

**CITY OF PUNTA GORDA POLICE OFFICERS' RETIREMENT SYSTEM
BOARD OF TRUSTEES
INITIAL DISABILITY HEARING MEETING MINUTES**

Governor Ron DeSantis signed Executive Order 20-69 which suspends all statutes that require a quorum to be present in person or require a local government body to meet at a specific public place. It also provides that local government bodies may utilize communications media technology, such as telephonic and video conferencing, as provided in section 120.54(5)(b)2, Florida Statutes. Under Executive Order 20-69, the board meeting was held via video conference using Zoom.

Wednesday, October 21, 2020, 3:00PM

TRUSTEES PRESENT: Dylan Renz, Chair
Sam Kiburz, Vice Chair
Chris Salsman, Secretary
Greg Andrulonis
Gerald O'Halloran

TRUSTEES ABSENT: None

OTHERS PRESENT: Scott Christiansen, Christiansen & Dehner
Kim Kilgore, Foster & Foster
Lee Coel, Claimant (via Zoom)
James Brantley, Donnelly & Gross, Claimant's attorney
Gerald Kriegshauser, Fort Myers Court Reporter

- I. **Call to Order** – Dylan Renz called the meeting to order at 3:00PM.
- II. **Public Comments** – None
- III. **New Business**
 - a. Initial disability hearing – Lee Coel
 - i. Scott Christiansen reviewed the informal disability hearing process.
 - ii. Scott Christiansen commented Lee Coel had applied for an In-Line-of-Duty (ILOD) disability which arose from a shooting incident in August 2016. Scott Christian stated Lee Coel and his attorney, James Brantley, were present at today's initial hearing.
 - iii. Scott Christiansen briefly reviewed the court ruling on the applicant's eligibility to apply for the disability benefit.
 - iv. Scott Christiansen stated medical records had been collected along with the disability application, job description, personnel records, the plan's document and an independent medical exam (IME) which had been sent to the trustees to review before today's hearing.
 - v. Scott Christiansen reviewed the board would be able to review the records presented and hear comments from the applicant and his attorney. Scott commented if the disability were granted the benefit would be effective today, if denied a formal hearing could be requested by the applicant and if denied again applicant could request a judicial review.

- vi. Scott Christiansen commented the claimant had the burden to provide the proof to his right to a disability pension. Scott further commented the standard of proof for this proceeding would be preponderance of the evidence.
- vii. Scott Christiansen explained his role for the board in this proceeding.
- viii. Sam Kiburz asked would there be any personal liability for the board members and Scott Christiansen commented the trustees would be covered by sovereign immunity.
- ix. Scott Christiansen reviewed the pension plan provision as it pertained to the eligibility of a disability benefit. Scott further stated Mr. Coel was not eligible for non ILOD benefit since he did not have 10 years of service with the City.
- x. Scott Christiansen reviewed the applicant would need to be totally and permanently disabled from performing the duties of a police officer for the Punta Gorda police department. Scott further commented permanent disability meant the claimant's condition was not likely to improve to perform the duties as a police officer.
- xi. Gerald O'Halloran asked was the decision based only on performing as a police officer for the City of Punta Gorda. Scott Christiansen commented if the disability were approved and Mr. Coel became a police officer elsewhere the board would need to review the continuance of his disability benefit.
- xii. Scott Christiansen reviewed the exclusionary factors which disqualified receiving disability benefits from the plan.
- xiii. Scott Christiansen reviewed Lee Coel had been employed with the City for almost three years and was claiming post-traumatic stress disorder (PTSD).
- xiv. Scott Christiansen commented the benefit would be 60% of the claimant's average final compensation if approved.
- xv. Scott Christiansen reviewed the records collected and provided to the board noting the doctors pretty much all agreed the applicant suffered from PTSD from the shooting incident.
- xvi. Scott Christiansen reviewed Dr. Stephen Cohen who performed the IME stated Mr. Coel was totally disabled from performing his duties as a police officer because of PTSD and more likely than not the total disability secondary to PTSD was permanent. Scott further commented Dr. Cohen mentioned in the IME of procedures Mr. Coel could receive which could be helpful in reducing his PTSD symptoms. Scott commented Dr. Cohen agreed Mr. Coel developed PTSD and Major Depressive Disorder because of the shooting death of a citizen during an exhibition.
- xvii. James Brantley, Mr. Coel's attorney, reviewed the qualifications for ILOD disability as stated in the plan's document. Mr. Brantley reviewed Mr. Coel's doctor reports which were submitted all certified his ILOD disability. Mr. Brantley further reviewed the IME stated the disability was directly caused by the shooting incident while employed as a police officer for the City of Punta Gorda and Mr. Coel could no longer perform the duties as a police officer. Mr. Brantley stated Mr. Coel had met the qualifications for ILOD disability benefit.
- xviii. Mr. Brantley reviewed the plan document on conditions for disqualifying a disability benefit on being injured while committing a crime. Mr. Brantley commented criminal charge was filed with no plea or adjudication of guilt.

Mr. Brantley stated Mr. Coel entered a plea of no contest to the charges by the State Attorney's office and the State Attorney withheld adjudication to his guilt. Mr. Brantley further stated Florida courts have repeatedly held that a plea of no contest does not constitute an admission of guilt and therefore may not be used as direct evidence of guilt in civil court or administrative hearing. Mr. Brantley stated he had three cases where the courts found a plea of no contest did not admit guilt and could not be used in civil court or administrative hearing. Mr. Brantley commented Mr. Coel was never found guilty of committing a crime. Mr. Brantley further stated Mr. Coel did not instantly develop PTSD during the shooting incident but rather he developed the PTSD over time after the incident. Mr. Brantley stated the language for disability disqualification stated while committing a crime, so even if the board decided Lee Coel had committed a crime you would need to show PTSD was developed during the seconds while committing the crime.

- xix. Mr. Brantley stated Lee Coel had met the necessary conditions to qualify for a disability benefit. Mr. Brantley further stated the disqualifying language mentioned in the plan document are not applicable to Lee Coel's application for disability since there is nothing in the record on Lee Coel committing a crime. Mr. Brantley stated even if Lee Coel had committed a crime it was clear from Dr. Kaplan's report the PTSD was not occasioned during the seconds of the alleged crime rather it developed during the days, weeks and months following. Mr. Brantley respectfully requested the board approve Lee Coel's application for an ILOD disability pension benefit.
- xx. Scott Christiansen asked the board if they considered the applicant was not totally and permanently disabled from performing his position as a police officer.
- xxi. Gerald O'Halloran commented he did not agree the PTSD was permanent. Scott Christiansen stated the doctors agreed he was permanently and totally disabled from performing his police officer position due to the PTSD. The board agreed there was no question the disability arose in line of duty and he was totally and permanently disabled from performing his police officer duties.
- xxii. Scott Christiansen commented the burden was on the claimant to prove the disability did not occur while committing a crime.
- xxiii. Sam Kiburz commented the biggest part for the board was the decision on if a crime occurred. Scott Christiansen stated Mr. Coel was currently serving a ten-year probation for negligent homicide. Chris Salsman asked if Mr. Coel violated his probation would that now be a crime committed. Mr. Brantley stated Mr. Coel violating his probation would not determine he was guilty of a crime.
- xxiv. Gerald O'Halloran commented he was having a hard time believing the PTSD did not occur when he shot the citizen and with all the mistakes Mr. Coel made, he would be entitled to a benefit.
- xxv. Chris Salsman had no doubt Mr. Coel was entitled to the disability benefit per the doctors' reports and the language in the plan document.
- xxvi. Greg Andrulonis was leaning towards no on approving the disability for Mr. Coel.
- xxvii. Dylan Renz agreed to approving the disability benefit and had found it difficult to call it a crime if a judge was not going to call Mr. Coel guilty of a crime.

xxviii. Sam Kiburz commented he believed it was an accident and would approve Mr. Coel for a disability benefit.

The Board voted to approve an ILOD disability for Lee Coel, upon motion by Chris Salsman and second by Sam Kiburz, motion carried 3-2 (Gerald O'Halloran and Greg Andrulonis voted no).

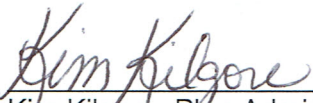
xxix. Gerald O'Halloran asked for the board to consider looking into changing the disability language at the State level.

IV. **Adjournment** – The meeting was adjourned at 4:17PM.

V. **Next Meeting** – The next quarterly meeting will be December 17, 2020, at 1:30PM.

Respectfully submitted by:

Approved by:



Kim Kilgore, Plan Administrator



Dylan Renz, Chairman

Date Approved by the Pension Board:

12/17/2020