

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

M E M O R A N D U M

TO: Gloria Johnson, Retirement Board Secretary

FROM: James T. Walker, Assistant City Attorney

RE: Procedure for Reconsideration
Amendment to Code Rule 12 (Reconsideration)

DATE: December 15, 2014

Please discard mine previously addressed to you dated December 1, 2014 regarding a proposed draft of an ordinance amending Section 13-172. The thought came to mind that it would make a lot more sense to make a simple change to the Retirement Board's Rules of Procedure rather than formally amend the Code of Ordinances so as to give the Retirement Board ability to follow procedural provisions set out in Code Section 13-172 (Claims Procedure) when confronted by petitions for reconsideration under Rule 12 of the Board's Rules of Procedure. With this in mind, my note to Tom Perona was revised. This revised memorandum, attached, is what should now be included in the next agenda packet for Board members, in place of the memo sent to you previously. Please let me know of any questions in this regard.

s/ James T. Walker

James T. Walker, Esq.
Assistant City Attorney

/mlp

Attachment

cc: Robert V. Schwerer, City Attorney

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

M E M O R A N D U M

TO: Thomas K. Perona, Retirement Board Chair

FROM: James T. Walker, Assistant City Attorney

RE: Procedure for Reconsideration
Amendment to Code Rule 12 (Reconsideration)

DATE: December 15, 2014

You will recall that Rule 12 of the Board's Rules of Procedure provides a means by which a benefits applicant may request the Board to reconsider its ruling. Proceedings for Reconsideration are typically more complex than the simple hearing recognized by Rule 11. Reconsideration proceedings are often contested, emotional, may have involvement of counsel and present complex legal and evidentiary issues not encountered in the normal course of considering a typical retirement application. Yet despite the greater challenges presented to the Board by Rule 12 Reconsideration, the rule provides no procedural guidance on how a petition for reconsideration is to be handled from a procedural standpoint.

With this in mind, it is recommended that the Board consider an amendment to Rule 12 which adopts for that rule the claims procedure prescribed in Section 13-172 for Chapter 185 proceedings as involving police officers. Section 13-172 sets out provisions for such things as presentation of evidence, swearing of witnesses, questioning of witnesses by parties, and so forth. A copy of Section 13-172 is attached for convenient reference. The amended version of Rule 12 now proposed for Board consideration is as follows:

Rule 12. Reconsideration.

Section (a). Request by Applicant. Within ten (10) days of the date the BOARD's written order is mailed to the applicant, the applicant may file with the Department of Finance a written request for reconsideration. The request shall include a description of new evidence or circumstances not presented or considered at the original hearing. The request should also state why any such new information was not presented at the original hearing. The Department shall schedule the request for reconsideration by the BOARD at its next regular meeting consistent with due notice to the applicant.

Thomas K. Perona, Retirement Board Chair
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Section (b). Initiated by Board. In the event the BOARD determines at any time that there is a reasonable likelihood that an applicant may not in fact be entitled to benefits previously awarded including, as provided by code Section 13-63, benefits previously awarded through error, or elects to require reexamination of a disability retired member pursuant to code Section 13-38(a) then, in such event, the BOARD shall give notice to the applicant of its intent to reconsider the applicants entitlement to benefits, or to subject the member to reexamination. The notice shall be as provided by Rule 7(a) and a public hearing shall be conducted in accordance with Rule 9. Any record relied upon by the BOARD in making the determination provided in this subsection shall be made part of the record of proceedings conducted hereafter pursuant to Rule 9.

Section (c). Procedure. Hearings under this section shall be conducted according to procedures prescribed by Code Section 13-172(c-g) (Claims Procedure).

s/ James T. Walker

James T. Walker, Esq.
Assistant City Attorney

/mlp

Attachment

cc: Robert V. Schwerer, City Attorney

Sec. 13-172. - Claims procedure.



- (a) The applicant for benefits under this plan may, within twenty (20) days after being informed of the denial of his or her request for pension benefits, appeal the denial by filing a reply to the proposed denial with the pension plan board of trustees. If no appeal is filed within the time period specified, then the denial is final.
- (b) The board shall hold a hearing within forty-five (45) days after receipt of the appeal. Written notice of the hearing shall be sent by certified mail to the applicant ten (10) days prior to the hearing, at the address listed on the application.
- (c) The board shall have the power to subpoena, require the attendance of witnesses, and the production of documents for discovery, prior to and at any proceedings provided for in the plan. The claimant may request in writing the issuance of subpoenas by the board. A reasonable fee may be charged for the issuance of any subpoenas, not to exceed the fees set forth in the Florida Statutes.
- (d) The procedures at the hearing shall be as follows:
 - (1) All parties shall have an opportunity to respond, to present physical and testimonial evidence and argument, on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. Medical depositions may be accepted in lieu of live testimony, at the board's discretion.
 - (2) All witnesses shall be sworn.
 - (3) The applicant and the board shall have an opportunity to question all witnesses.
 - (4) The formal rules of evidence and the formal rules of civil procedures shall not apply. The proceedings shall comply with the essential requirements of due process of law.
 - (5) The record in a case governed by this subsection shall consist only of:
 - a. A tape recording of the hearing, to be taped and maintained as part of the official files of the board of trustees by the pension's secretary.
 - b. Evidence received or considered.
 - c. All notices, pleadings, motions and intermediate rulings.
 - d. Any decisions, opinions, proposed or recommended orders or reports by the board of trustees.
- (e) Within ten (10) days after the hearing, the board shall take one of the following actions:
 - (1) Grant the pension benefits by overturning the denial by majority vote;
 - (2) Deny the benefits and confirm the denial.The board's decision shall be in writing set forth as an order.
- (f) Findings of fact by the board shall be based on competent, substantial evidence on the record.

- (g) Upon rendering its order, the board shall send by certified mail a copy of the order to the applicant.
- (h) The applicant may seek review of the order of the board by filing a petition for writ of certiorari with the circuit court within thirty (30) days of the order being rendered.

(Ord. No. L-34, § 1, 8-18-08)