

Motion to Approve: Ian Murton
Second: Chandler Brown
Opposed: None

Following discussion during Executive Session, the Board decided to table review of Glenn Cannon's accidental disability application until the August meeting.

Motion: James Conner
Second: Ian Murton
Opposed: None

Consideration and possible action to enter Executive Session to receive legal advice regarding the adoption of a reevaluation process and criteria pertaining to accidental disability recipients pursuant to A.R.S. § 38-844 (E).

The PSPRS Board Secretary provided the following as background information: The PSPRS Police Disability Review Subcommittee met on May 27, 2020 and June 24, 2020 to discuss, review and present a tentative adoption of a reevaluation process and criteria pertaining to accidental disability recipients pursuant to A.R.S. § 38-844 (E). The process and criteria is now being presented for consideration of the PSPRS Local Police Board.

Severin Hall made a motion to exit Regular Session and enter Executive Session at 10:10 a.m.

Motion: Severin Hall
Second: Ian Murton
Opposed: None

DISCUSSION ENSUED DURING EXECUTIVE SESSION

Severin Hall made a motion to exit Executive Session and resume Regular Session at 10:36 a.m.

Motion to Approve: Severin Hall
Second: Chandler Brown
Opposed: None



**PUBLIC SAFETY RETIREMENT SYSTEM
CITY OF SURPRISE LOCAL BOARD – POLICE**
Minutes, Wednesday, July 15, 2020
16000 N. Civic Center Plaza, Surprise, Arizona 85374

I. Adjournment

Motion to adjourn at 10:37 a.m. – APPROVED -

Motion: Chandler Brown

Second: Ian Murton

Opposed: None

Meeting Minutes Approval:

Skip Hall, Chair

CERTIFICATION:

I, Ariana Reyna, Sr. Human Resources Analyst – ADA & Leaves for the City of Surprise, Maricopa County, Arizona, do hereby verify that these are true and correct minutes of the PSPRS Local Police Board Meeting of **Wednesday, July 15, 2020**.

Ariana Reyna, Human Resources



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: No	Regular: Yes	Public Hearing: No	Report/Discussion: No
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Agenda Wording:

Possible action to enter Executive Session to receive legal advice regarding the reevaluation process for accidental disability recipients pursuant to A.R.S. § 38-844(E)

Motion:

I make a motion to enter Executive Session to receive legal advice regarding the reevaluation process for accidental disability recipients

Background:

City of Surprise Human Resources Director has met with the Disability Review Subcommittee and would like to address the Local Police Board in regards to the possible adoption of a disability review process and criteria.

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:

1. Memo from Carrie
-

*GUST
ROSENFELD*
ATTORNEYS SINCE 1921 P.L.C.

■ ONE E. WASHINGTON, SUITE 1600 ■ PHOENIX, ARIZONA 85004-2553 ■ TELEPHONE 602-257-7422 ■ FACSIMILE 602-254-4878 ■

CARRIE O'BRIEN
602-257-7414
cobrien@gustlaw.com

May 21, 2020

Ariana Reyna
City of Surprise Local Police Board Secretary
City of Surprise
16000 N Civic Center Plaza
Surprise, AZ 85374
Ariana.Reyna@surpriseaz.gov

Re: Legal Advice Regarding Reevaluation Process for Accidental
Disability Recipients
Our File No. 021770-00019

Dear Ms. Reyna:

This law firm currently serves as independent legal counsel to the City of Surprise Local PSPRS Police Board ("Local Police Board"). Board Secretary Ariana Reyna has asked this law firm for legal advice on the process for reevaluation of ordinary and accidental disability retirement cases permitted by A.R.S. § 38-844(E) and Local Police Board Rules at section G(2) and the legal obligations of the City of Surprise for reemployment of members who are determined to have sufficiently recovered from their accidental disability by the Local Police Board. The purpose of this letter is to provide the requested legal advice to the Local Police Board. The Local Police Board will need to waive the attorney-client privilege to provide this advice to the City of Surprise Human Resources Department.

Background

Members of the Local Police Board have requested review of accidental disability recipients to determine whether to refer them for Independent Medical Evaluations ("IMEs") to decide whether the recipient has sufficiently recovered. Local Police Board members have conducted one executive session in a subcommittee pursuant to Local Police Board rule G(2)(3) and are scheduled for another meeting next week.

Legal Framework

Arizona law provides the Local Police Board with discretion to review accidental or ordinary disability retirement cases to determine whether the person has sufficiently recovered. A.R.S. § 38-844 (E)(1) (attached at Tab 1). A person on accidental disability cannot be required

to undergo an IME more than once per calendar year. A.R.S. § 38-844(E)(2). Several Attorney General Opinions in addition to the statutory framework guide this process. For example, responsibility for determining whether a member's employment during disability retirement is for primary purpose of rehabilitation rests upon local board. Op. Atty. Gen. No. 70-10. Whether a member receiving disability retirement is engaged in "substantial gainful employment" ultimately must be determined through an examination of the facts and circumstances of each individual case. *Id.* It is my legal opinion although there are older Attorney General Opinions permitting external evidence to be considered, the Board's decision should be based on an IME based on recent cases in Mesa and Phoenix. *See Hosea v. City of Phoenix Fire Pension Board*, 224 Ariz. 245 (2010) and *Pascarella v. Mesa Pension Police Board*, 1/14/2020, Arizona Court of Appeals (attached at Tab 2).

Arizona law is silent as to whether an offer of employment by the City of Surprise is required if the Local Police Board determines a person is sufficiently recovered from the medical condition resulting in the accidental disability. Ariz. Ops. Atty Gen. 179-285, footnote 4 (attached at Tab 3). *See* A.R.S. § 38-844. A person's employment with the City of Surprise terminates by action of the Local Police Board to approve the person's disability retirement. A.R.S. § 38-844(B). Arizona law also requires that if the person who is determined to have sufficiently recovered refuses an offer of employment by the City of Surprise, the accidental disability retirement terminates. A.R.S. § 38-844(E). However, the decision to offer the person who has sufficiently recovered a position within the City of Surprise Police Department is not within the legal authority of the Local Police Board.

The Local Police Board Rules provide a process for the discretionary reevaluation process. The Board Secretary is to compile a list of members receiving accidental and ordinary disability benefits who may be subject to reevaluation. Local Board Rules at G(2)(b) (attached at Tab 4). The Local Police Board has created a Subcommittee of the two elected members of its board to review the list prepared by the Board Secretary. The Subcommittee reports its recommendations for consideration by the entire Board at a public meeting. Local Board Rules at G(2)(c).

Analysis

If the Local Police Board chooses to refer members on accidental disability retirement for an IME, I recommend the Local Police Board consider additional practical issues regarding the City's op. The reevaluation process is within the Local Police Board's discretion and is not required under Arizona law. There are sometimes underlying and unresolved conduct and other personnel issues that may reemerge if a member is determined to have recovered and offered a position within the Surprise Police Department.

In addition, the Local Police Board Subcommittee should create criteria by which it determines which persons to recommend to the Local Police Board for an IME. This decision to

refer a person for an IME should not be arbitrary or based on personal opinions; otherwise the decision may be subject to a legal challenge as pretext for terminating the disability retirement.

If the Local Police Board recommends certain accidental disability recipients for IMEs, the City would be obligated to facilitate those IMEs and provide the results to the Local Police Board for further review at a Public Meeting. The Local Police Board would then make a determination based on the record whether the accidental disability recipient has sufficiently recovered. If the City of Surprise offered the recipient a position and it was refused, the disability retirement terminates. Again, Arizona law is silent as to whether the City of Surprise is required to offer a new position to the person determined by the Local Police Board to have sufficiently recovered from the medical condition causing the accidental disability.

I am available to answer any additional questions regarding this matter at your convenience.

Very truly yours,



Carrie O'Brien
For the Firm

CO/lb
Enclosures

 KeyCite Yellow Flag - Negative Treatment
Distinguished by [Pascarella v. Mesa Police Pension Board](#), Ariz.App. Div.
1, January 14, 2020

224 Ariz. 245
Court of Appeals of Arizona,
Division 1, Department E.

William T. **HOSEA**, Plaintiff–Appellant,
v.
CITY OF PHOENIX FIRE PENSION BOARD,
an [administrative body](#), Defendant–Appellee.

No. 1 CA–CV 09–0105.
|
April 29, 2010.

Synopsis

Background: Firefighter sought review of decision of city fire pension board denying his application for an accidental disability pension. The Superior Court, Maricopa County, No. LC 2007–000767–001 DT, William B. Schafer, III, J., affirmed. Firefighter appealed.

Holdings: The Court of Appeals, [Weisberg, J.](#), held that:

[1] board's finding that firefighter terminated his employment because Deferred Retirement Option Plan (DROP) period had expired was supported by substantial evidence;

[2] board was not required to appoint a medical board before denying application; and

[3] expiration of DROP period was sole reason for firefighter's retirement.

Affirmed.

West Headnotes (9)

[1] [Administrative Law and Procedure](#)  Review for arbitrary, capricious, unreasonable, or illegal actions in general

[Administrative Law and Procedure](#)  Discretion of agency; abuse of discretion

[Administrative Law and Procedure](#)  Presumptions and Burdens on Review

The Court of Appeals views the evidence in the light most favorable to upholding the decision of an administrative agency and will affirm the decision unless it is arbitrary, capricious, or an abuse of discretion.

[4 Cases that cite this headnote](#)

[2] [Administrative Law and Procedure](#)  Findings; evidence

In reviewing the superior court's ruling upholding an administrative decision, the Court of Appeals independently examines the record to determine whether the evidence supports the judgment.

[3 Cases that cite this headnote](#)

[3] [Administrative Law and Procedure](#)  Construction, interpretation, or application of law in general

[Administrative Law and Procedure](#)  Substitution of reviewing court's discretion or judgment

[Administrative Law and Procedure](#)  Competence, expertise, and knowledge of agency

Neither the Court of Appeals court nor the superior court may substitute its judgment for that of an administrative agency on factual questions or matters of agency expertise, but the Court of Appeals applies its independent judgment to questions of law, including questions of statutory interpretation.

[1 Cases that cite this headnote](#)

[4] [Administrative Law and Procedure](#)  Review for arbitrary, capricious, unreasonable, or illegal actions in general

Even if there is room for two opinions and the Court of Appeals believes that an erroneous conclusion has been reached, the Court will not set aside the decision of an administrative agency unless there has been unreasoning action, without consideration and in disregard for facts and circumstances.

[5] **Municipal Corporations** ➡ Evidence

Public Employment ➡ Pensions and Benefits

City fire pension board's finding that firefighter terminated his employment because deferred retirement option plan (DROP) period had expired, rather than by reason of accidental disability, was supported by substantial evidence; firefighter worked his last day before retirement on a fire truck on duty at full-time capacity, firefighter never sought workers' compensation benefits or treatment at his employer's health center, and employer had no knowledge of his alleged inability to perform his duties. *A.R.S. § 38-844(B)*.

1 Cases that cite this headnote

[6] **Municipal Corporations** ➡ Proceedings to Obtain Pensions or Benefits

Public Employment ➡ Procedural Requirements and Protections in General

Firefighter failed to meet initial statutory requirement for eligibility, and therefore city fire pension board was not required to appoint a medical board before denying his application for accidental disability benefits; appointment of a medical board would have been futile, and firefighter's interpretation of the statutes to mandate that requirement in all cases would have lead to an absurd consequence not intended by the legislature. *A.R.S. §§ 38-844(B), 38-859*.

2 Cases that cite this headnote

[7] **Statutes** ➡ Consistency, uniformity, and fairness

Statutes ➡ Intent

In construing statutes, the Court of Appeals interprets them so as to find and give effect to legislative intent and to give them a fair and sensible meaning.

2 Cases that cite this headnote

[8] **Statutes** ➡ Statutory scheme in general

Statutes ➡ Construing together; harmony

The Court of Appeals construes statutory provisions in light of their place in the statutory scheme, so they may be harmonious and consistent.

4 Cases that cite this headnote

[9] **Municipal Corporations** ➡ Disability pension or compensation

Public Employment ➡ Particular Conditions or Impairments

Firefighter's termination of his employment due to expiration of deferred retirement option plan (DROP) period precluded eligibility for an accidental disability pension; firefighter's sole reason for terminating his employment was because his DROP period expired, and his alleged disability was not a reason for retirement, as firefighter suggested. *A.R.S. § 38-844(B)*.

2 Cases that cite this headnote

Attorneys and Law Firms

****258** The Law Offices of Judith E. Abramsohn by **Judith E. Abramsohn**, Phoenix, Attorneys for Appellant.

Ryan Rapp & Underwood, PLC by **David L. Niederdeppe**, Phoenix, Attorneys for Appellee.

Kutak Rock, LLP by **Marc R. Lieberman**, Mary Grace McNear, Scottsdale, Attorneys for Fund Manager of Public Safety Personnel Retirement System, Amicus Curiae.

Opinion

WEISBERG, Judge.

*246 ¶ 1 William T. **Hosea** appeals from a judgment of the superior court affirming an administrative decision of the City of Phoenix Fire Pension Board denying his application for an accidental disability pension. For reasons that follow, we affirm.

BACKGROUND

¶ 2 **Hosea** was employed as a firefighter with the City of Phoenix Fire Department from March 7, 1977 to May 31, 2007. As such, he was a member of the Public Safety Personnel Retirement System ("System"). In December 1994, **Hosea** was injured on the job and had surgery in June 1995. Although he had some continuing problems from the surgery, he was released to full-duty status in October 1995.

259 *247 ¶ 3 On April 17, 2002, **Hosea applied for the Deferred Retirement Option Plan ("DROP"). Under this plan, a member of the System with twenty years of credited service who is eligible for normal retirement may elect to participate in the DROP. A member who elects to participate in the DROP shall "voluntarily and irrevocably" designate a retirement date of not more than sixty consecutive months into the future and agrees to terminate employment on the designated date. See [Arizona Revised Statutes \("A.R.S."\) §§ 38–844.02, –844.03\(A\),\(B\)](#) (Supp. 2009). Although there are significant adverse economic consequences if a member fails to terminate employment on completion of the DROP period, see [A.R.S. § 38–844.03\(C\)](#), **Hosea** irrevocably designated his participation in the DROP to terminate on May 31, 2007.

¶ 4 On July 9, 2006, while on duty, **Hosea** was injured when a defective seat on a truck collapsed, which caused him pain and other medical problems. **Hosea** submitted an injury report on July 19, 2006. Using his own medical insurance, **Hosea** saw one physician on August 15, 2006 for a diagnosis, and another physician on September 10, 2006 for medical treatment. He did not, however, apply for workers' compensation benefits or seek medical treatment through his employer's health center. **Hosea** was assigned to light duty at Sky Harbor Airport, which allowed him to work full time. He used about 300 hours of sick leave and 265 hours of vacation leave in order to continue working as a firefighter and "extend out as far as [he] could."

¶ 5 On May 17, 2007, **Hosea** was examined by a physician's assistant at the Phoenix Fire Department's Health Center. After examining him and reviewing his previous medical

records, the physician's assistant recommended that **Hosea** "continue on full duty status." **Hosea** had not made the Health Center aware of his injury or physical limitations until that date.

¶ 6 One week later, on May 24, 2007, **Hosea** filed an application for an accidental disability pension with the City of Phoenix Fire Pension Board ("Board"). He requested disability benefits arising from the July 9, 2006 injury, effective May 31, 2007, the same day as the end of the DROP period. He attached medical records in support of his application. **Hosea** worked on full duty status as a firefighter until May 31, 2007, the last day of the DROP period.

¶ 7 At a meeting held on June 15, 2007, the Board declined to send **Hosea** to a medical board for an examination and denied his application for an accidental disability pension because there was no "compelling evidence that [he] left the workforce because of his disability." The Board granted **Hosea** normal retirement beginning June 1, 2007. In a letter to **Hosea** dated June 20, 2007, the Board indicated that it denied the application "after determining that the medical evidence submitted by you did not indicate your condition(s) caused you (or would have caused you) to have to terminate your position and retire." **Hosea** requested a rehearing after which the Board unanimously upheld its earlier decision, finding that **Hosea** did not terminate his employment "by virtue of the disability" but "by virtue of [DROP]."

¶ 8 On November 30, 2007, **Hosea** filed a complaint seeking judicial review of the Board's decisions in the superior court. Following oral argument, the court affirmed the Board's denials of **Hosea's** application. After entry of final judgment, **Hosea** filed a timely notice of appeal. We have jurisdiction pursuant to [A.R.S. §§ 38–847\(J\)](#) (Supp.2009), 12–913 (2003) and 12–120.21(A) (2003).

DISCUSSION

¶ 9 On appeal, **Hosea** argues that the Board violated the terms of the System by denying his application for accidental disability benefits without appointing a medical board and that its decision was an abuse of discretion, arbitrary and capricious and contrary to law. He thus claims the superior court erred in affirming the Board's action. See [A.R.S. § 12–910\(E\)](#) (2003)(superior court shall affirm agency action unless it "is not supported by substantial evidence, is

contrary to law, is arbitrary and capricious or is an abuse of discretion”).

****260 *248 Standard of Review**

[1] [2] [3] [4] ¶ 10 We view the evidence in the light most favorable to upholding the decision of the administrative agency and will “affirm the decision unless it is arbitrary, capricious, or an abuse of discretion.” *Weller v. Ariz. Dep’t of Econ. Sec.*, 176 Ariz. 220, 224, 860 P.2d 487, 491 (App.1993). In reviewing the superior court’s ruling upholding the administrative decision, “we independently examine the record to determine whether the evidence supports the judgment.” *Webb v. State ex rel. Ariz. Bd. of Med. Exam’rs*, 202 Ariz. 555, 557, ¶ 7, 48 P.3d 505, 507 (App.2002). “Neither this court nor the superior court may substitute its judgment for that of the agency on factual questions or matters of agency expertise ... [but][w]e apply our independent judgment, however, to questions of law, including questions of statutory interpretation....” *Id.* (citations omitted). Further, even if “there is room for two opinions and we believe that an erroneous conclusion has been reached,” we will not set aside the decision of an administrative agency unless “there has been ‘unreasoning action, without consideration and in disregard for facts and circumstances.’” *Petrus v. Ariz. State Liquor Bd.*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App.1981) (quoting *Tucson Pub. Schools, Dis. No. 1 of Pima County v. Green*, 17 Ariz.App. 91, 94, 495 P.2d 861, 864 (1972)). See also *Woerth v. City of Flagstaff*, 167 Ariz. 412, 417, 808 P.2d 297, 302 (App.1990) (administrative decision supported by competent evidence may not be set aside as being arbitrary and capricious).

Refusal to Appoint Medical Board

¶ 11 **Hosea** argues that a finding of accidental disability by the Board can only be based on medical evidence provided by a medical board under the provisions set forth in A.R.S. § 38–859 (Supp.2009). He contends that the Board’s refusal to appoint a medical board before denying **Hosea’s** application for accidental disability benefits violated the terms of the System. See A.R.S. § 38–847(E)(Supp.2009) (“A local board shall have no power to add to, subtract from, modify or waive any of the terms of the system, change or add to any benefits provided by the system or waive or fail to apply any requirement of eligibility for membership or benefits under the system.”). He also claims that the Board’s decision was arbitrary, capricious and an abuse of discretion. The Board responds that it was not required to appoint a medical board in this case because **Hosea** did not meet the threshold

eligibility criterion for an accidental disability pension under A.R.S. § 38–844(B) (Supp.2009).¹ We agree with the Board that medical evidence of a purported accidental disability is unnecessary when the alleged disability could not have been a cause of the member’s retirement.

¶ 12 Pursuant to A.R.S. § 38–844(B), “A member is eligible for an accidental disability pension if the member’s employment is terminated by reason of accidental disability.” (Emphasis added.) An “accidental disability” is defined as “a physical or mental condition that the local board² finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee’s job classification and that was incurred in the performance of the employee’s duty.” A.R.S. § 38–842(1)(Supp.2009). A finding of accidental disability “shall be based on medical evidence by a physician or clinic appointed by the local board.” A.R.S. § 38–859(C) (emphasis added). Further, “All employees shall undergo medical examinations before a physician or clinic appointed by the local board” and an employee who fails to comply with such an examination, “waives all rights to disability benefits.” A.R.S. § 38–859(D)(emphasis added). Finally, the examining physician or clinic “shall *249 **261 report the results of the examinations to the local board.” A.R.S. § 38–859(E) (emphasis added).

¶ 13 **Hosea** argues that because of the mandatory language found in A.R.S. § 38–859, the Board was required to appoint a medical board when **Hosea** applied for an accidental disability pension. In support of his argument, **Hosea** relies on the legislative history of former A.R.S. § 38–844(C) that had provided in part that the “board shall have the right to waive the requirement for a medical examination if it determines that such an examination is unnecessary.” He also refers to statutory changes to former A.R.S. § 38–842(1) that had allowed a finding of disability “based on medical evidence satisfactory to the Board.” In 1983, the legislature amended this sentence to require that “a finding of accidental disability shall be based on medical evidence by a doctor or clinic appointed by the local board.” See 1983 Ariz. Sess. Laws, Ch. 300, § 4 (1st Reg. Sess.). He contends that these amendments reflect the legislature’s intent to prohibit the local board from making a decision on an application for a disability pension in the absence of a medical examination.

[5] ¶ 14 Here, however, the Board denied **Hosea’s** application for a disability pension based on its finding that he terminated his employment “because his DROP period

had expired,” rather than “by reason of accidental disability,” as controlled by A.R.S. § 38–844(B). On the record before us, the Board's action was based on substantial evidence and therefore, was neither arbitrary and capricious, nor an abuse of discretion.

¶ 15 At the rehearing on Hosea's application, Board member Tobin told Hosea that to decide in his favor, the Board had to find that Hosea suffered an injury that occurred in the performance of his duties, that the injury prevented him from performing a reasonable range of duties, that the injury was total and permanent, and that “the reason for your termination of your employment must be the disability.” Tobin added that, “[o]ur concern, Tom, is you worked your last day on the Phoenix Fire Department on a fire truck prior to retirement.... You were on duty that day in the capacity of a full time firefighter at the airport.”

¶ 16 In explaining why the Board was having “a difficult time” sending Hosea for an independent examination, Tobin observed that Hosea did not seek workers' compensation benefits or treatment at his employer's health center and his employer had no knowledge of his alleged inability to perform his duties. He remarked that, although Hosea claimed to be permanently disabled, two weeks prior to that he had worked on a Phoenix fire truck. He continued,

if you had a job-related injury that occurred in the performance of your duties, those injuries are covered by work[ers'] compensation and you should have been on industrial during that time. When you're off on sick leave, the appearance is that you're off on a personal medical illness, not a work-related injury.

Hosea, however, explained that he did not pursue this course of action because “they would have taken me out of the field in a minute,” and that “firemen always would rather be on duty than sitting in waiting rooms and going to doctors' appointments and being on light duty....”

¶ 17 Hosea admitted, however, that except for paid leave, he had worked the full sixty months of the DROP period.³ He also stated that he understood the board's skepticism, and that “it's kind of a remarkable coincidence that my [DROP]

came up the same time I would have had to quit.” As Tobin observed, “by his own admission,” Hosea continued working as long as he could because “he had a [DROP] dead date for retiring.” He stated, “the record shows that you left the Phoenix Fire Department employment ... because your [DROP] period expired. It wasn't because you were disabled. It was because you finished out as far as you could go on the [DROP].” He continued, “This is why we denied your initial application.” Hosea responded, “True. True.” Tobin concluded that “the bottom line is [Hosea] work[ed] his last day on a fire truck. He *250 **262 was not totally and permanently disabled the day he left. He worked.”

¶ 18 Board member Zuercher also observed that Hosea was employed as a firefighter for the full sixty months and had “worked the last day possible under the [DROP] period that he could work as a full-duty, on-duty firefighter.” Board member Larsen explained that “the first criteria that has to be met is did [you] leave the work force because of [your] injury or for some other reason. When the record is that you worked your last day, we didn't have any indication that you couldn't work beyond your last day.”

¶ 19 Tobin later remarked that “you were working in your full capacity just prior to your retirement date.... [W]hen you're working on one day, unless something happens on that day to subsequently change your status, the very next day you can't be totally and permanently disabled.” Board Member Moore agreed with this conclusion.

¶ 20 The evidence supports the Board's decision that Hosea was not eligible to receive disability benefits because he did not terminate his employment by reason of accidental disability. After Hosea's July 9, 2006 injury, using his own medical insurance, he saw a physician for a medical diagnosis on August 15, 2007 and a second physician for treatment on September 10, 2007. Although he reported the injury to his employer, he did not apply for workers' compensation benefits, nor did he then seek treatment through his employer's health center. Instead, he used paid sick leave when required by his injury. According to Hosea, he did this because he did not want to be taken “out of the field,” but instead wanted to extend his career as long as he could.

¶ 21 On May 17, 2007, Hosea was examined for the first time by a physician's assistant at the Phoenix Fire Department's Health Center. The physician assistant recommended that Hosea continue working on full duty status. One week later, he applied for an accidental disability, pension that was to

begin on May 31, 2007, “coincidentally” the last day of the DROP period. Nonetheless, **Hosea** worked as a “full-duty, on-duty firefighter” through May 31, 2007. Notwithstanding his explanation as to why he waited so long to apply for an accidental disability pension, given the “remarkable” coincidence that the DROP date was the same as the date of his alleged disability and the other uncontested facts before it, the record justifies the Board’s conclusion that **Hosea** did not terminate his employment by reason of accidental disability. Because **Hosea** did not meet the initial statutory requirement for eligibility under A.R.S. § 38–844(B), the Board was not required to appoint a medical board before denying his application for disability benefits.

[6] ¶ 22 **Hosea** nonetheless maintains that despite the facts before it, as a matter of law, the statutory scheme does not afford the Board the discretion to reject his application for an accidental disability pension without first referring him to a medical board for an examination, and that the Board therefore acted contrary to law in refusing to do so. We, however, disagree.

[7] [8] ¶ 23 We begin by noting that in construing statutes, we interpret them so as “to ‘find and give effect to legislative intent’ ” and to give them “a fair and sensible meaning.” *Walter v. Wilkinson*, 198 Ariz. 431, 432, ¶¶ 6, 10 P.3d 1218, 1219 (App.2000) (interpreting statute requiring mental health experts to conduct examinations “simultaneously” to mean within a “short time frame,” not at “precisely the same time”). “If statutory language is clear and unambiguous, it is normally conclusive unless clear legislative intent to the contrary exists or impossible or absurd consequences would result.” *Bustos v. W.M. Grace Dev.*, 192 Ariz. 396, 398, 966 P.2d 1000, 1002 (App.1997). We construe statutory provisions “ ‘in light of their place in the statutory scheme,’ so ‘they may be harmonious and consistent.’ ” *State v. Flynt*, 199 Ariz. 92, 94, ¶ 5, 13 P.3d 1209, 1211 (App.2000) (citations omitted).

¶ 24 Reading the applicable statutes together, we interpret them to mean that when the Board subsequently makes a “finding of accidental ... disability” in determining whether to grant an accidental disability pension, such finding must be based on “medical evidence” provided by a medical board. See **263 *251 A.R.S. § 38–859(C). The statutory scheme does not require, as **Hosea** suggests, that the Board appoint a medical board in every instance in which a member applies for an accidental disability pension, when, as here, such a procedure is wholly unnecessary and such a conclusion absurd. See *Pinal Vista Properties, L.L.C. v. Turnbull*, 208

Ariz. 188, 193, ¶ 17, 91 P.3d 1031, 1036 (App.2004) (“Statutes cannot be interpreted to require a futile act.”). In this case, the appointment of a medical board would have been futile, and **Hosea’s** interpretation of the statutes to mandate that requirement in all cases would lead to an absurd consequence not intended by the legislature.

[9] ¶ 25 **Hosea** finally asserts that the Board’s decision was contrary to law because the Board erroneously assumed that **Hosea’s** participation in the DROP precluded him from receiving an accidental disability pension. **Hosea** relies on *Parkinson v. Guadalupe Pub. Safety Ret. Local Bd.*, 214 Ariz. 274, 151 P.3d 557 (App.2007), to support his claim that a member can receive an accidental disability pension if he meets the statutory requirements for an accidental disability, even if he has other reasons for terminating his employment.

¶ 26 Parkinson was a fire chief who suffered a neck injury on the job in 2000 but returned to work in 2001. *Id.* at 275, ¶ 2, 151 P.3d at 558. His medical condition was not resolved by 2003. *Id.* On February 3, 2004, Parkinson was placed on paid administrative leave pending an internal investigation for alleged misconduct. *Id.* at ¶ 3. On February 6, 2004, Parkinson submitted an application for an accidental disability pension. *Id.* at ¶ 4. On February 17, 2004, Parkinson submitted a letter of resignation, and in July 2004, the Board approved his application for an accidental disability pension. *Id.* at 276, ¶¶ 5–6, 151 P.3d at 559. Because the Board subsequently received information questioning whether “the cause of Parkinson’s resignation was an accidental disability,” it conducted a rehearing. *Id.* at ¶ 6. Determining that Parkinson’s resignation was not caused *solely* by his disability, it reversed its earlier order and denied the application. Parkinson appealed to the superior court. *Id.* at ¶ 10. Finding that Parkinson had suffered a job-related injury and that he had resigned because of his disability, the court reversed the Board’s decision. The Board appealed, and this court affirmed the judgment of the superior court. *Id.* at 277, ¶¶ 5–10, 151 P.3d at 560.

¶ 27 We held that even if one reason Parkinson resigned was because he feared the results of the investigation, “[n]o statute provides that a member’s accidental disability must be the sole reason for his resignation or that the Board must find as a fact that a member’s disability is the sole cause of the end of his employment.” *Id.* at ¶ 15. We stated that “we do not find in the statutory scheme any requirement that a pension applicant have a single reason, an objectively credible reason or even a reasonable reason for seeking a pension.” *Id.* at 278, ¶ 18,

151 P.3d at 561. We concluded that the Legislature intended that a member is eligible for a disability pension “if the Board finds that he suffers a medically documented disability, [and] that such disability is a cause of his decision to terminate employment.” *Id.*

¶ 28 **Hosea** claims that *Parkinson* controls here. He contends that even if one reason for his termination of employment was because he was at the end of the DROP period, he is not precluded from receiving a disability pension if his other reason was his disability. **Hosea** therefore argues that the Board's refusal to process his application and appoint a medical board was contrary to the holding in *Parkinson*.

¶ 29 The Board has acknowledged that a member participating in the DROP could become disabled during the DROP period, terminate participation in the DROP, and be eligible for disability benefits. See A.R.S. §§ 38–844.06(B), –844.04(B)(4) (Supp.2009). But it asserts, and we agree, that the facts of this case are distinguishable from those in *Parkinson*. Here, **Hosea** was continued on full status duty on May 17, 2007 and worked until the last day of the DROP, which was May 31, 2007. Because of the DROP, it was advantageous for him to retire on May 31, 2007, which he did. Rejecting his claim that his alleged disability could have been a reason, the evidence supports the Board's finding that the sole reason **Hosea** terminated his employment was because his DROP period *252 **264 expired. Thus,

under the express language of A.R.S. § 38–844(B), **Hosea's** employment was not terminated by reason of accidental disability, and he was not eligible for an accidental disability pension. *Parkinson* does not compel a different result.

CONCLUSION

¶ 30 Because **Hosea** did not meet the threshold statutory eligibility requirement under A.R.S. § 38–844(B), the Board was not required to appoint a medical board under the provisions of A.R.S. § 38–359 or otherwise process his application for disability benefits before denying it.⁴ We accordingly affirm the judgment of the superior court. **Hosea** has requested an award of attorneys' fees on appeal pursuant to A.R.S. § 12–348(A)(2), which we deny. We award the Board, as the prevailing party, its costs on appeal subject to compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCURRING: PHILIP HALL and JOHN C. GEMMILL, Judges.

All Citations

224 Ariz. 245, 229 P.3d 257, 581 Ariz. Adv. Rep. 36

Footnotes

- 1 There are three statutory grounds for disqualification from eligibility for an accidental disability pension: (1) “An injury suffered while engaged in a felonious criminal act or enterprise. (2) Service in the armed forces of the United States that entitled the member to a veteran's disability pension. (3) A physical or mental condition or injury that existed or occurred before the member's date of membership in the system.” See A.R.S. § 38–844(D) (Supp.2009).
- 2 The “Local board” means “the retirement board of the employer, who are persons appointed to administer the system as it applies to their members in the system.” A.R.S. § 38–842(30) (Supp. 2009).
- 3 Although under A.R.S. § 38–844.03(C), **Hosea** could have continued to work beyond the DROP period, the record reflects he had no intention of doing so.
- 4 The Fund Manager of the System submitted a brief in support of the Board as an *amicus curiae* pursuant to Rule 16(c), Arizona Rules of Civil Appellate Procedure, in support of the Board. The Fund Manager raises additional issues to which **Hosea** has responded in an Answering Brief. Because of our resolution of this appeal, we need not address those issues.

2020 WL 207069

Only the Westlaw citation is currently available.
NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME
COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED
ONLY AS AUTHORIZED BY RULE.
Court of Appeals of Arizona, Division 1.

Todd **PASCARELLA**, Plaintiff/Appellee,
v.

MESA POLICE PENSION BOARD,
et al., Defendants/Appellants.

No. 1 CA-CV 19-0086

|
FILED 1/14/2020

Appeal from the Superior Court in Maricopa County; No.
LC2018-000049-001; The Honorable **Patricia A. Starr**, Judge.
AFFIRMED

Attorneys and Law Firms

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Presiding Judge **Kenton D. Jones** delivered the decision of the
Court, in which Judge **James B. Morse Jr.** and Judge **Diane
M. Johnsen** joined.

MEMORANDUM DECISION

JONES, Judge:

*1 ¶1 The Mesa Police Pension Board (the Board) appeals
from the superior court's judgment reversing the Board's
denial of Todd **Pascarella's** application for an accidental
disability pension pursuant to **Arizona Revised Statutes**
(A.R.S.) § 38-844(B). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 **Pascarella** worked as a police officer for the City of
Mesa (the City) from the end of 2005 through the summer
of 2017.¹ As such, he was a member of Arizona's Public
Safety Personnel Retirement System (APSPRS) and eligible
to apply for an accidental disability pension if his employment
was terminated "by reason of accidental disability." A.R.S.
§ 38-844(B).² Accidental disability is defined by statute
as "a physical or mental condition that the local board
finds totally and permanently prevents an employee from
performing a reasonable range of duties within the employee's
job classification and that was incurred in the performance of
the employee's duty." A.R.S. § 38-842(1).

¶3 In August 2017, **Pascarella** applied for an accidental
disability pension from APSPRS, identifying "PTSD,
major depressive disorder, panic disorder, [and] generalized
anxiety" as the nature and cause of his disability, and
citing August 31, 2016 as the date of the "disabling
event." **Pascarella** also attached an "injury timeline" to his
application that explained the circumstances he believed were
relevant to his claim.

¶4 According to **Pascarella's** timeline, in August 2016,
the City began investigating his conduct during an on-duty
incident that occurred in June. As the investigation proceeded,
Pascarella began to fear he would lose his job. These
circumstances caused him overwhelming stress and were
the "onset of [his] symptoms." On August 30, **Pascarella**
was put on administrative leave pending the outcome of
the investigation. The following day, **Pascarella's** attorney
advised him that the City had concerns about his June
conduct. That news caused **Pascarella** to "f[a]ll into a major
depressive state, suffer[] anxiety, ... hav[e] panic attacks[,] ...
[and experience] sleeping problems." **Pascarella** also alleged
the "entire investigation was motivated by revenge" since
Pascarella was unknowingly recorded criticizing fellow
officers' response to a situation involving **Pascarella's** and
an officer-in-training's pursuit of a murder suspect in March
2015.

¶5 **Pascarella** also submitted medical records to support his
accidental disability pension application. According to the
records, **Pascarella's** primary care physician prescribed him
medication for anxiety within a few weeks after **Pascarella**
learned he might be disciplined. **Pascarella** also related a
March 2017 incident in which he experienced stress-related
gastrointestinal bleeding. A few months later, **Pascarella**
sought psychiatric treatment for stress, which he asserted was

caused by being “charged inappropriately” in the internal affairs investigation.

*2 ¶6 After reviewing **Pascarella's** application, the Board determined that his disabling condition, namely PTSD, arose from the internal affairs investigation rather than a “line of duty triggering event.” Accordingly, the Board found the condition was not “incurred in the performance” of his duty as a police officer and did not qualify as an accidental disability within the meaning of [A.R.S. § 38-842\(1\)](#). See Procedures of the Mesa Fire and Police Pension Boards (Procedures), at ¶ 12 (discussing disability benefit applications), <https://www.mesaaz.gov/home/showdocument?id=19642> (last visited Jan. 7, 2020); <https://www.mesaaz.gov/city-hall/advisory-boardscommittees/public-safety-personnel-retirement-system> (follow “Procedures” hyperlink). After the Board denied his application, **Pascarella** applied for and was granted a rehearing. See [A.R.S. § 38-847\(H\)](#); Procedures, at ¶ 17.

¶7 At the rehearing, **Pascarella** suggested the disabling event was the March 2015 pursuit of the murder suspect, rather than the August 2016 internal affairs investigation as he had originally claimed. **Pascarella** explained that in March 2015, he was training a “rookie that [he]’d known only a few days” when the rookie had to ram the patrol vehicle, in which **Pascarella** was a passenger, into a murder suspect’s vehicle to prevent the suspect from harming children on a nearby elementary school playground. **Pascarella** described the incident, explaining they had to “use force [to] stop this guy at all costs,” which was “not normal.” He also felt “helpless” based on his perception that other officers at the scene did not respond appropriately.

¶8 **Pascarella** offered additional medical documentation to support the March 2015 injury date, including an August 18, 2017 letter from a psychiatrist, Dr. Rosengard. According to Dr. Rosengard, **Pascarella** suffered from PTSD, depression, [generalized anxiety disorder](#), and panic attacks stemming from “a critical incident in March of 2015 and subsequent repercussions that were taken against [**Pascarella**] for actions that seemed to be otherwise appropriate.”³ Dr. Rosengard also explained the role of the internal investigation in **Pascarella's** mental condition, adding:

As a continuation of this [critical March 2015 incident], there was

another incident where [**Pascarella**] w[as] treated badly by [his] management and that further exacerbated an already fragile mental state. As a result of the initial critical incident further magnified by the second incident [**Pascarella**] w[as] in a state that disable[d] [him] from work.

A separate psychiatric assessment, dated August 21, 2017, indicated **Pascarella** reported a “history of witnessing violence/crime/battling with criminal[s]/being subject of the traumatic events (work related) over years” that caused impairment of his “work and social life.”

¶9 After considering the new information, the Board noted that **Pascarella** did not provide any evidence that he sought medical treatment immediately following the March 2015 incident and that, while that event was stressful, **Pascarella** simply acted “in the normal course of what [it] expect[ed] police officers to do.” The Board affirmed its denial of **Pascarella's** application.

¶10 On review, the superior court reversed the Board’s decision, finding it was “not supported by substantial evidence, was contrary to law, and constituted an abuse of discretion” and remanded for the Board to appoint an independent medical examiner (IME). See Procedures, at ¶ 12(F) (“Board action on a disability benefit application shall be based on medical evidence by the independent medical examiner appointed by the Board.”); see also [A.R.S. § 38-859](#) (“A finding of accidental, ordinary, temporary, or catastrophic disability shall be based on medical evidence by a designated physician or a physician working in a clinic that is appointed by the local board ... that established the disability.”). The Board timely appealed, and we have jurisdiction pursuant to [A.R.S. §§ 12-120.21\(A\)\(1\), 12-913,⁴ and 38-847\(D\)\(3\), \(J\)](#).

DISCUSSION

*3 ¶11 The Board argues the superior court erred in reversing its denial of **Pascarella's** application. On appeal, we “review *de novo* the superior court’s judgment, reaching the same underlying issue as the superior court: whether the [local board’s] action was not supported by substantial evidence or was illegal, arbitrary and capricious, or involved an abuse of direction.” See [Carlson v. Ariz. State Pers. Bd.](#), 214 Ariz.

426, 430, ¶ 13 (App. 2007) (citing *Siler v. Ariz. Dep't of Real Estate*, 193 Ariz. 374, 378, ¶ 14 (App. 1998)); see also *Brodsky v. City of Phx. Police Dep't Ret. Sys. Bd.*, 183 Ariz. 92, 94-95 (App. 1995) (citing *Havasui Heights Ranch & Dev. Corp. v. Desert Valley Wood Prods.*, 167 Ariz. 383, 386 (App. 1990)). To be sure, “[n]either this court nor the superior court may substitute its judgment for that of the agency on factual questions or matters of agency expertise.” *Carlson*, 214 Ariz. at 430, ¶ 13 (quoting *Webb v. Ariz. Bd. of Med. Exam'rs*, 202 Ariz. 555, 557, ¶ 7 (App. 2002)). However, we apply our independent judgment to questions of law, including questions of statutory interpretation. *Id.* (quoting *Webb*, 202 Ariz. at 557, ¶ 7).

¶12 As an initial matter, the parties seemingly dispute which event — the March 2015 or the August 2016 — forms the basis of **Pascarella's** application for accidental disability pension. The record reflects that, on rehearing, the Board allowed **Pascarella** to supplement the record with medical documentation and personal explanation to demonstrate his disabling condition originated in March 2015. See Procedures, at ¶ 12(F) (permitting the Board to accept and review relevant medical evidence with “no limit”). The Board then considered the merits of **Pascarella's** assertion that the relevant event occurred in March 2015; the Board's comments indicate it considered whether the March 2015 incident was sufficiently stressful to cause a disabling condition, as well as whether **Pascarella** indeed suffered a disabling condition thereafter. Because the Board based its decision on the merits of **Pascarella's** amended claim, any discussion of the August 2016 event is irrelevant to the Board's apparent determination that **Pascarella** did not suffer a documented injury following the March 2015 incident.

¶13 The Board argues the superior court failed to give deference to its determination that **Pascarella** failed to offer sufficient evidence of a medical condition, incurred in the course of his employment in March 2015, to warrant appointment of an IME to evaluate his claim. But the record contains an opinion from a medical professional that identified the March 2015 on-duty event, along with “subsequent repercussions” from that event, as the impetus for **Pascarella's** disabling condition. A second medical record from August 2017 also identifies “work related” traumas that caused **Pascarella** physical and emotional impairment. While we may not substitute our judgment for that of the Board's, see *Carlson*, 214 Ariz. at 430, ¶ 13 (quoting *Webb*, 202 Ariz. at 557, ¶ 7), nor is the Board free to ignore undisputed medical evidence.

¶14 Here, **Pascarella** presented medical evidence — however slim — to support his claim that he suffered a permanent, disabling condition during the course of his employment as a law enforcement officer. The Board abused its discretion in substituting its own lay understanding of medical causation for that of a medical professional. Cf. *Hosea*, 224 Ariz. at 250-51, ¶ 24 (“[I]n determining whether to grant an accidental disability pension, such finding [of accidental disability] must be based on ‘medical evidence’ provided by a medical board.”) (citing A.R.S. § 38-859(C)); *Siqueiros v. Indus. Comm'n*, 20 Ariz. App. 104, 109 (1973) (“[T]he law is clear that the medical causation question can be resolved only by expert medical testimony, and that the [administrative agency] has an obligation not to ignore all the sworn evidence of the hearing without further hearing or medical evidence.”).

*4 ¶15 The Board nonetheless relies on *Hosea*, 224 Ariz. 245, to argue that further review of **Pascarella's** application by an IME is unnecessary because **Pascarella** does not meet the statutory prerequisites for an accidental disability pension. In *Hosea*, this Court found no error in the denial of an application for accidental disability pension where an IME would have been futile. *Id.* at 251, ¶ 24 (citing *Pinal Vista Props., L.L.C. v. Turnbull*, 208 Ariz. 188, 193, ¶ 17 (App. 2004)). But in *Hosea*, the Board determined the applicant did not qualify for disability retirement because he terminated his employment for a reason other than disability. *Id.* at 251-52, ¶ 29. We agreed that, under those circumstances, further medical evidence was irrelevant to the claimant's eligibility for the pension and therefore appointment of an IME was unnecessary. *Id.* at 252, ¶ 30.

¶16 Here, however, the denial of **Pascarella's** application is based upon the existence, nature, and origin of the condition **Pascarella** asserts entitles him to an accidental disability pension. Under these circumstances, further exploration through an IME would not be futile; rather, the IME will likely provide valuable, objective information regarding the merits and substance of **Pascarella's** claims that will assist the Board in determining whether his application should be granted. Accordingly, *Hosea* does not compel reversal.

CONCLUSION

¶17 The superior court's order reversing the Board's denial of **Pascarella's** application for an accidental disability pension and remanding for appointment of an IME is affirmed.

¶18 **Pascarella** requests an award of attorneys' fees incurred on appeal pursuant to A.R.S. § 12-348(A)(2) (authorizing an award of fees to a party who "prevails by an adjudication on the merits in ... [a] court proceeding to review a state agency decision"). Because our decision does not finally determine **Pascarella's** claim for an accidental disability pension on its merits, the request is premature and denied without prejudice.

See *4501 Northpoint L.P. v. Maricopa Cty.*, 212 Ariz. 98, 101-02, ¶¶ 16-20 (2006). As the prevailing party, however, **Pascarella** is awarded his costs incurred on appeal upon compliance with ARCAP 21(b). See A.R.S. § 12-341.

All Citations

Not Reported in Pac. Rptr., 2020 WL 207069

Footnotes

- 1 "We view the evidence in the light most favorable to upholding the [Board's decision]." See *Hosea v. City of Phx. Fire Pension Bd.*, 224 Ariz. 245, 248, ¶ 10 (App. 2010) (citing *Weller v. Ariz. Dep't of Econ. Sec.*, 176 Ariz. 220, 224 (App. 1993)).
- 2 Absent material changes from the relevant date, we cite a statute's current version.
- 3 At the rehearing, **Pascarella's** counsel asserted the Board had been earlier presented with a handwritten version of Dr. Rosengard's now-typed August 18, 2017 letter at the original hearing. However, the Board "had trouble reading it, so after the meeting," **Pascarella** asked Dr. Rosengard to "clarify what his chicken scratch handwriting was" for the rehearing. Regardless, according to the Board's Procedures, "[t]here shall be no limit on the Board's ability to accept and review relevant medical evidence," Procedures, at ¶ 12(F), and the record indicates the Board accepted Dr. Rosengard's typed letter at the rehearing.
- 4 Although A.R.S. § 12-913 expressly allows a party to appeal to the "supreme court," we have construed this provision as "also allowing an appeal to the court of appeals, which was created after [A.R.S.] § 12-913 was enacted." *Svendsen v. Ariz. Dep't of Transp., Motor Vehicle Div.*, 234 Ariz. 528, 533, ¶ 13 (App. 2014) (collecting cases).

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Ariz. Op. Atty. Gen. No. 179-285 (Ariz.A.G.), 1979 WL 23352

Office of the Attorney General

State of Arizona
179-285 (R79-215)
November 20, 1979

*1 Mr. Vernon L. Hoy, Chairman
Local Retirement Board
Public Safety Personnel Retirement System
Post Office Box 6638
Phoenix, AZ 85005

Dear Mr. Hoy:

In your letter of July 24, 1979, you asked several questions relating to the possible reduction of disability benefits which have previously been granted to Department of Public Safety (DPS) personnel on the basis of permanent disability retirements. You specifically wish to know the conditions under which such benefits may be terminated pursuant to A.R.S. § 38-844.

Eligibility for a permanent disability pension is governed by A.R.S. § 38-844.B, which provides in part:
B. A member shall be eligible for a permanent disability pension if his employment is terminated prior to his normal retirement date by reason of ordinary disability after completion of at least twenty years of credited service, or accidental disability.¹

Once it has been determined that a permanent disability exists,² pension payments must be made until the member dies or until the disability ceases³ (i.e., when the Board determines that the disability has ceased pursuant to A.R.S. §§ 38-844.C and 38-847.D.1 and 3). A.R.S. § 38-844.E also specifies the conditions under which a disability shall be deemed to have ceased:
E. Disability shall be considered to have ceased and a permanent disability pension shall not become payable if, prior to his normal retirement date, the member:

1. If under ordinary disability, has sufficiently recovered, in the opinion of the board, based on a medical examination by a doctor or clinic appointed by the board, to be able to engage in regular employment with his employer and refuses an offer of employment by his employer.

2. Refuses to undergo any medical examination requested by the board, provided that a medical examination shall not be required more frequently than once in any calendar year.

Under subsection 2, the disability of a member who has been granted a permanent disability pension, irrespective of whether it was granted on an 'ordinary' or 'accidental' basis, shall be considered to have ceased if he refuses to undergo a requested medical examination. Subsection 1 authorizes discontinuing benefits only with respect to a member who has received an 'ordinary' disability pension and who, having recovered from the disability, refuses an offer of re-employment by his employer.⁴ It appears, then, that disability benefits shall be terminated when (i) a member dies, (ii) when his disability in fact ceases, or (iii) when he refuses to undergo a medical examination.⁵

We refer you also to A.R.S. § 38-844.F, which provides that a permanent disability pension shall be reduced if a member engages in substantial gainful employment while still disabled and suspended if he fails to report earned income.⁶
Sincerely,

BOB CORBIN
Attorney General

Footnotes

- 1 A.R.S. § 38-842 defines 'ordinary disability' and 'accidental disability' as follows:
1. 'Accidental disability' means a physical or mental condition which, in the judgment of the Board, totally and presumably permanently prevents an employee from performing his regularly assigned duties and was incurred in the performance of his duty. A determination of disability shall be based on medical evidence satisfactory to the board.

17. 'Ordinary disability' means a physical or mental condition which, in the judgment of the Board, totally and presumably permanently prevents an employee from engaging in any substantial gainful activity. A determination of disability shall be based on medical evidence satisfactory to the board.
You have informed us that ordinary disability retirements no longer exist in reality because members are eligible for 'normal retirement' after completion of twenty years of service (A.R.S. §§ 38-842.16 and 38-844.A) and would not therefore seek ordinary disability retirement, which also has the twenty-year requirement. It is our duty to interpret the law as it is written, and we can suggest only that a legislative change be made to accurately reflect existing conditions.
- 2 Pursuant to A.R.S. § 38-844.C, the appropriate board makes a determination of permanent disability. A.R.S. § 38-844.D states that no member shall qualify for a permanent disability pension when the injury occurred while engaged in a criminal act or where the member qualifies for a veteran's disability pension.
- 3 The pertinent section of A.R.S. § 38-844.B provides:
. . . The last payment [of the pension] shall be made as of the first day of the month in which the death of the retired member occurs, or if disability ceases prior to his normal retirement date, the first day of the month in which disability ceases.
- 4 In Ariz.Att'yGen.Op. No. 75-177, we stated that there is no requirement the re-employment be offered. The Public Safety Personnel Retirement System Act does not guarantee re-employment of any member upon recovery from a disability. A.R.S. § 38-844.G concerns a member whose disability ceases and who, in fact, is re-employed. His benefits and position are determined under A.R.S. § 38-849.E, which specifies that he shall be treated as if he had been on uncompensated leave of absence for the duration of his disability and that he shall again become a contributing member of the system and return to active service at the same salary step and grade as he was receiving immediately prior to his disability retirement.
- 5 As noted in fn. 1, supra, an ordinary disability cannot, by definition, occur prior to a normal retirement date. Thus, subsection 1 of A.R.S. § 38-844.E, in effect, is inoperable.
- 6 The provision states:
F. A permanent disability pension shall be reduced in the period prior to his normal retirement date, if the member engages in any substantial gainful employment which is found by the board to be other than for the primary purpose of rehabilitation. The amount of reduction shall be equal to one dollar of pension for each two dollars of earned income. The board shall have the right to suspend payments of a permanent disability pension if the disabled member fails to report earned income. Such suspension shall be for the period there is no satisfactory report with restoration of benefits upon acceptance of such report or until the member's normal retirement date, which occurs earlier.
We refer you to Ariz.Att'yGen.Op. No. 70-10-L for a discussion as to what constitutes 'substantial gainful employment' for purposes of the statute.

Ariz. Op. Atty. Gen. No. I79-285 (Ariz.A.G.), 1979 WL 23352

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 38. Public Officers and Employees (Refs & Annos)
Chapter 5. Social Security and Retirement
Article 4. Public Safety Personnel Retirement System (Refs & Annos)

A.R.S. § 38-844

§ 38-844. Requirements for retirement benefits and disability pensions

Effective: September 13, 2013

[Currentness](#)

A. A member shall be eligible for a normal pension on retirement on or after the member's normal retirement date. Payment of a normal pension shall commence as of the first day of the month following the date of retirement, and the last payment shall be made as of the last day of the month in which the death of the retired member occurs.

B. A member is eligible for an accidental disability pension if the member's employment is terminated by reason of accidental disability. A member is eligible for an ordinary disability pension if the member's employment is terminated before the member's normal retirement date by reason of ordinary disability. A member shall file an application for a disability pension after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an accidental, catastrophic or ordinary disability pension is a prerequisite to receipt of the pension. Payment of an accidental, catastrophic or ordinary disability pension shall commence as of the first day of the month following the date of retirement or the expiration of a period during which the member is receiving sick leave payments or a temporary disability pension, whichever is later, but not earlier than [§ 38-845.02](#) allows for retroactive payments. The last payment shall be made as of the last day of the month in which the death of the retired member occurs, or if disability ceases before the member's normal retirement date, the first day of the month in which disability ceases.

C. A member is eligible for a catastrophic disability pension if the member's employment is terminated by reason of catastrophic disability. If more than the allowable catastrophic disability pensions are approved by the local boards in a calendar year, from and after December 31 of the following calendar year a member of the system is not eligible to apply for a catastrophic disability pension. On or before January 31, the board of trustees shall report to the president of the senate and the speaker of the house of representatives the number of catastrophic disability pensions that were approved by the local boards in the preceding calendar year. For the purposes of this subsection, "allowable catastrophic disability pensions" means for calendar year 2004, ten, and for subsequent calendar years the number of allowable catastrophic disability pensions allowed in the prior calendar year minus the number of catastrophic disability pensions approved by the local boards in the prior calendar year plus four.

D. Notwithstanding any other provision of this section, no member shall qualify for an accidental, catastrophic or ordinary disability pension if the local board determines that the member's disability results from the following:

1. An injury suffered while engaged in a felonious criminal act or enterprise.

2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.

3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the system.

E. Accidental or ordinary disability shall be considered to have ceased and an accidental or ordinary disability pension terminates if the member:

1. Has sufficiently recovered, in the opinion of the local board, based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board, to be able to engage in a reasonable range of duties within the member's department and the member refuses an offer of employment by an employer in the system.

2. Refuses to undergo any medical examination requested by the local board, provided that a medical examination shall not be required more frequently than once in any calendar year.

F. Sixty months after the award of a catastrophic disability pension, the local board shall reevaluate the member. If the member still qualifies for the catastrophic disability pension, the member is entitled to continue to receive the pension at the reduced amount prescribed in § 38-845, subsection E. A catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board. After the sixty-month review, the catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board, except that the medical examination shall not be required more frequently than once in a calendar year. The medical review after the sixty-month period does not apply after the date the catastrophic disability pensioner would have attained twenty-five years of service assuming the pensioner remained a member of the system. The local board shall also terminate a catastrophic disability pension if the member refuses to undergo any medical examination requested by the local board. A member whose catastrophic disability pension is terminated may apply for and if eligible is entitled to receive an accidental disability pension as provided in this section.

G. Subsection E of this section does not apply after a disability pensioner's normal retirement date. The amount of a disability pension shall not be recomputed at a disability pensioner's normal retirement date.

H. If accidental or ordinary disability ceases before a retired member attains the member's normal retirement date and the member is reemployed by an employer, the member shall be treated as if the member has been on an uncompensated leave of absence during the period of the member's disability retirement and shall be a contributing member of the system. The pension payable on the member's subsequent retirement shall be determined as provided in § 38-845.

I. A member shall be eligible for a temporary disability pension if the member's employment is terminated before the member's normal retirement date by reason of temporary disability. Payment of a temporary disability pension shall commence as of the first day of the month following the date of disability or the expiration of a period during which the member is receiving compensation and sick leave payments, whichever is later. The last payment shall be made as of the first day of the month in which either the death of the member occurs or the local board deems the member is no longer under temporary disability,

whichever first occurs, provided that no more than twelve monthly temporary disability payments shall be made in total to the member.

J. If on the expiration of a temporary disability pension the local board finds on application that the member has an accidental or ordinary disability, the member shall be eligible for an accidental or ordinary disability pension, as provided in this section.

K. The system shall make payments pursuant to [section 401\(a\)\(9\) of the internal revenue code](#)¹ and the regulations that are issued under that section. Notwithstanding any other provision of the system, beginning January 1, 1987 payment of benefits to a member shall commence no later than April 1 of the calendar year following the later of:

1. The calendar year in which the member attains seventy and one-half years of age.
2. The date the member terminates employment.

Credits

Added by Laws 1968, Ch. 85, § 1. Amended by Laws 1971, Ch. 143, § 3, eff. July 1, 1972; Laws 1980, Ch. 146, § 2; Laws 1983, Ch. 300, § 6; [Laws 1988, Ch. 267, § 3](#); [Laws 1994, Ch. 356, § 25](#); [Laws 1996, Ch. 318, § 1](#); [Laws 1997, Ch. 239, § 11](#); [Laws 2004, Ch. 91, § 1](#); [Laws 2004, Ch. 325, § 2](#); [Laws 2009, Ch. 35, § 12](#); [Laws 2010, Ch. 118, § 5](#); [Laws 2010, Ch. 200, § 35](#), eff. April 28, 2010; [Laws 2012, Ch. 136, § 5](#); [Laws 2013, Ch. 203, § 4](#).

Editors' Notes

RETROACTIVE APPLICATION

<This section, as amended by Laws 1996, Ch. 318, applies retroactively to July 1, 1995.>

[Notes of Decisions \(10\)](#)

Footnotes

¹ Internal Revenue Code sections may be found in Title 26 of U.S.C.A.

A. R. S. § 38-844, AZ ST § 38-844

Current through legislation effective March 27, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: No Regular: Yes Public Hearing: No Report/Discussion: No

Agenda Wording:

Further review, consideration and possible action to adopt a reevaluation process and criteria pertaining to accidental disability recipients pursuant to A.R.S. § 38-844(E)

Motion:

I make a motion to approve the adoption of the presented reevaluation process and criteria by the Disability Review Subcommittee **(with the following changes _____ or without any changes)** pertaining to review of accidental disability recipients pursuant to A.R.S. § 38-844(E)

Background:

The PSPRS Police Disability Review Subcommittee has done its due diligence in researching, analyzing and drafting the attached review process and criteria for the Board's review and potential approval for adoption.

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:

1. Surprise Local Police Board Reevaluation DRAFT
-

Surprise Local Police Board Reevaluation Process Proposal

For Consideration by the Reevaluation Process Subcommittee and in compliance with Local Police Board Rules

Process

1. The Local Board Secretary shall maintain a running spreadsheet of the disability retirements awarded – including the Date of Membership, Date of Retirement, Last Exam, Type, Date when 20 years of service is met, whether there is a possibility of recovery based on independent medical evaluation (“IME”) report (Yes or No).
2. The Local Board shall receive updates periodically from the Local Board Secretary regarding the information maintained above.
3. The Local Board shall consider the input of the Human Resources Department, which includes conference with Police Department management, when making a determination of whether to refer a member for an IME.
4. If a member is referred to an IME for reevaluation, the Local Board will receive the IME and determine whether any further action is necessary in a public meeting with appropriate notice to the member.

Criteria for Review

1. The Local Board may consider whether members receiving accidental disability retirement should be referred for an IME up to one time every two years to determine whether member remains eligible for disability retirement.
2. The Local Board may consider whether members receiving accidental disability retirement should be referred for an IME upon receipt of information by the Board that the member may have sufficiently recovered. The Local Board shall provide the information to the member so that the member has an opportunity to respond to the information prior to the Local Board taking action on a recommendation for an IME.
3. Members will not be required to undergo IME within one (1) year of initial approval for accidental disability retirement.
4. Members who will reach normal retirement within five (5) years of being awarded accidental disability retirement shall not be considered for reevaluation.

The Local Board shall apply these criteria when deciding who to recommend for an IME to determine whether the member has sufficiently recovered. The Local Board shall clearly and in detail explain this process and the decision regarding recommendation for IME during a public meeting.

This process shall be uniformly and consistently applied to all members in similar circumstances. Local Board members will recuse themselves from any matter in which they have a conflict of interest, as defined under Arizona law or an appearance of impropriety.



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: No Regular: Yes Public Hearing: No Report/Discussion: No

Agenda Wording:

Summary and discussion of Arizona Supreme Court case as it relates to accrued leave vacation payouts for pension benefits

Motion:

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: No	Regular: Yes	Public Hearing: No	Report/Discussion: No
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Agenda Wording:

Consideration and possible action pertaining to the review of medical examination and the acceptance of three (3) new police officer (recruits): Andrew Harding, Taylor Knight, and Heather Lynn into the PSPRS system pursuant to A.R.S. § 38-859

Motion:

I make a motion to approve Tier 3 Police Officer Recruits into the PSPRS system as follows:

- Andrew Harding **WITH** _____ **OR WITHOUT** _____
pre-existing condition(s) as discussed and agreed by the Board.
- Taylor Knight **WITH** _____ **OR WITHOUT** _____
pre-existing condition(s) as discussed and agreed by the Board.
- Heather Lynn **WITH** _____ **OR WITHOUT** _____
pre-existing condition(s) as discussed and agreed by the Board.

Background:

Police Officer recruits Andrew Harding, Taylor Knight, and Heather Lynn have been extended an offer of employment with the Surprise Police Department. They are scheduled to start employment on August 24, 2020. They will go through new hire orientation with Human Resources and be informed of their Tier 3 status and 90 day waiting period before contributing into the PSPRS system. Police Officer recruits have been notified of the Board's review of medical records today.

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: No Regular: Yes Public Hearing: No Report/Discussion: No

Agenda Wording:

Consideration and possible action pertaining to the acknowledgement of end of DROP period for Police Officer Craig Scartozzi who will separate from employment effective September 1, 2020 and start collecting retirement pension benefit

Motion:

I make a motion for the Board to acknowledge the end of DROP period for Police Officer Craig Scartozzi and approve PSPRS retirement with an effective date of September 1, 2020.

Background:

The PSPRS Local Police Board met and approved Officer's Scartozzi's DROP application on 9/21/2016 with an effective date of 9/15/2016. Officer Scartozzi elected a 60 month designation period. He acknowledged and agreed to separate employment from the City of Surprise prior to 9/30/2021.

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: No Regular: Yes Public Hearing: No Report/Discussion: No

Agenda Wording:

Consideration and possible action regarding the application for Accidental Disability Retirement of Glenn Cannon

Motion:

I make a motion to _____ regarding the application for Accidental Disability Retirement of Glenn Cannon

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System –
Police Meeting

Council Meeting Date: August 12, 2020
Submitting Department: Human Resources
Staff Recommendations:

Contact Person:
District: Internal

Consent: No Regular: Yes Public Hearing: No Report/Discussion: No

Agenda Wording:

Considerations and possible action for the Police Board to finalize RFQ process for Independent Legal Counsel after receiving recommendation from selection panel review

Motion:

I make a motion to move forward and select _____ (name of firm) as Legal Counsel for PSPRS Local Police Board as a result of the RFQ process with the City of Surprise.

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:
