

Meeting Minutes

Public Safety Police Personnel Retirement Board

Special Meeting

March 26, 2024 | 9:00 a.m.
2nd Floor, Training Room B
175 S. Arizona Ave., Chandler, AZ



Call to Order

The meeting was called to order by Chairperson Turner at 9:02 a.m.

Roll Call

Board Attendance

Chairperson Steven Turner
Citizen Member Bill Crawford
Citizen Member Valerie Remington
Police Member Elect Daniel Shellum
Police Member Elect Raymond Kieffer

Staff Attendance

Rae Lynn Nielsen, HR Director
Nichole Bombard, Medical Leave Coord.
Christine Jarosik, Medical Leave Coord.
Rowena Laxa, Assistant City Attorney

Others Present

Andrew Apodaca, Board Attorney

Absent

Executive Session - Pursuant to A.R.S. Section 38-431.03 (A), the Chandler Local Police Public Safety Personnel Retirement Board may vote to convene in executive session to discuss or consider confidential records exempt by law from public inspection, and/or to consult with the Board's attorney for legal advice and to consider the Board's position and to instruct the Board's attorney regarding its position on item 1. The Board will take action on those items in open session.

Action Agenda Item No. 1 and Discussion

1. **Accidental Disability Application Hancock**

Consideration, Discussion, and appropriate Action regarding the Application for an Accidental Disability for Shawn Hancock.

Ms. Abramsohn, Mr. Hancock's attorney, has submitted two motions and one subpoena request to the board in reference to evidentiary hearing. Claimant's Request for a Subpoena, with regard to Ms. Lauren Goldbach. Claimant's Motions included 1) Claimant's Motion regarding CPD Exhibit 16 and Medical Records of Wilson, Ph.D, and 2) Claimant's Motion to Dismiss City of Chandler Police Department.

Chairperson Turner asked Ms. Abramsohn to discuss Claimant's Request for a Subpoena. Ms. Abramsohn's medical witness requires a subpoena to appear before the board on the direction of the witness' attorney. Mr. Apodaca confirmed that the Board will issue the subpoena and send it to Ms. Abramsohn to deliver to Mr. Hancock's provider.

Chairperson Turner then asked Ms. Abramsohn to discuss the first motion, Claimant's Motion regarding CPD Exhibit 16 and Medical Records of Wilson, Ph.D. Ms. Abramsohn objects to the exhibit provided by Ms. Baker that only includes 2 pages of the medical record rather than the entire report and medical file.

Ms. Baker countered that Mr. Hancock did not see Dr. Wilson, who's a psychologist, until after he was placed on administrative leave. The exhibit offered was the MMCI, a computer generated report. Mr. Hancock has now provided in this huge cache of new documents that he wants to offer including Dr. Wilson's progress reports. These are self-serving hearsay reports by a psychologist who's not going to testify, and Dr. Wilson creates his file not to seek out objective evidence because he's not an independent psychological examiner. He relies on the patients' self-report, and he doesn't create an exhaustive record of what the patient says. He controls what is put into his records because he knows they might be involved in a legal proceeding and as a treating psychologist, he feels that he has to not break the bond of confidence and trust between him and the patient, and therefore he doesn't put negative information in these records. Ms. Baker objects to anything that they have offered from Dr. Wilson as he is not going to testify, it's inadmissible and unreliable hearsay, and this board in this hearing is not going to decide what the diagnosis is if there is one. Ms. Baker is entitled to structure exhibits as they feel necessary but agrees that that computer generated commentary is acceptable and would agree to amend exhibit 16. Ms. Baker does object to Ms. Abrahamson's effort to put this additional information into the record.

Ms. Abramsohn countered that on the applications for accidental disability retirement, the board asks that the applicants list all the doctors that they go to. She argues that the board secretary sends out requests for those doctors and gets all these records. All the records are submitted to the board for the board's review for making a determination on the

application and it's given to your IME doctor. Ms. Baker indicates she's going to bring, an expert which was the workers compensation doctor. All these records were given to him, so they're perfectly admissible here. Ms. Abramsohn notes that the board asked to address 2 questions, the first question is whether Lieutenant Hancock terminated his employment due to an accidental disability and second, whether Lieutenant Hancock's disabling condition was incurred in the performance of his employment duties. Those were the only two issues, not whether or not he is disabled and all his treating physicians that he went to. Claimant is submitting the records for understanding Lieutenant Hancock's motive and filing his application for accidental disability.

Chairperson Turner then asked Ms. Abramsohn to discuss the third motion, Applicant's Motion to Dismiss City of Chandler Police Department. Ms. Abramsohn notes that through the rules that the board has enacted, it has made the City of Chandler Police Department, the employer in this matter, a party to the hearing. She argues the City lacks standing to be a party in front of this board in an application for accidental disability. She argues that there's absolutely nothing in the statutory system that gives an employer the right to become a party in someone's application for accidental disability. The definition of employer under 38-842 only states what an employer is and its requirements for contributions. It says absolutely nothing about them being a party or them being involved in application determinations. If you continue through the statutes on 38-847(D), that claimant or the board of trustees, or both, have a right to a rehearing on the original determination. So that means that the board of trustees can be a party to hearing in front of the board, it doesn't say that the employer gets to ask for a rehearing. Ms. Abramsohn argues that the board can ask the city to provide information, but the City doesn't get to come and argue how the Board should rule on an application for accidental disability. If you look at the model rules that the system established, it defines parties, and those parties are the claimant, the Board of trustees, and the local board and that's it. It doesn't include the employer because there's no authority for the employer to be a party in front of this board. She argues that the Local Board cannot implement a rule to make the City a party when you don't have specific statutory authority to. The attorney for the city is advocating for a particular result and giving an opinion on the ultimate issue. Ms. Abramsohn questions who is directing or instructing the appointed attorney for the City, and who is directing or advocating the position that the attorney should take in this matter. Ms. Abramsohn suggested that there was an open meeting law violation, since she cannot understand how the City was added as a part to the claim. Ms. Abramsohn also suggested that since at least three members of the board work for the City, and an attorney is arguing on behalf of what the City thinks should happen, that there is an automatic conflict of interest.

Counsel for the Local Board asked Ms. Abramsohn if she was accusing the Local Board of violating open meeting law, which was answered in the affirmative. Counsel for the Local Board asked Ms. Abramsohn if she was accusing three members of the board of having a conflict of interest, which she again answered in the affirmative.

Ms. Baker countered that there are cases that discuss rulemaking authority and when there is a statutory grant of rulemaking authority, there can be a grant of specific authority and there can be a grant of general authority, and when general authority is granted to make rules, it gives the body broad discretion to act. The local board clearly has a general grant of rulemaking authority, and that's because of ARS 38-847. That is a general grant of authority. ARS 38-847 allows the Local Board to adopt these rules that within your reasonable discretion you deem will facilitate the presentation of evidence, the development of a record to help you make a decision, and that includes making the city a party. Ms. Baker notes that the rules require at a minimum, that the board's rules shall incorporate the model uniform rules. It doesn't say procedurally when you deem in your judgment, it's appropriate that you can't institute a procedural rule. She argues that, in fact, the Model Rules anticipates that a Local Board will adopt those rules that it reasonably believes are required to facilitate a hearing like this, and therefore that's exactly what this Local Board did. In this case, the city comes in as the employer and can provide information that the employee has no interest in providing. We can give you the chronology of the decision making to show that there was a disciplinary action pending at the time that he decided suddenly, after over a decade, to seek some sort of counseling, and that his counselors are not independent psychological counselors. They're just relying on what he said. The Local Board's rule allowing the City to be a party doesn't alter or amend any substantive PSPRS right or benefit, and therefore it's not accurate to say that the Local Board adds to or subtracts from the system by merely having a procedural rule that the Local Board in its discretion determines was appropriate to have. Nor is the Local Board adding to the terms of the system. It has absolutely no application here, allowing the City to come in and provide objective evidence, as it is helpful to the board and as the board deems appropriate. It does not add to the terms of the system. It doesn't change and benefit. It doesn't change the way the system operates. Ms. Baker argues that the statutory language is very clear and that this board acted appropriately within its statutory authority.

Ms. Abramsohn counters that it is offensive that the City would suggest that any pending discipline for Mr. Hancock would be relevant in an accidental disability claim. argues that the Local Board has general rule making authority, but no specific statutory authority for rule that says an employer can be a party. She argues the Local Board can't use general rulemaking authority to make rules about things that you don't have any specific rule making authority to make, just because you can make rules doesn't mean that you can make rules that go beyond the terms of the statutory scheme, and that adding a party to a procedure to a hearing is not procedural. She reiterates that the model rules define who can be parties, and it's the claimant, the board, and the board of trustees or the system however you want to refer to it, it does not include employer. There is a conflict with having the employer here trying to tell the board what it should or shouldn't do when you got people, on the board who work for the city. Ms. Abramsohn argued that clearly the City can come to the Board and provide any evidence that it wishes, but it cannot give an opinion on the ultimate issue.

Board Counsel asked Ms. Abramsohn if Claimant was able to point to any other harm that would come to her client, other than the alleged conflict of interest attributed to City employees. Ms. Abramsohn pointed to the fiduciary duty of the Local Board. She was asked if that fiduciary responsibility to the membership is from A.R.S. 38-848.04, which she affirmed, and was asked if that is a local board responsibility or a board of trustees responsibility. Ms. Abramsohn argued that it does apply to the Local Board too.

Board Counsel asked if it is Claimant's position that the existence of contemporaneous discipline is irrelevant to any decision the Local Board can reach, and Ms. Abramsohn argued that pending discipline is irrelevant because Mr. Hancock's application for accidental disability was already filed before any discipline was handed down.

Ms. Abramsohn was asked to confirm that Mr. Hancock does not protest that the City can be asked to present evidence before the Local Board, which was answered in the affirmative.

Ms. Abramshon was asked to confirm that Mr. Hancock is not protesting the fact that the City is represented by counsel, and that question was answered in the affirmative.

In response to questioning from Local Board counsel Ms. Abramsohn argued that she is objecting to the City being provided the right to make an opening and closing statement to the Local Board, the right to cross examine witnesses, and the right to direct examination of its own witnesses.

Counsel for the Local Board posed asked if it was more objectionable for Local Board Counsel to direct testimony of witnesses, and cross examine Mr. Hancock's witnesses versus Ms. Baker doing so. Ms. Abramsohn noted that it is not objectionable for the local board to ask questions of Mr. Hancock or his witnesses, just that the City is participating in the upcoming hearing as a party.

The Board took a recess from 10:20am – 10:30am

Executive Session – Chairperson Turner asked for a motion to end the Open Session and to move into Executive Session for confidential legal advice. Police Member Elect Shellum made a motion to end the Open Session and to move into Executive Session for legal advice in matter Action Agenda Item No. 1. Citizen Member Crawford seconded the motion, and the vote was unanimous to end the Open Session and move into Executive Session at 10:32 a.m.

Open Session – Chairperson Turner asked for a motion to end the Executive Session and move into Open Session. Police Member Elect Shellum made the motion to end the Executive Session and to move into Open Session; Citizen Member Crawford seconded the motion, and the vote was unanimous to end the Executive Session and move into Open Session at 11:32 a.m.

Action Agenda Item No. 1 Motion and Vote

Applicant's Request for a Subpoena for the medical provider is affirmed.

Chairperson Turner asked for a motion regarding Applicant's Motion regarding Chandler Police Department Exhibit 16 and Medical Records of Dr. Wilson. Police Member Elect Shellum made a motion to include the documents provided by applicant's attorney as exhibit 10; Citizen Member Crawford seconded the motion.

Motion carried unanimously (5-0)

Chairperson Turner asked for a motion regarding Applicant's Motion to Dismiss City of Chandler Police Department.

Police Member Elect Shellum stated that the board has prior claims that we now have precedence and we have our rules that are in place. He is hesitant to deviate from the rules at this point. The board's job is to determine whether or not the termination of employment was a result of the accidental disability, and whether that was incurred in the performance of the job and permanently disabling. He feels he should not be the one investigating, asking questions, interrogating, cross examining or trying to dive into information or trying to figure out information. He thinks his responsibility is to determine based on that evidence and present to the Local Board, whether or not those two questions can be answered in the affirmative or in the negative. He would rather have somebody else ask those questions or look at that information from the outside and from an objective standpoint, he doesn't want to see the board get into an adversarial relationship between the board and the applicants. Because he has sat on this board for a number of years now and he doesn't feel like he's had an adversarial relationship with any applicants. Our responsibility is to act as a fiduciary for the retirement system itself.

Citizen Member Remington stated she is looking at it in the same way as Police Member Elect Shellum and that she also looked at exhibit 16. She's interested in getting all of the information and not looking at the board being the investigative source of all this information, but she would like to have all the information. The board shouldn't be changing the rules in the middle of the game, and she would rather not do that. Also she absolutely does not feel any influence or undue pressure from any of the parties on this to make a decision that she think that is correct. So, when she makes this decision, it's something that she's making and not influenced by anybody or pressure to.

Citizen Member Crawford stated he feels completely impartial. He feels no influence or that anyone is influencing him to make a decision. He is the type of person that his integrity is extremely important to him. It's the way he has always lived his life. He doesn't feel like he's being directed by anyone including the City of Chandler to make a decision, and he will look at the facts as presented at the evidentiary hearing and make his decision based on the information.

Police Member Elect Kieffer stated in his time of serving on this board, he's never ever been challenged or asked or told how to vote, one way or another. His obligation is to PSPRS and to be a fiduciary for the system and that is the ultimate goal in the process. He has no bias one way or another, or one feeling until I have all the information that's presented to him, to make an informed decision.

Chairperson Turner stated he looked at each one of the board's cases as a chair of this PSPRS board on an individual basis. The board has a model for consistency, and they try to do things the right way. He feels very confident in the way that the rules are established and how the board run things. To do this the board obtains as much information as possible in fairness to the PSPRS system, the applicant, and to the city, who we have a fiduciary responsibility to PSPRS. The board has a responsibility to see this case through as the rules have dictated. Whether it takes them in any direction and it gives them the full information that will be available, and they will be able to make a recommendation based on the fullness of the information available to them.

Police Member Elect Shellum made a motion to deny the requested motion to dismiss the City as a party; Police Member Elect Kieffer seconded the motion.

Motion carried unanimously (5-0)

Adjourn

Chairperson Turner asked for a motion to adjourn. Police Member Elect Shellum moved to adjourn the meeting; seconded by Citizen Member Remington, carried unanimously (5-0). The meeting was adjourned at 11:53 a.m.

Nichole Bombard, Secretary

Steve Turner, Chairperson