



Minutes
Queen Creek Public Safety Retirement Board
22350 S. Ellsworth Rd., Queen Creek, AZ
Town Hall-Council Chambers
February 24, 2011
9:00am

1. Call To Order and Roll Call

Chair Barney called the meeting to order at 9:00am.

Board Members present: Gale; Kross; Reese; Chair Barney. Board Member Gray was absent.

Staff present: HR Director Bruce Gardner; Board Attorney Justin Pierce; Board Secretary Jennifer Robinson; Fire Chief Van Summers.

Others present: Dr. Horn, M.E. and Dr. Gerkin, expert testimony participated via telephone.

Steve Springborn and Judy Tinkham.

2. Public Comment: Members of the public may address the Board on items not on the printed agenda. Please observe a time limit of three minutes. Note that pursuant to the Arizona Open Meeting Law, members of the Board may not discuss matters raised under this public comment portion of the meeting.

None.

3. Items for Discussion and Possible Action

A. Consideration and possible approval of the October 12, 2010 Minutes.

Motion to approve the October 12, 2010 minutes (Kross/Reese/Unanimous)

B. Discussion and possible action regarding the Board's understanding of Judy Tinkham's intent to apply for a rehearing within the time period prescribed by Arizona Revised Statutes.

HR Director Gardner gave a brief history of the Board approval on August 18, 2009 of a normal survivor death benefit application submitted by Judy Tinkham, surviving spouse of Eric Tinkham and the subsequent amended killed in line of duty death application approved by the Board on May 24, 2010. The Local Board unanimously approved the amended application as a killed in line of duty death. At that meeting, Fire Chief Van Summers, presented a

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statement of circumstances; Dr. Richard Gerkin provided pathology testimony and Steve Springborn, United Maricopa County Firefighters Association representative provided information provided general information on firefighters killed in line of duty deaths and information on other Board's approvals of killed in line of duty applications.

The PSPRS denied the application based on two concerns:

- a) Whether Ms. Tinkham timely appealed the Local Board's award of a survivor's pension on August 18, 2009.
- b) Whether Captain Tinkham's death was the result of natural causes, i.e., his death was not the direct and proximate result of the performance of his public safety duties.

Mr. Gardner asked the Board to discuss their intent of approval at the May 24, 2010 Board Meeting.

Board Member Reese stated that that the time of the initial approval for death benefits (August 18, 2009) the Board understood that an amended application for killed in line of duty benefits would be filed once the autopsy report was received and the initial approval was a stop-gap to provide for the family until the amended application could be filed.

Board Attorney Pierce added that if a representative from PSRPS was in attendance at the meeting, questions could have been asked of the Local Board. He stated that he is not aware of any law or regulation that prohibits an initial application to be filed when it is unknown when autopsy results will be complete. Mr. Pierce discussed filing claims with what information is available at the time; amended applications vs. appeals; and his belief that the Fund Manager's (PSPRS) opinion on the timeliness of the amended application is incorrect.

Chair Barney stated that he understood that it would take time to receive the autopsy results and other pertinent data before an amended application could be filed.

Board Member Kross stated that Ms. Tinkham was prudent in filing the initial application and not waiting for autopsy results which took several months to receive.

Mr. Pierce recommended the Board make a motion to accept the amended application as timely filed.

Motion to reaffirm Ms. Judy Tinkham's intent to apply for a line of duty death benefit and the Local Board's understanding that intent was made clear on August 18, 2009 and that the amended application was not an appeal or request for rehearing but an actual amended application (Kross/Reese/Unanimous)

C. Discussion and possible action regarding the amended Survivor's Benefit

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Application as a line of duty death application by Judy K. Tinkham, spouse of deceased member (Eric Tinkham).

Fire Chief Summers reiterated the position that the death of Capt. Eric Tinkham was directly related to the stresses of his profession over time. He read a statement from Dr. Horn, ME, relevant to Mr. Tinkham's cardiovascular condition. Mr. Summers asked Dr. Gerkin to restate position from previous Board meeting in regard to the death certificate.

Dr. Gerkin explained how dysrhythmia/irregular heartbeat can be caused by surges of adrenaline due to stressful events and that there is reasonable chance that it is related to employment. He provided information from articles related to firefighters and bodily reactions to stresses.

Dr. Horn, ME, said that physical and psycho-social factors, including exposure to extreme physical stress play a role in arrhythmia/dysrhythmia. He said the autopsy results don't show otherwise and clarified/restated his written statements regarding Mr. Tinkham's heart condition at time of death.

Mr. Pierce reviewed the statutory duty of the Local Board to decide all questions of eligibility and make determinations based on facts available to the Board. He asked Dr. Horn to give an opinion as to whether Mr. Tinkham's duties as a firefighter simply contributed or more than contributed to his death. Dr. Horn responded that Mr. Tinkham had a genetic pre-disposition to heart disease, but strong psycho-social factors and employment as a firefighter are strong contributors.

Mr. Pierce talked about multiple factors more than contributing to Mr. Tinkham's death.

Dr. Gerkin said he was of the same opinion and experience has shown that the duties as a firefighter was a strong and more than contributing factor than a pre-disposition to hypertension.

Mr. Pierce further reviewed the statutes that define that a surviving spouse of a deceased member is entitled to a killed in line of duty or injuries suffered on duty benefit. Mr. Pierce asked for clarification that stresses of duties of a firefighter were contributing factors to injuries suffered as opposed to other professions.

Dr. Gerkin and Dr. Horn agreed Mr. Tinkham died as an accumulation of injuries suffered over the course of many years as a firefighter.

There was discussion on facts of the case and opinions of the doctors and whether the State Board (PSPRS) read supporting documentation in making their decisions. Mr. Summers said he could re-read the statement of facts from the May 24, 2010 meeting.

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Drs. Gerkin and Horn disconnected at 9:29am.

Board Member Kross asked that all documentation, including the statement of circumstances be included and referenced in the application that is re-sent to PSPRS.

Mr. Pierce discussed the right of the Fund Manager to request a rehearing, but if the Fund Manager continues to disagree with the Local Board, they can no longer request another rehearing but would have to file a case in Superior Court under Administrative Procedures Act for any further action. He also reiterated that no representative of the Fund Manager was present at today's meeting to ask questions of the medical doctors. Mr. Gardner stated that a certified letter was sent with the agenda as well as a voicemail left with the Fund Manager. Mr. Gardner added that the transcript of the May 24, 2010 meeting will be resubmitted a conference call with Dr. Gerkin, Dr. Horn and Chief Summers was held prior to this meeting and a transcript will be submitted with the application.

The Board discussed procedures in referring members to an independent medical examiner for disability applications and the appropriateness to rely on Dr. Horn's findings.

The Board also discussed and requested that certain documents be referred to in the minutes as part of the record including: a recorded statement based on testimony of individuals establishing that Capt. Tinkham's profession contributed to his death and the following abstracts:

- Heart Rate and ECKG Responses of Firefighters
- Rates of Post Traumatic Stress Disorder
- Heart Disease in Firefighters
- Firefighters Non-Duty Deaths from Coronary Heart Disease
- Triggering of Acute Cardiovascular Disease Amongst Firefighters

The Board and Mr. Pierce discussed further the actions the State must take if the Fund Manager continues to disagree, including filing a suit in Superior Court against the Local Board.

Motion to find Captain Eric Tinkham was killed in the line of duty or died from injuries suffered in the line of duty (Reese/Kross/Unanimous)

Motion to approve the application submitted by Judy K. Tinkham as a line of duty death application or injuries suffered in the line of duty pursuant to state statute and in support of the previous motion (Kross/Gale/Unanimous)

4. Announcements

None.

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5. Adjournment

The meeting was adjourned at 9:48am.

Attest:

Gail Barney, Chairman
Queen Creek Public Safety Pension Board

Jennifer F. Robinson, Board Secretary

I, Jennifer F. Robinson, do hereby certify that, to the best of my knowledge and belief, the foregoing Minutes are a true and correct copy of the Minutes of the February 24, 2011 Queen Creek Public Safety Local Fire Pension Board. I further certify that the meeting was duly called and that a quorum was present.

Jennifer F. Robinson, Board Secretary

Passed and approved on February 9, 2012.