

WEST PALM BEACH FIREFIGHTERS' PENSION FUND
MINUTES OF SPECIAL MEETING HELD

December 2, 2021

1. Dave Merrell called a Special Meeting of the Board to order at 3:55 PM. Mr. Baur called roll for the Board. Those persons present included:

TRUSTEES

Dave Merrell, Chair
Brian Walker, Secretary
Elizabeth Fugler
Sophia Loren-Taylor
Jeff Stefaniak

OTHERS

Scott Baur, Administrator (Resource Centers)
Bonni Jensen, Attorney (Klausner Kaufman Jensen & Levinson)
Marcus Andrews, Plan Member
Approximately 150 Additional Plan Members

Chair Merrell expressed his displeasure with the amount of time necessary to review the materials for the disability hearing scheduled for Marcus Andrews. He noted that some records appeared in duplicate, while other records were not in chronological order. Ms. Jensen indicated that she understood his frustration. She explained that providers become slower in providing the records and some outsource the process of producing records altogether. Directly addressing the concerns she indicated that the process could be challenged if her office changes or omits the records that are produced or the omission or change could affect the outcome in some material way. Counsel representing members in the disability process have also criticized her office for creating a timeline of the facts. The Board engaged in a substantial and productive dialogue regarding the records and ways to improve the presentation of records. In the case of Mr. Andrews, Trustee Brian Walker worked with the office of counsel to expedite the process with multiple provider offices.

Trustees received notice that the Department plans to immediately terminate the employment of Mr. Andrews.

2. **DISABILITY HEARING: MARCUS ANDREWS**

Ms. Jensen instructed the Trustees regarding the provisions of the Plan regarding the consideration of the disability application. The Board must find that Mr. Andrews is totally disabled, he will likely remain so disabled permanently and continuously, and the disability resulted from the performance of his duties as a firefighter paramedic for the City of West Palm Beach. The medical condition diagnosed for Mr. Andrews may fall under the presumption for heart related issues. Ms. Jensen reported that the IME doctor retained by the Board did not answer the questionnaire with the presumptions of the statute in mind. The Board also received substantial records through the City worker's compensation file for Mr. Andrews, along with a functional capacity examination that document his physical limitations.

Mr. Andrews addressed the Board and responded to questions from the Trustees. The Board considered whether any related factors might have contributed to the heart condition diagnosed for Mr. Andrews, as well as whether any of the conditions might have pre-existed his employment at the City of West Palm Beach. The Board thoroughly reviewed the available records, the medical conclusions reached by the physicians treating Mr. Andrews and the doctors retained by the Board to review those records, and his physical limitations in comparison to the job description for a firefighter in the City of West Palm Beach. The Board IME included some inconsistent facts, so the Board considered the entirety of the evidence completing the medical record for Mr. Andrews.

The Department does not have another position available for Mr. Andrews, nor does the Fire Department have any permanent light duty positions. Mr. Walker noted that 2 physicians stated that Mr. Andrews will not further improve, and Mr. Andrews failed a recent fitness exam. One treating physician addressed the NFPA standards related to presumption for heart conditions.

Trustee Brian Walker made a motion to find that Mr. Andrews can no longer perform the substantial and gainful duties of a firefighter for the City of West Palm Beach. The motion received a second from Elizabeth Fugler, approved by the Trustees 5-0.

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The Board considered whether the records indicated that Mr. Andrews will remain so disabled continuously and permanently. The Special Act requires that Mr. Andrews periodically submit evidence of his continuing disability until he reaches normal retirement age.

Elizabeth Fugler made a motion finding that Mr. Andrews is likely to remain disabled permanently and continuously. The motion received a second from Brian Walker, approved by the Trustees 5-0.

The Board then considered whether the heart condition for Mr. Andrews resulted from the performance of his duties as a firefighter for the City of West Palm Beach, based on his pre-employment physical and the provisions for presumption including in Florida statutes. The Board determined that he had no evidence of a heart condition at the time of his employment by the City of West Palm Beach, and the treating physician concluded that high blood pressure readings were not related in any way to the diagnosed heart disease. Ms. Jensen advised that "heart disease" resulting in disability is presumed to have occurred in the line of duty unless evidence exists to the contrary.

Jeff Stefaniak made a motion based on the presumption for heart conditions and the review of the pre-employment physical that the heart condition diagnosed for Mr. Andrews resulted from the performance of his duties as a firefighter for the City of West Palm Beach. The motion received a second from Elizabeth Fugler, approved by the Trustees 5-0.

The Board thanked Mr. Andrews for his service to the City of West Palm Beach.

3. OTHER BUSINESS

The Board had no other business for discussion.

4. ADDITIONAL REPORTS

The Board received no additional reports.

5. PUBLIC COMMENTS

Multiple members of the West Palm Beach Fire Department addressed the Board to express their support for Mr. Andrews. They thanked him for his service to the Department, to his fellow workers, and to the residents of the City of West Palm Beach.

6. ADJOURNMENT

There being no further business and the Board having previously scheduled the next regular meeting for Thursday, January 6, 2022 @ 1:30 P.M., the Chair adjourned the Special Meeting at 4:51 PM.

Brian Walker, Secretary