



CITY OF SURPRISE
Public Safety Personnel Retirement System Meeting - Police
16000 N. Civic Center Plaza
Surprise, AZ 85374

Tuesday, September 10, 2019 @ 1:00 PM
COUNCIL OVERFLOW ROOM

Amended agenda - removed item #6 September 6, 2019 at 10:45 AM

- 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:

INSTRUCTIONS: In order to address the Board\Commission, you will need to fill out a Call to the Public Form available at the front counter, and then turn it in to the Secretary before the meeting begins.

Note: A.R.S. 38-431.01(H) - During this time members of the public may address the Board\Commission only on issues within the jurisdiction of the Board\Commission which are not an item on the agenda. At the conclusion of the open call, the Board\Commission may respond to criticism, may ask staff to review the matter or may ask that the matter be put on a future agenda. No discussion or action shall take place on any item raised.

CONSENT AGENDA:

- | | | | |
|----|----------|---|-----------------|
| 1. | Internal | Discussion and action pertaining to approval of PSPRS Local Board-Police July 10, 2019 meeting minutes. | None |
| | | | Human Resources |

REGULAR AGENDA ITEM - NON-PUBLIC HEARING:

- | | | | |
|----|----------|---|-----------------|
| 2. | Internal | Consideration and action pertaining to the acceptance of one (1) new Police Officer into the PSPRS System. | None |
| | | | Human Resources |
| 3. | Internal | Consideration and action pertaining to the acceptance of Michael J. Forbrook into the Deferred Retirement Option Plan (DROP) effective August 25, 2019. | None |
| | | | Human Resources |
| 4. | Internal | Consideration and action pertaining to the Application for a Survivor Benefit of Steven Reppert. | None |
| | | | Human Resources |

- | | | | |
|----|----------|--|-----------------------------|
| 5. | Internal | Consideration and action pertaining to further review of the Accidental Disability application for Richard Yost. The commission may further consider and take action to appoint an independent medical examination (IME) for Richard Yost. | None

Human Resources |
| 6. | Internal | Consideration and action pertaining to the rehearing of the Accidental Disability Retirement application and IME summary for Rachael Tidd. | None

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

SHERRY ANN AGUILAR, CITY CLERK, MMC

POSTED: September 6, 2019 at 10:45 AM

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
Meeting - Police

Council Meeting Date: September 10, 2019
Submitting Department: Human Resources
Staff Recommendations: None

Contact Person:
District: Internal

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

Agenda Wording:

Discussion and action pertaining to approval of PSPRS Local Board-Police July 10, 2019 meeting minutes.

Motion:

I move to approve the PSPRS Local Board-Police July 10, 2019 meeting minutes.

Background:

N/A

Objective Analysis:

N/A

Policy Compliant:

N/A

Financial Impact:

N/A

Budget Impact:

N/A

FTE Impact:

N/A

ATTACHMENTS:

1. Draft PSPRS Police Minutes -2019.07.10
-



**PUBLIC SAFETY RETIREMENT SYSTEM
CITY OF SURPRISE LOCAL BOARD – POLICE**
Draft Minutes, Wednesday, July 10, 2019
16000 North Civic Center Plaza, Surprise, Arizona 85374

The following are the minutes from the PSPRS City of Surprise Local Board – Police Meeting held at 10:00 a.m. Wednesday, July 10, 2019. The meeting was held in City Hall, 1st floor lobby conference room.

Call To Order:

Acting Chair Jeffrey called the meeting to order at 10:13 a.m.

A. Roll Call: Scott Gwaltney, Chairperson & Citizen Board Member – Absent
excused
Don Jeffrey, Citizen Board Member – Present
Jim Conner, Citizen Board Member – Present
Ian Murton, Employee Board Member – Police Dept. – Absent
Severin Hall, Employee Board Member- Police Dept. – Present

In attendance: Chanda Washington, Board Administrator
Donna Meuse, Human Resources
Kelly Pedersen, Human Resources
Cynthia Kelley, Board Attorney
Glenn Cannon, Applicant (attended agenda items #1 & #2)
Jennifer Cannon, Spouse of Applicant Mr. Cannon (attended
agenda items #1 & #2)
Rachael Tidd, Applicant (attended agenda item #3 only)
Edyta Tabor-Dakowicz, Co-Worker of Applicant Ms. Tidd (attended
agenda item #3 only)

B. Pledge of Allegiance: completed

C. Current Events Reports: None

D. Staff Reports: Ms. Washington introduced newly elected board member Severin Hall to his first board meeting. Ms. Washington advised the board the need for postponement for providing information to the subcommittee for review of the disability cases until at least December to give her additional time to get the information to the subcommittee to review for a recommendation to the board.

The board agreed to grant the extension of time needed for Ms. Washington to gather information for the subcommittee to review.

Board Attorney Kelley provided the board with clarification about the re-examination of the disability cases.

Mr. Hall commented on Ms. Kelley's clarification to ensure he had the correct understand of the information provided.

Mr. Conner commented on the reason why the board choose the two elected members to be part of the subcommittee.

Call to the Public: None

Consent Agenda:

- #1.** Discussion and action pertaining to approval of PSPRS Local Board - Police June 12, 2019 Meeting Minutes. **-Approved**

Motion: Conner
Second: Jeffrey
Opposed: None

Scott Gwaltney- absent
Don Jeffrey- voted yes
Jim Conner- voted yes
Ian Murton- absent
Severin Hall- abstain

Regular Agenda:

- #2.** Consideration and action pertaining to further review of the Accidental Disability application of Glenn Cannon. The commission may further consider and take action to appoint an independent medical examination (IME) for Glenn Cannon to be conducted by the following IME professionals: MMRO as primary, MCN as secondary and Integrated Medical Evaluations Inc. as tertiary (third) choice. – **Approved**

Ms. Washington advised the board that Mr. Cannon did not sign off on the waiver of confidentiality so the board cannot discuss any medical information regarding his application during an open meeting session and the board would have to go into executive session to discuss his medical information. Ms. Washington informed the board she had previously sent out the medical records for Mr. Cannon to the board to review and Mr. Cannon and his wife also provided a timeline of events to assist with the review of the records and that information was also provided to the board to review prior to the meeting.

Mr. Jeffrey had medical related questions for Mr. Cannon and was advised by Ms. Washington that the board would need make a motion to go into executive session to discuss Mr. Cannon's medical information.

Mr. Jeffrey made a motion at 10:23 a.m. to go into modified executive session with Mr. Cannon, his spouse Jennifer Cannon and his attorney Kathryn Baillie present.

Motion: Jeffrey
Second: Hall
Opposed: None



**PUBLIC SAFETY RETIREMENT SYSTEM
CITY OF SURPRISE LOCAL BOARD – POLICE**
Draft Minutes, Wednesday, July 10, 2019
16000 North Civic Center Plaza, Surprise, Arizona 85374

Scott Gwaltney- absent
Don Jeffrey- voted yes
Jim Conner- voted yes
Ian Murton- absent
Severin Hall- voted yes

Mr. Conner made a motion at 10:29 a.m.to end executive session and reconvene to regular session.

A motion was made to accept for further review of the Accidental Disability Retirement Application for Glenn Cannon.

Motion: Conner
Second: Hall
Opposed: None

Scott Gwaltney- absent
Don Jeffrey- voted yes
Jim Conner- voted yes
Ian Murton- absent
Severin Hall- voted yes

A subsequent motion was made to appointment an independent medical examination (IME) for the Accidental Disability Retirement application for Glenn Cannon to be conducted by the following IME professionals: MMRO as primary, MCN as secondary and Integrated Medical Evaluations Inc. as tertiary (third) choice.

Motion: Jeffrey
Second: Hall
Opposed: None

Scott Gwaltney- absent
Don Jeffrey- voted yes
Jim Conner- voted yes
Ian Murton- absent
Severin Hall- voted yes

#3. Consideration and action pertaining to the Accidental Disability Retirement application and IME summary for Rachael Tidd.

A short break was taken so Ms. Tidd to allow Ms. Tidd to be present in the meeting room for agenda item #3.

Ms. Washington explained to the board that Ms. Tidd did not sign off on the waiver of confidentiality so the board cannot discuss any medical information regarding her

application during an open session and in order to discuss her medical information while she is in the room the board would have to go into executive session. Ms. Washington advised she did send a copy of the IME results to the board prior to the meeting, but a copy is also provided in the board members meeting notebooks. Ms. Washington advised the board Ms. Tidd was present along with her attorney Ms. Baillie should the board have any questions to address to her.

Board member Jeffrey posed a series of non-related medical questions for Ms. Tidd. Ms. Tidd answered his questions.

Ms. Baillie made arguments on behalf of Ms. Tidd that she should be considered on duty due to receiving on call pay.

Mr. Jeffrey commented on the information the physician addressed.

Ms. Kelley stated to the board the differences between what is considered on duty versus not on duty.

Ms. Kelley stated to the board the difference between motorcycle officers being considered on duty versus police officers.

Mr. Conner commented regarding the law.

Ms. Baillie made arguments for Ms. Tidd that the on call pay should have been considered on duty in order for the IME physician to respond differently to question#4 in the questionnaire.

Ms. Meuse asked a series of questions about standby pay that no one on the board was to comment on.

Ms. Baillie made arguments for Ms. Tidd regarding her understanding of how on call/standby works for the City of Surprise.

Ms. Tidd commented to the board that she received a copy of her timesheet showing she received standby pay.

Ms. Meuse commented to the board that she would need to look into Ms. Tidd's payroll records and asked the board if they wanted to discuss this further to review the policy.

Mr. Hall posed a series of non-medical related questions to Ms. Tidd. Ms. Tidd answered his questions.

A motion was made by Mr. Conner to approve the Accidental Disability Retirement application and IME summary for Rachael Tidd.

Motion: Conner
Second: Jeffrey
Opposed: None

Scott Gwaltney- absent
Don Jeffrey- voted yes
Jim Conner- voted yes
Ian Murton- absent
Severin Hall - voted yes

Mr. Jeffrey asked the board if they needed to go over the questionnaire checklist.

Ms. Kelley advised the board they can vote on the agenda item and then go over the questionnaire checklist.

Ms. Baillie made a request on behalf of Ms. Tidd for the motion to address question #4 in the questionnaire from the IME physician.

The board had further discussion regarding the motion previously made.

Mr. Conner withdrew the motion he previously made. A new motion was made by Mr. Conner stating after discussing the IME and physician's statement regarding question #4, that it was not a job related duty that the additional information indicates that the applicant was on call status and should be granted a disability at this time.

Motion: Conner
Second: Hall
Opposed: None

Scott Gwaltney- absent
Don Jeffrey- voted yes
Jim Conner- voted yes
Ian Murton- absent
Severin Hall - voted yes

Ms. Washington read the accidental questionnaire to the board to answer. They responded to the following questions:

1. Did the employee file the application after the disabling incident, or within one year of ceasing to be an employee? **yes**
2. Did (or will) the employee terminate by a reason of disability? **yes**
3. Did employment terminate based on a disciplinary issue? **no**

4. If the member's period of DROP has ended, if applicable, did (or will) the employee terminate by a reason of disability? **not applicable**
5. Is the employee still working a position within their job classification that the Local Board considers a reasonable range of duties position? **no**
6. Has the employee refused a position within their job classification that the Local Board considered a reasonable range of duties? **no**
7. Did the injury or condition occur prior to the current PSPRS membership date? **no**
8. Was the injury or condition the results of an event incurred during the performance of the employee's duty? **yes**

Ms. Washington commented the motion reflects question #4 that was answered by the doctor.

#4. Consideration and action pertaining to placing items on future agenda.

Ms. Washington stated there are no agenda items for August and Mr. Cannon's IME results will not be back in time for August so the next meeting will occur on Wednesday, September 11th at 10 a.m.

Ms. Washington advised the board to let her know if they are unable to attend the next meeting so she can ensure there is a quorum.

Ms. Washington also asked the board members to check the board meeting materials that are sent within a few days of them being issued so she can make sure everyone has access to the information. She stated if the information cannot be received electronically it can be burned onto a CD.

#5. Executive Session: Consideration and action to enter into Executive Session pursuant to A.R.S. 38-431.03 (A) (2) and (3) for consideration or discussion of material deemed confidential by law and/or discussion or consultation for legal advice with the board attorney regarding the local board procedures.

The board went into modified executive session for agenda item #2 with Mr. Cannon, his spouse Jennifer Cannon and his Attorney Kathryn Baillie present

Adjournment:

Mr. Conner made a motion to adjourn the meeting at 10:47 a.m. – **Approved**

Motion: Conner
Second: Jeffrey
Opposed: None

Scott Gwaltney- absent



**PUBLIC SAFETY RETIREMENT SYSTEM
CITY OF SURPRISE LOCAL BOARD – POLICE**
Draft Minutes, Wednesday, July 10, 2019
16000 North Civic Center Plaza, Surprise, Arizona 85374

Don Jeffrey- voted yes
Jim Conner- voted yes
Ian Murton- absent
Severin Hall- voted yes

Scott Gwaltney, Chairperson

Donald Jeffrey – Board Member - Citizen

Jim Conner, Board Member - Citizen

Ian Murton, Board Member – Police Dept.

Severin Hall, Board Member - Police Dept.

Chanda Washington, Board Secretary



CITY OF SURPRISE
Public Safety Personnel Retirement System
Meeting - Police

Council Meeting Date: September 10, 2019
Submitting Department: Human Resources
Staff Recommendations: None

Contact Person:
District: Internal

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

Agenda Wording:

Consideration and action pertaining to the acceptance of one (1) new Police Officer into the PSPRS System.

Motion:

I move to approve the acceptance of one (1) new Police Officer into the PSPRS System as follows:

Jarrot J. Tevault, effective 8/5/2019 with pre-existing condition

Background:

Mr. Tevault is a Tier 3 member who has satisfied his 90 day waiting period and will be participating in the Defined Benefit Plan. The employee contribution is 9.94% of the applicable gross wages per pay period and the employer contribution rate is 26.04% of the applicable gross wages per pay period.

Objective Analysis:

N/A

Policy Compliant:

N/A

Financial Impact:

The employer contribution rate is 26.04% of the applicable gross wages.

Budget Impact:

The employer contribution rate is 26.04% of the applicable gross wages.

FTE Impact:

N/A

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System
Meeting - Police

Council Meeting Date: September 10, 2019
Submitting Department: Human Resources
Staff Recommendations: None

Contact Person:
District: Internal

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

Agenda Wording:

Consideration and action pertaining to the acceptance of Michael J. Forbrook into the Deferred Retirement Option Plan (DROP) effective August 25, 2019.

Motion:

I move to approve the acceptance of Michael J. Forbrook into the Deferred Retirement Option Plan (DROP) effective August 25, 2019.

Background:

N/A

Objective Analysis:

N/A

Policy Compliant:

N/A

Financial Impact:

Both the employer and employee contributions will cease effective August 25, 2019.

Budget Impact:

N/A

FTE Impact:

N/A

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System
Meeting - Police

Council Meeting Date: September 10, 2019
Submitting Department: Human Resources
Staff Recommendations: None

Contact Person:
District: Internal

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

Agenda Wording:

Consideration and action pertaining to the Application for a Survivor Benefit of Steven Reppert.

Motion:

I move to approve surviving spouse Terry Vernon Reppert's Application for Survivor Benefit of Steven Reppert.

Background:

Terry Vernon Reppert is listed as the beneficiary of Steven Reppert's PSPRS account and is eligible to receive the surviving spouse benefit by submitting the Application of Survivor Benefit to the PSPRS Police Local Board.

Objective Analysis:

N/A

Policy Compliant:

N/A

Financial Impact:

N/A

Budget Impact:

N/A

FTE Impact:

N/A

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System
Meeting - Police

Council Meeting Date: September 10, 2019
Submitting Department: Human Resources
Staff Recommendations: None

Contact Person:
District: Internal

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

Agenda Wording:

Consideration and action pertaining to further review of the Accidental Disability application for Richard Yost. The commission may further consider and take action to appoint an independent medical examination (IME) for Richard Yost.

Motion:

I move to accept for further review the Accidental Disability application for Richard Yost.

Subsequent Motion: I move to appoint an independent medical examination (IME) for the Accidental Disability Retirement application for Richard Yost to be conducted by the following IME professionals: MMRO as primary, MCN as secondary and Integrated Medical Evaluation Inc. as tertiary (third) choice.

Background:

N/A

Objective Analysis:

N/A

Policy Compliant:

N/A

Financial Impact:

N/A

Budget Impact:

N/A

FTE Impact:

N/A

ATTACHMENTS:



CITY OF SURPRISE
Public Safety Personnel Retirement System
Meeting - Police

Council Meeting Date: September 10, 2019
Submitting Department: Human Resources
Staff Recommendations: None

Contact Person:
District: Internal

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

Consideration and action pertaining to the rehearing of the Accidental Disability Retirement application and IME summary for Rachael Tidd.

Motion:

I move to _____ (approve or disapprove) the Accidental Disability Retirement application and IME summary for Rachael Tidd based upon the rehearing.

Background:

The Administrative Office of the Public Safety Personnel Retirement System (PSPRS) has requested the City of Surprise local board to have a rehearing on Rachael Tidd's Accidental Disability Retirement application to resolve conflict regarding Ms. Tidd's injury and if it was incurred in the performance of her duties.

Objective Analysis:

N/A

Policy Compliant:

N/A

Financial Impact:

N/A

Budget Impact:

N/A

FTE Impact:

N/A

ATTACHMENTS:

1. L - C Washington (Surprise PD) RR Tidd
-

Board of Trustees

William T. Buividas, Chairman
Mike Scheidt, Vice Chairman
Harry A. Papp, Trustee
Dean M. Scheinert, Trustee
Donald A. Smith, Jr., Trustee
Scott McCarty, Trustee
Jim Ameduri, Trustee
Brian V. Moore, Trustee
Christopher J. Hemmen, Trustee

**PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM
CORRECTIONS OFFICER RETIREMENT PLAN
ELECTED OFFICIALS' RETIREMENT PLAN**

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Phoenix, Arizona 85016-4416
Telephone: (602) 255-5575
Fax: (602) 255-5572
www.psprs.com

Administration

Bret H. Parke
Interim Administrator
General Counsel
Dave DeJonge
Deputy Administrator
Mark Steed
Chief Investment Officer

August 13, 2019

Chanda Washington
Local Board Secretary
Public Safety Personnel Retirement System
City of Surprise Local Board – Police
16000 N. Civic Center Plaza
Surprise, Arizona 85374

RE: Accidental Disability Claim – Rachael R. Tidd

Dear Ms. Washington:

The Administrative Office of the Public Safety Personnel Retirement System (the “System”) is in receipt of Rachael R. Tidd’s Application for an Accidental Disability Retirement and corresponding documentation. The System has concerns about the manner in which the City of Surprise Local Board – Police (“Local Board”) reached its decision. There appears to be a conflict regarding Ms. Tidd’s injury and if it was incurred in the performance of her duties.

As you may know, Arizona Revised Statutes § 38-842(1) states: *"Accidental disability means 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."*

Jody Reiser, M.D. states in her portion of the Questionnaire that Ms. Tidd’s injury was NOT the result of an event incurred during the performance of her/employee duty; and in her report that Ms. Tidd’s “injury was incurred as Ms. Tidd was on her way to work and she was actually not yet on duty.” It is unclear to the System how Dr. Reiser determined or learned that Ms. Tidd was not on duty.

In the Local Board meeting minutes, Donna Meuse of the City of Surprise’s Human Resources Department stated to the Local Board “that she would need to look into Ms. Tidd’s payroll records” and asked the Board “if they wanted to discuss this further to review the policy.” The meeting minutes do not explain what the Local Board’s response was to Ms. Meuse question and it appears from the meeting minutes that the policy was never discussed.

Also in the Local Board meeting minutes, it states that the Local Board approved a motion granting Ms. Tidd’s accidental disability claim and references “additional information” that indicates that Ms. Tidd was on call status. It is unclear from the record what the “additional information” is.

Chanda Washington
Local Board Secretary
Public Safety Personnel Retirement System
City of Surprise Local Board – Police
August 13, 2019
Page 2

The minutes are inadequate as they fail to address the conflict referenced above and how the Local Board resolved the conflict. If evidence was relied upon by the Local Board and reasons for the resolving the conflict were discussed in the Local Board meeting, then the minutes should specifically address how and what the Local Board relied upon to come to their decision. There is insufficient evidence in the record to sustain the Local Board's decision.

The System respectfully requests that the Local Board conduct a rehearing to resolve the conflict regarding Ms. Tidd's injury and if it was or was not incurred in the performance of her duties and to confirm if Ms. Tidd is eligible or ineligible for an accidental disability pension benefit.

It is possible that Ms. Tidd may be eligible for an ordinary disability retirement benefit. If Ms. Tidd decides to apply for an ordinary disability retirement benefit she will need to complete a new application, the Local Board and Dr. Reiser or a different physician appointed by the Local Board will need to answer the ordinary disability questionnaire and the Local Board will need to conduct a rehearing to consider Ms. Tidd's ordinary disability retirement application.

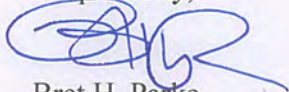
For your information, the statutory requirements for an Ordinary Disability are located at A.R.S. §§ 38-842(34) and 38-844.

To avoid further delay of the Local Board's decision, the System requests that the Local Board review the enclosed letter from the Surprise City Attorney's Office and to the extent possible, reconcile with the employer that Ms. Tidd was or was not on duty.

As a reminder, A.R.S § 38-847(D), states that the Local Board makes all determinations with respect to benefits which includes disability pension benefits. The Local Board determines if an employee qualifies (per the statutes) for a pension benefit. The System does not make the determination if an employee qualifies for a pension benefit. The System reviews the Local Board's determination and if in compliance with statute, pays the pension benefit.

Once the rehearing has taken place, please forward one copy of the meeting minutes to our Paralegal, Michelle Pechan, including any new documentation. If you have any questions, please contact Ms. Pechan.

Respectfully,



Bret H. Parke
Interim Administrator
and General Counsel

cc: Rachael R. Tidd
Melinda A. Bird, Deputy City Attorney

July 31, 2019

Robert Ortega
Director, Member Services
PSPRS
3010 E. Camelback Rd.
Suite 200
Phoenix, AZ 85016

COPY

RECEIVED - PSPRS

Re: PSPRS Local Board – City of Surprise, AZ
In the matter of Rachael Tidd

AUG 01 2019

Dear Mr. Ortega:

This letter serves as notice of the City of Surprise's ("City") objection to the local board decision of July 10, 2019, approving the Accidental Disability Retirement application ("Application") of Rachael Tidd.

Rachael Tidd was employed as a detective for the City of Surprise Police Department. On November 30, 2017, she was driving to work at approximately 6:46 a.m. As she entered the intersection of Dysart Rd. and Glendale Ave., her vehicle was struck by another motorist.

At the time of the collision, Detective Tidd was on standby;¹ she was not responding to a call and she had not yet started her regular shift – accordingly, she was **not** on duty at the time of her accident. As a result, her treating physician correctly noted on the I.M.E. report that her injury did not result from a workplace accident. Despite the above, Detective Tidd improperly applied for "accidental disability", rather than "ordinary disability". "Accidental disability" only applies to a condition the employee "incurred in the performance of the employee's duty". See A.R.S. §38-842(1). Whereas "ordinary disability" may arise from non-work activities. A.R.S. §38-842(34). The local board erroneously approved Detective Tidd's accidental disability retirement application, finding that her injuries were the results of an event (the collision) that occurred during the performance of her employment duties.

The City opposes the local board's finding given that Detective Tidd was on standby at the time of the vehicle collision and was, therefore, **not** on duty for purposes of her Accidental Disability Application. The local board's decision is contrary to Arizona law, arbitrary and capricious, and in excess of the local board's jurisdiction and legal authority.

¹ City police detectives are occasionally (on a rotation basis) assigned to be on standby during off duty hours.

Arizona case law discussing when overtime compensation is mandated for officers who are “on call” (or “standby”) is illustrative. The “proper and overriding test is whether the waiting time in issue is predominantly for the employer’s benefit or for the employee’s benefit.” *Prendergast v. City of Tempe*, 143 Ariz. 14, 19, 691 P.2d. 726, 731 (App. 1984) (citations omitted). In deciding whether standby time is in reality work time, the tribunal must consider the employee’s normal duties and “whether the employee’s leisure is so restricted that [the standby time] cannot be fairly said to be primarily for the employee’s benefit.” *Id.* at 20, 691 P.2d. at 732; *see also Hockersmith v City of Patagonia*, 123 Ariz. 559, 561, 601 P.2d 322, 324 (App. 1979) (deputy marshal who was “on call” but not on active duty was not entitled to compensation for “on call” time where his activities were “basically unfettered”). In determining whether the employee is free to engage in personal activities, the courts look at a variety of factors, including, but not limited to: (1) whether the employee was subject to an on-premises living requirement; (2) whether excessive geographical restrictions were placed on the employee’s movement; and (3) whether during on call time, the employee could sleep, eat and engage in personal activities. *Hockersmith*, 123 Ariz. 559, 561, 601 P.2d 322, 324 (App. 1979).

Here, Detective Tidd’s activities while on standby, like those of the deputy marshal in *Hockersmith*, were basically unfettered. She was not required to reside at the station while on standby; she resided in her personal residence. No unreasonable geographical restrictions were placed on her while on standby, and she was free to engage in personal activities such as dining in restaurants, attending movies, running personal errands and so forth. Accordingly, she was not “on duty” at the time of the collision and not entitled to “accidental disability” as her injuries from that collision did not arise out of the performance of her employment duties. A.R.S. §38-842(1).

Similarly, she was not on duty simply because she was commuting to the station to start her regular shift at the time of the collision. Her regular “on duty” shift had not yet started. As a general rule, an employee is not acting within the scope of his or her employment while commuting to or from work. *Faul v. Jelco, Inc.*, 124 Ariz. 490, 492, 595 P.2d 1035, 1037 (App. 1979). In fact, in recognition of this general rule, the Arizona Legislature has adopted a very limited exception to this rule for peace officers for purposes of workers’ compensation benefits **only**. *See* A.R.S. § 23-1021.01(A) (“A peace officer . . . who is injured or killed while traveling directly to or from work as a peace officer shall be considered in the course and scope of employment *solely for the purposes of eligibility for workers’ compensation benefits*,”) (emphasis added). Subsection (B) of this statute continues to follow the general rule that an employee is not acting within the scope of his or her employment while commuting to or from work. A.R.S. §23-1021.01(B) (noting that subsection (A) of the statute does not create any respondeat superior liability for a peace officer’s employer for the peace officer’s negligent conduct while traveling to and from work). As the statute is expressly limited to workers’ compensation benefits, it does not override the general rule that a commute does not fall within an employee’s scope of work and it does not provide any basis for the local board’s arbitrary and

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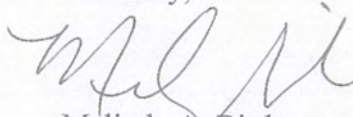
capricious determination that Detective Tidd was on duty at the time of the vehicle collision and therefore entitled to accidental disability.

The erroneous legal determination of the local board violates A.R.S. § 33-847(E). If permitted to stand, at a minimum and in addition to IRS tax implications, the local board's decision will directly modify or waive the terms of the system, add benefits to which Detective Tidd is not otherwise entitled, and fail to apply a requirement of eligibility benefits under the system.

Accordingly, this matter should be rejected and reversed by the board of trustees, or at a minimum, returned to the local board for a rehearing with proper instructions of the law.

Thank you for your cooperation in this matter.

Sincerely,



Melinda A. Bird
Deputy City Attorney

MAB/

cc: Robert A. Wingo

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AUG 01 2019



CITY OF SURPRISE
Public Safety Personnel Retirement System
Meeting - Police

Council Meeting Date: September 10, 2019
Submitting Department: Agenda Creation
Staff Recommendations:

Contact Person:
District: Citywide

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

Agenda Wording:

Executive Disclaimer (PSPRS)

Motion:

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:
