



SUMMARY TO THE BOARD OF TRUSTEES SPECIAL MEETING

Wednesday, August 31, 2022

9:00 A.M. – 10:26 A.M.

City of Jacksonville Police and Fire Pension Fund
1 West Adams Street Suite 100, Jacksonville, FL 32202

Board of Trustees

Assistant Chief Chris Brown, Chair
Nawal McDaniel, Secretary
Mia Jones
Cpt. Michael Lynch
Terry Wood

Fund Staff

Timothy H. Johnson, Executive Director – Plan Administrator
Steve Lundy, Deputy Director
Chuck Hayes, Pension Benefits Manager
Maria Young, Finance and Pension Benefits Specialist

Guests

Daniel Bean, Abel Bean Law
Christopher Dempsey, Abel Bean Law
Sonya Harrell, Office of General Counsel
*Lawsikia Hodges, Office of General Counsel
Bob Sugarman, Fund Counsel
Diane Tropia, Court Reporter

*Ariel Cook, Office of General Counsel
Kyle Gavin, Office of General Counsel
*Sean Granat, Office of General Counsel
James Holderfield, JSO, Chair, Advisory Committee
*Randy Wyse, President, IAFF Local 122
*(904) 583-0223

Notice

Meeting Agendas and Summaries are available on our website at jaxpfpf.coj.net. For additional meeting documents, please contact Steve Lundy, Custodian of Public Records for the City of Jacksonville Police and Fire Pension Fund at 904-255-7373 or SLundy@coj.net to file a public records request.

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Agenda

I. Public Speaking

None.

II. Application for Disability Retirement – Joshua Livingood

Bob Sugarman discussed the process of today's meeting: Joshua Livingood, a member of the fund, has applied for a disability pension, saying his career has been cut short. This is a sad occasion for everyone, but sympathies must be put aside as the Board must look at the facts. The burden is on the member to prove they are eligible for a disability pension. The Advisory Committee has made a recommendation to the Board of Trustees to approve the disability application. Today, the Board's task is to either approve or reject the Advisory Committee's recommendation on the disability pension application.

Bob Sugarman overviewed the roles of the attorneys present today. No new evidence would be presented. The task of the Board is to decide whether to accept or reject the Advisory Committee's recommendation.

Bob Sugarman read sections 121.201 (b) and 121.109 (f) of the City of Jacksonville Code of Ordinances, which determine the requirements and limitations to granting disability retirement.

Michael Lynch moved to approve the Advisory Committee's recommendation to grant Joshua Livingood's application for disability retirement, seconded by Nawal McDaniel. Discussion:

Daniel Bean, attorney for Joshua Livingood, presented his case in support of Michael Lynch's motion. He recommended the Board of Trustees grant the disability pension, based on Joshua Livingood's condition(s). The Jacksonville Sheriff's Office cannot accommodate Mr. Livingood, and five medical doctors have evaluated his medical record and all agree that he is totally and permanently disabled and cannot perform the duties of a police officer.

Sonya Harrell, opposing counsel, presented her case in opposition to Michael Lynch's motion. She recommended the Board of Trustees reject the disability application, based on Joshua Livingood's pre-existing condition(s) prior to employment with the Jacksonville Sheriff's Office.

Michael Lynch said that according to the law, any pre-existing conditions have to be identified at the time of approval of membership in the pension fund. According to the record, there were no pre-existing conditions identified at the time Joshua Livingood was approved for membership in the pension fund. To become eligible for a disability retirement, two separate doctors are required to conclude that a member is totally and permanently disabled. In this case, five doctors have agreed Mr. Livingood is disabled.

Terry Wood discussed how in the insurance industry, pre-existing conditions are found to have existed, and policies cancelled, and commissions returned. There are consequences.

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Michael Lynch said that in this case, the law is unambiguous, although Terry Wood has valid points which may come up at another time.

Chris Brown said there is a two-pronged test today – is the member disabled? Yes. Are there any exceptions? No. For the Board’s purposes, both are satisfied. There were no preexisting conditions identified at the time of employment.

Nawal McDaniel agreed and said that looking at the code, the requirements are satisfied.

Mia Jones said she believes the requirements have been met to grant the disability pension.

The vote passed unanimously.

Bob Sugarman addressed Joshua Livingood’s attorneys and requested that Mr. Livingood ensure his contact information is updated with the Pension Office.

III. Forfeiture Discussion – Lynch’s Letter & Executive Director’s Report

Michael Lynch said that he wanted his position to be on the record. He pointed out that at the beginning of today’s conversation, Bob Sugarman said that the Board of Trustees is neutral. He said he cannot see that. The Board is paying the Office of General Counsel to work on a forfeiture. If the Board is neutral, it is the judge – however, it is paying for the prosecution. He said he talked with Timothy Johnson and could not come up with a way to justify this.

Michael Lynch said that in the official record – provided to the Board by Timothy Johnson – says ‘there was no fraud’ when it came to the disability application. When that conclusion was met, any responsibility that follows falls on someone else. If the Jacksonville Sheriff’s Office feels that Joshua Livingood defrauded the City, then they can build a case and hand Timothy Johnson a stack of papers with evidence. However, the Board kept going after Mr. Livingood after the investigation found no fraud. He said he wants to have the Board on the record saying this is what it wants to do. He said that four years from now, he could say that he made his case.

Timothy Johnson said that this is a situation in which he and Michael Lynch have a difference in opinion, and that is okay. The Board of Trustees does not handle forfeiture cases often. The law says that if the Executive Director perceives fraud, the Executive Director should investigate. He said he investigated three times, and brought results to the Board of Trustees in his Director’s Report. He said he had a perception of the possibility of fraud. This is only to substantiate that perception. Mr. Livingood’s answer to the specific question on the disability application asking if he had applied to any other department for this disability became a little suspicious.

Timothy Johnson said that when he reviewed JSO’s internal affairs report, he noticed it contradicted an answer on Mr. Livingood’s pre-employment physical. There was also another answer contradicting evidence related to an injury Mr. Livingood sustained prior to his employment with JSO. He said now, he is suspicious, and his job is to substantiate that suspicion.

Timothy Johnson said his third point is that 121.109(e) was possibly triggered, because Mr. Livingood did not disclose the disability he is now applying for. He said he received advice from counsel that prior military is exempt, and he does not think this is fraud.

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Timothy Johnson said that the Board of Trustees' rules put responsibility on the Executive Director to investigate, and it becomes the Executive Director's problem. He said that he thinks it is the facts in dispute, however the Board of Trustees has authority to do what it wants.

Michael Lynch said that Timothy Johnson hired an independent investigator, and based on the investigation, this disability application does not rise to the level of fraud on the PFPF. This should have been 'done, we are done with this, cased closed'. The fund should not be responsible for anything else beyond that. This was on the record in the June meeting.

Chris Brown asked Bob Sugarman how the Board should look at that report in this part of the process.

Bob Sugarman said the investigator's conclusion should be disregarded because the investigator went beyond his authority. The investigation finds facts – what happened. The facts then go to two places, the fund counsel and Lawsikia Hodges. The hearing will give Mr. Livingood a chance to tell his story. If these facts are all true, does that rise to the level of fraud. Do these facts cause the executive director to perceive fraud.

Michael Lynch said that he is somewhat appalled that four months after the Board of Trustees receives a document that says this, we are just now being told to disregard what the investigator said. That is problematic.

Bob Sugarman said that the determination of fraud is a legal decision. First, you have to find the facts. The Administrative Law Judge (ALJ) will make a finding of fact once all facts have been heard. The Executive Director's job, if he perceives fraud, is to send the facts to the lawyer. If the facts are proven, is it fraud? The lawyers say yes. Then it goes back to the Executive Director to issue a Notice of Proposed Agency Action. If the member wants a hearing, then they get to tell their side of the story. He said he believes the PFPF followed the procedure correctly.

Michael Lynch said he thinks the Board should cease all action on this matter.

Nawal McDaniel said that she thinks Michael Lynch is focusing on one part of the investigator's report. She said she thinks the Board has an obligation to move forward.

Bob Sugarman continued to discuss the process of the forfeiture procedure.

Timothy Johnson clarified his original three points regarding fraud following the investigator's report. He said he reviewed all reports and came to the conclusion of 'possible fraud'. There is not a point in the forfeiture procedure that requires the Board to authorize the Executive Director to move forward – the Board did not have to vote on it. He said that going forward, maybe the Board should amend the procedure if it wishes.

Lawsikia Hodges said that for the record, Michael Lynch has alluded that OGC has done something inappropriate, however OGC has done its job, and the Board has been following the Charter and forfeiture rules. She said OGC has been working in tandem with Bob Sugarman's office and Timothy Johnson.

Michael Lynch moved to discontinue paying all fees related to the Joshua Livingood forfeiture issue. There was no second.

Chris Brown adjourned the meeting at 10:26 A.M.

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IV. Adjournment
10:26 A.M.

Nawal McDaniel, Board Secretary

Summary Prepared By:

Steve Lundy, Deputy Director
City of Jacksonville Police and Fire Pension Fund

Posted: 09/06/2022

To be Approved: 09/23/2022