

**TOWN OF WALLINGFORD
PERSONNEL AND PENSION APPEALS BOARD
REGULAR MEETING
MAY 20, 2009**

A Regular Meeting of the Wallingford Personnel and Pension Appeals Board was held on Wednesday, May 20, 2009 at the Wallingford Town Hall Room 315. Chairman Loren Lettick called the meeting to order at 6:28 p.m. Present were Chairman Lettick, Board Members Matthew Furman, Jr., Richard Vanski, Fred Ulbrich, Jr., Steve Davis, and Sandra Smith. Also present were Personnel Director Terence Sullivan, Assistant Personnel Director James Hutt, Attorney Dennis Ciccarillo and Recording Secretary Sonja Vining.

Chairman Lettick thanked Shelby Jackson and David Romano, past members, for their service on the Board and welcomed new members Steve Davis and Sandra Smith.

ITEM 3 – APPROVAL OF MINUTES – SEPTEMBER 16, 2008 MEETING

Mr. Ulbrich made a motion to approve the Minutes of the September 16, 2008 Meeting. Mr. Vanski seconded and the Minutes were approved as submitted by a vote of 4-0. Mr. Davis and Ms. Smith abstained from voting.

ITEM 4 – OLD BUSINESS

None

ITEM 5 – NEW BUSINESS

- a. Election of Chairman

Mr. Furman made a motion to have Mr. Lettick continue to serve as Chairman of the PPAB. The motion was seconded by Mr. Vanski and passed unanimously.

- b. Election of Vice Chairman

Ms. Smith made a motion to have Mr. Vanski continue to serve as Vice Chairman of the PPAB. The motion was seconded by Mr. Furman and passed unanimously.

- c. Consideration and Possible Action on a Disability Pension Appeal by Michael Devin

In attendance for the hearing were:

Michael Devin, Attorney John Walsh, Personnel Director Terence Sullivan, Assistant Personnel Director James Hutt, and Attorney Dennis Ciccarillo.

Attorney Walsh gave an opening statement explaining that Mr. Devin filed an application for a service connected disability pension based on a report from his treating physician Dr.

Phillip Dickey indicating that Mr. Devin was permanently disabled from performing his duties as a police officer. Attorney Walsh gave the time line of events including Mr. Devin's injuries and his doctor visits. The documentation for these events would be submitted as joint exhibits. Attorney Walsh referred to Section 2.5A of the Pension Plan.

Attorney Ciccarillo gave an opening statement. He referred to Section 2.5A of the Pension Plan stressing that it reads "unable because of injuries received in the performance of his or her duties as an officer". He read from was Section 6.3A pertaining to application for disability retirement. It is the Town's position that there was some doubt as to maximum medical improvement leading to a question of whether or not the condition being spoken of was in fact permanent. Attorney Ciccarillo stated that it was the position of the Town that Mr. Devin had not satisfied the requirement and that is why Mr. Sullivan denied the application.

Attorney Walsh indicated that he had several exhibits to enter as evidence and he didn't believe that Attorney Ciccarillo would have any objections. Attorney Walsh presented "Joint Exhibits #1 - #12",

"Joint Exhibit #1" – Police Pension Agreement 2005-2014

"Joint Exhibit #2" - Job Description for Entry Level Police Officer issued by the Municipal Police Training Council

"Joint Exhibit #3" - Chronological sequence of correspondence (items were identified individually by the Chairman)

"Joint Exhibit #4" - Treatment records from the Center for Orthopaedics

"Joint Exhibit #5" - Records from New Haven Neurosurgical and Assoc. P.C. Dr. Phillip Dickey

"Joint Exhibit #6" - Report from Dr. William Druckemiller dated May 5, 2008

"Joint Exhibit #7" - Independent Medical Exam from CT Neuroscience P.C. Dr Isaac Goodrich

"Joint Exhibit #8" - Letter from Dr. Goodrich dated May 19, 2009

Attorney Ciccarillo stated that he had not seen this document before this evening. He did not object to it being submitted as evidence.

"Joint Exhibit #9" - Report dated January 7, 2009 from Dr. Stephen Torey, Neutrsurgery, Orthopaedics and Spine Specialists P.C.

"Joint Exhibit #10"- Employer's Report of Occupational Injury or Disease dated November 6, 2007

"Joint Exhibit #11 - Notice of Intention to Reduce or Discontinue Payments

"Joint Exhibit #12 - State of CT Workman's Compensation Commissioner Voluntary Agreement, date stamped December 10, 2008

Attorney Ciccarillo submitted "Joint Exhibits #13 - #15.

"Joint Exhibit #13 – Personnel Department Attendance Record for Mr. Devin 2007-2008

"Joint Exhibit #14 – Last two (2) Temple Physical Therapy notes dated March 25, 2008 and March 26, 2008

“Joint Exhibit #15 – Center for Orthopaedics return to work certificate from Dr. Sumner dated March 25, 2008

Michael Devin was sworn in by Chairman Lettick. Attorney Walsh examined Mr. Devin. Attorney Ciccarillo cross-examined Mr. Devin.

Mr. Sullivan was sworn in by Chairman Lettick. Attorney Walsh examined Mr. Sullivan. Attorney Ciccarillo cross-examined and gave direct examination of Mr. Sullivan. Attorney Walsh gave redirect of Mr. Sullivan.

Chairman Lettick stated that it boils down to the Boards feeling on whether an MRI was required by the Town or by Mr. Devin. Attorney Walsh indicated that the Appellant has tried to get the MRI done but was unable to because he had no referral. It was his feeling that the Town is obligated, before denying the application, to schedule an MRI for Mr. Devin.

Attorney Ciccarillo stressed that Dr. Goodrich and Dr. Torey are independent medical examiners; they are not “the Town’s doctors”. The Town declined to order an MRI. Attorney Ciccarillo stated that it wasn’t until tonight that he was informed that Dr. Dickey declined to facilitate the MRI.

8:30 p.m. – The Board took a ten-minute break.

Attorney Walsh made a closing statement where he indicated that it was his position that the language of Section 2.5A is clear and unambiguous. He referred to “Joint Exhibit #12” which confirms that Mr. Devin’s injury of November 6, 2007 was in fact an accepted work related claim. The disability was expected to be permanent and continuous for the remainder of his life. A permanent light duty work restriction does not allow a person to be a police officer in the Town of Wallingford. He stated that Mr. Devin had met his burden and was entitled to a service connected disability pension.

Attorney Ciccarillo handed to the Board Members a summary to follow along with his closing statement. He reviewed the time line of doctor visits and doctors reports. It is the position of the Town that the injury was not solely caused by a work related incident. The contract/plan requires that the disability be “because of” or “a result of” a service injury and that is why Mr. Sullivan declined the application. Attorney Ciccarillo stated that the Appellant has not sustained his burden to establish that Mr. Sullivan’s assessment was in error.

There was discussion and each Board Member stated his/her position. Chairman Lettick discussed the possibility of briefing this case. It was decided that the case would not be briefed. The Board indicated that they would feel more comfortable making a decision after reviewing all of the exhibits. There was a Special Meeting scheduled for June 2, 2009 at 6:30 p.m.

ITEM 6 – ADJOURNMENT

Mr. Davis made a motion to adjourn. Mr. Furman seconded and the motion passed unanimously. The meeting adjourned at 9:55 p.m.

Submitted by,

Sonja Vining
Recording Secretary
Personnel & Pension Appeals Board