

BOARD OF TRUSTEES
Reconvened Regular Meeting
Friday, October 3, 2008, 12:00 p.m.
Retirement Fund Conference Room

MINUTES

DEFINED BENEFITS

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan reconvened at 12:07 p.m. Friday, October 3, 2008, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:

Joe T. San Agustin, Chairman
Wilfred P. Leon Guerrero, Vice-Chairman
Gerard A. Cruz, Treasurer
James J. Taylor, Secretary
Katherine T.E. Taitano, Trustee
Antolina S. Leon Guerrero, Trustee

Board of Trustees Absent:

George A. Santos, Trustee

Staff Present:

Paula Blas, Director
Jackie Blas, Recording Secretary
Dr. John C. Steele, Retirement Fund Medical Consultant
Kenneth Dunstan, Benefit Program Administrator
Greg Perez, Benefit Specialist III
Jackie Sablan, Benefit Specialist II
Lena Sanchez, Benefit Specialist II

Public Present:

Antonio Pangelinan
Enrique F. Torres

Chairman San Agustin stated that the Board of Trustees will now reconvene its regular meeting from Friday, September 26, 2008. Chairman San Agustin stated that the Board of Trustees will be entertaining, at today's meeting, the disability appeals.

II. MEMBERS AND BENEFITS DISABILITY APPEALS HEARING

Chairman San Agustin stated that the Board of Trustees will hear the disability appeals cases currently before the Board. Chairman San Agustin stated that he would like to establish the procedures for this hearing:

- Each case will be addressed individually.
- In order to preserve the privacy of the medical records of each applicant, each applicant's case is assigned a case number and will be addressed by the case number.
- The Board will hear the report by the Retirement Fund's Medical Consultant, Dr. John Steele. Dr. Steele will present the case summary, his findings and recommendations relative to each case. For identification purposes, Dr. Steele will refer to each case by its assigned case number.
- The Board may direct any questions to Dr. Steele. The Board of Trustees will refer to each case by their assigned case number.
- The Board will allow each applicant, and only the applicant, five to seven minutes to address the Board. Applicants are advised that their decision to address the Board in this forum will constitute their waiver of their rights to privacy of their medical records.

Chairman San Agustin stated that the Board of Trustees' decision will be guided by the American Medical Association (AMA) guidelines as adopted by Board Resolution No. 2005-001, retirement law, and the medical facts. The Board will deliberate and render their decision.

Chairman San Agustin read out loud the definition of disability: "A total and permanent disability for the purposes of this Chapter is one which results from some impairment of body or mind which can be expected to result in death, or can be expected to last for a continuous period of not less than twelve months. The impairment shall be one that substantially precludes a person from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that he/she would be competent to perform were it not for that impairment, and if founded upon condition which render it reasonably certain that it will continue indefinitely."

Vice-Chairman Wilfred Leon Guerrero asked for a clarification on whether the current law provides for a degree of disability. Chairman San Agustin stated that the Board of Trustees, on November 12, 2004, had adopted Retirement Fund Resolution No. 2005-001, to use the American Medical Association (AMA) Guidelines to the Evaluation of Permanent Impairments Editions, which makes reference to the appropriate illness and whole person percentage figure scale. Director Paula Blas stated that the threshold is 75% total disability. Vice-Chairman Leon Guerrero asked whether the Board has the authority to make a modification. Dr. John Steele, Medical Consultant, stated that he has been the medical consultant for the Retirement Fund for ten years and the Retirement Fund has been using the AMA Guidelines for disability. The old threshold was 50% and it is now 75% with the new guidelines. Dr. Steele mentioned having a third physician on appeal cases. Vice-Chairman Leon Guerrero stated that he is concerned about the modification of the procedures. Trustee Katherine Taitano stated that a certain threshold has been established. Vice-Chairman Leon Guerrero asked

whether the law was amended. Director Blas stated that there were statutory changes on the M&B agenda. Secretary James Taylor stated that there had been a discussion to change the law. Trustee Antolina Leon Guerrero stated that the law is clear on what is permanent and total disability. Chairman San Agustin read out loud Resolution No. 2005-001 “Whereas, the new Board desires to affirm the process used by prior Boards of Trustees in determining eligibility for disability retirement under the Defined Benefit Plan; and Whereas, the application packet, medical certification forms, questionnaires and other documentation used by prior Boards of Trustees is attached hereto and referred to as the ‘Disability Packet’; and Whereas, the selected Medical Consultant and participating physician’s evaluations are considered in determining disability applications; and Whereas, the application of the American Medical Association (AMA) Guide to the Evaluation of Permanent Impairments Editions, which makes reference to the appropriate illness and whole person percentage figure scale is used as a guide; and Now, Therefore, Be it Resolved, that the Board of Trustees of the Government of Guam Retirement Fund in exercise of its duties, hereby reaffirms the use of the ‘Disability Packet’ to include a list of participating physicians and disability processing forms attached hereto and the AMA Guide to the Evaluation of Permanent Impairments for processing disability retirement applications from members of the Defined Benefit Plan. Chairman San Agustin stated that Resolution No. 2005-001 was drafted by the Retirement Fund’s Legal Counsel. Dr. Steele made a comment that, in the Retirement system, it is either you have a disability pension or you don’t have a disability pension and the same goes with the Social Security system. The Veterans Administration uses a scale of disability and people are ranked in terms of their disability. The Retirement Fund’s system makes it more difficult. Each applicant is a special circumstance and the Board needs to hear each case under current procedures.

Trustee Antolina Leon Guerrero, seconded by Treasurer Gerard Cruz, moved to accept the Members and Benefits Disability Appeals Hearing Procedures. Without objection, the motion passed.

Chairman San Agustin stated that case numbers have been assigned on the appeal cases going before the Board of Trustees. Chairman San Agustin stated that Dr. Steele will present the cases to the Board. The names of the applicants are not provided or known to the Board. Chairman San Agustin stated that if the applicant would like to address the Board, he or she would have to waive their right to the privacy of their medical records and he or she must state his or her name for the record.

CASE NO. 08-1401

Dr. Steele stated that there are four reports on 08-1401. Dr. Steele stated that there is a brief statement of all examinations. Dr. Steele stated that his recommendation is to deny disability pension. Dr. Steele stated that Dr. Raymond Tanaguchi carried out a review. Chairman San Agustin stated that five physicians independently examined the applicant and all five physicians indicated that the applicant did not merit disability. Chairman San Agustin asked whether any of the physicians collaborated with other physicians. Dr. Steele replied, “No.” Vice-Chairman Leon Guerrero asked what is a system magnification. Dr. Steele that it is Dr. Tanaguchi’s term for exaggeration. Dr. Steele read his report out loud – “ Dr. Steele stated that the applicant had chronic persistent pains, although he/she had no disability. Trustee Taitano asked for a clarification on Page Two of Dr. Steele’s report in reference to the five medical reviews. Dr. Steele stated that it was Dr. Ramel Carlos. Trustee Gerard Cruz asked whether any of the physicians assessed the applicant’s disability rate. Dr. Steele stated that there is a summary report from the five physicians. Trustee Cruz stated that there is no difference in the

physicians' opinion. Chairman San Agustin stated that the initial physicians and the appeal physicians did not find the applicant disabled.

At this time Chairman San Agustin asked whether the applicant would like to address the Board of Trustees and if so, the applicant was advised that he/she would then waive his/her right of privacy. Chairman San Agustin indicated that no one came forward to address the Board.

Trustee Katherine Taitano, seconded by Trustee Antolina Leon Guerrero, moved to sustain the initial finding to deny appeal. The Board of Trustees concluded that Case No. 08-1401 does not merit disability. With a unanimous vote of yes, the motion passed. Trustee George Santos was absent.

CASE NO. 08-1722

Dr. Steele stated that the applicant is 47-67% disabled. Dr. Steele stated that his recommendation is to deny disability as the applicant is less than 75% although his/her medical condition is permanent. Chairman San Agustin stated that two physicians have a divided evaluation of the applicant. Chairman San Agustin stated that there is a variance in the assessment of the rate of disability. Dr. Steele stated that the rate is taken from the check list which is not usually filled out by the physician. Dr. Steele agreed that the applicant is permanently disabled but not totally disabled and that he/she ranked less than 75%. Chairman San Agustin asked what is the difference in total and permanently disabled. Dr. Steele stated that there are two different things. There are two criteria. This case is only permanently disabled. Chairman San Agustin asked whether arthritis is a disability. Dr. Steele replied, "Yes," it is impairment to his/her work. Trustee Taitano stated that she thought this applicant was given an opportunity to continue employment. Trustee Taitano stated that she voted to deny the appeal. Trustee Leon Guerrero stated that the Members and Benefits Committee met the applicant on December 2007 and also on a recent interview. The applicant did not speak at all and was still employed. There is a difference in opinion from the M&B Committee members. Treasurer Cruz stated that the disease progresses. The applicant may come back and may then qualify because the disease had worsened. Trustee Taitano stated that the appeal physician was independent. Treasurer Cruz asked whether there was a third physician. Director Blas replied, "Yes." Dr. Steele stated that the applicant had recommended to be interviewed by the M&B Committee and was his/her own advocate. Upon denial of appeal, family and friends testified. Vice-Chairman Leon Guerrero asked whether it is possible that his/her problem is getting worse. Dr. Steele replied, "Yes." His/her arthritis has worsened. Coronary disease worsens with age. Chairman San Agustin stated that there is a physical impairment. Age has a bearing. Dr. Steele stated that the arthritis of the hip was initiated by injury. Treasurer Cruz asked whether, under those recommendations, does Dr. Steele see his/her arthritis manageable or livable or does Dr. Steele see a probable deterioration. Dr. Steele stated that the arthritis of the hip is a common condition. There is no absolute progression. Treasurer Cruz asked what would determine the rate of pain. Dr. Steele stated that he used the AMA Guidelines. Secretary Taylor asked what is the prognosis of the physical examination. Dr. Steele replied, "Limitation of movement of hips, need to use a cane or walker." Vice-Chairman Leon Guerrero asked whether it is appropriate to have another examination. Chairman San Agustin stated that it is up to the Board. Vice-Chairman Leon Guerrero stated that the applicant is close to the 75% threshold. Chairman San Agustin suggested referring to the criteria. Dr. Steele stated that there is consistency in all three medical consultants that the applicant does not meet the 75% criteria. Dr. Steele stated that he does agree that the applicant's ailment may have progressed. Treasurer Cruz stated that it is progressing. Chairman San Agustin stated that the applicant could be referred to another physician. Chairman San Agustin stated that there is no

consistency with the physicians. Dr. Steele stated that the physicians all used the same guidelines but provided different opinions.

At this time Chairman San Agustin stated that the applicant will be given five to seven minutes to address the Board of Trustees and that if the applicant wishes to do so, he/she will be waiving his/her right of privacy. Chairman San Agustin indicated that no one came forward to address the Board.

Vice-Chairman Wilfred Leon Guerrero, seconded by Trustee Katherine Taitano, moved to approve that another examination be conducted and that Case No. 08-1722 be referred to another independent physician. Yes votes: Vice-Chairman Wilfred Leon Guerrero, Trustee Antolina Leon Guerrero, Treasurer Gerard Cruz, and Trustee Katherine Taitano; No votes: Chairman Joe San Agustin, and Secretary James Taylor; Absent: Trustee George Santos. With four affirmative votes, the motion passed.

CASE NO. 08-6196

Dr. Steele read out loud his May 12 Summary. Dr. Steele stated that his recommendation is to deny disability. Chairman San Agustin stated that the first and third physicians rated a 10% disability. Trustee Leon Guerrero stated that Dr. Doris Lim rated the applicant 13% disabled. Dr. Steele stated that on August 2007 the applicant had a problem with his/her back. The assessment by a Navy physician, Dr. Lim, Dr. Fred Schroeder and Dr. Vincent Duenas is 10%. Dr. Schroeder's 50% took into consideration two other diseases. The applicant's back problem was given 15% by three physicians. Secretary Taylor asked whether the other symptoms were systematic. Dr. Steele replied, "Correct." Chairman San Agustin stated that the applicant has not sought remedial action. Dr. Steele stated that the applicant was cared for in Virginia by a Navy doctor. Dr. Steele stated that at Tripler Hospital, the applicant did not want an operation and the pain went away. Dr. Steele stated that the applicant's ailment is a permanent condition. Dr. Steele stated that the applicant did not want an operation. Chairman San Agustin stated that there is a problem with people who do not want to take remedial action. Dr. Steele stated that it is common in applicants to not want to better themselves. Treasurer Cruz asked what the risk would be. Dr. Steele stated that it is minimal risk. Trustee Taitano stated that the Board was provided with findings and that the Board would have to deal with what it has at this time. Chairman San Agustin stated that the law is very specific.

At this time Chairman San Agustin stated that the applicant will be given five to seven minutes to address the Board of Trustees and that if the applicant wishes to do so, he/she will be waiving his/her right of privacy.

Applicant Antonio Pangelinan addresses that Board at this time and acknowledges waiving his right of privacy. Mr. Pangelinan stated that he thinks Dr. Steele is putting things out of proportion. Mr. Pangelinan stated that when he went to Tripler Hospital, he was given blood thinning medication and it was explained to him that it will take at least 46 hours on his back. Mr. Pangelinan stated that he spoke to several people who have undergone the same surgery and was told that they are experiencing more pain now than before surgery and that is why he refused surgery. Mr. Pangelinan stated that he has a permanent numbness in his left knee and his right knee went numb. Mr. Pangelinan stated that he is not obsessed, he does not consume alcohol, does not smoke or do drugs. Mr. Pangelinan stated that with the pain, he can not perform his duties. Mr. Pangelinan gave Dr. Steele the April 2008 report to read indicating he also has problems with his neck and that he is going to alternative treatment and does not want to use drugs. Mr. Pangelinan stated that being 56 years old, his arthritis is getting worse.

Mr. Pangelinan concluded by saying that Dr. Steele's report has thrown things out of proportion and thanked the Board for giving him the opportunity to address the Board.

Chairman San Agustin stated that three physicians had reported that the applicant is not totally disabled. The physicians were guided by the law. Trustee Taitano asked about the disparity in the two ratings and asked whether Dr. Schroeder took other conditions into consideration. Chairman San Agustin stated that the applicant may be permanently, but not totally disabled. Losing one arm does not make an individual totally disabled. Trustee Taitano asked whether one physician took other conditions and one other physician took only the condition listed in the application. Of the three physicians, two looked at the applicant's back issue and the other physician looked at other issues. Chairman San Agustin reiterated that the physicians were given guidelines to follow the law. Dr. Steele stated that the physicians gave a full examination of the applicant. Treasurer Cruz stated that it complicates the Board's review. The physicians who were hired are out of line. Dr. Steele stated that it is important to have three independent physicians. Dr. Steele stated that all three physicians assessed the applicant's back problem. One physician included future conditions. Dr. Steele agreed that there are other conditions. Dr. Steele stated that he takes the full medical condition into consideration. Chairman San Agustin asked whether Dr. Steele could go back to Dr. Schroeder to have him only take the applicant's initial condition. Chairman San Agustin asked whether the applicant could be reevaluated. Dr. Steele replied, "No." Secretary Taylor stated to look at the evidence presented before the Board. Treasurer Cruz stated that there is an issue on the process.

Secretary James Taylor, seconded by Trustee Antolina Leon Guerrero, moved to sustain the initial decision of the Board of Trustees to deny the appeal of Case No. 08-6196. With a unanimous vote of yes, the motion passed. Trustee George Santos was absent.

CASE NO. 08-7788

Dr. Steele read out loud his report of May 2008, February 3, 2008, Page 2 – Dr. Steele stated that Dr. Fred Schroeder was the 4th examiner. The Veteran Affairs (VA) gave the applicant 100% disability. Chairman San Agustin asked how did the VA grant 100% disability. Chairman San Agustin also asked whether it is for the same ailment. Director Blas replied, "No." Chairman San Agustin asked whether there was a Posttraumatic situation. Dr. Steele stated that it was an acute breakdown. Dr. Steele stated that the family had relocated to Arizona as the applicant was tired of teaching. Vice-Chairman Leon Guerrero stated that there is a statement in the report that the applicant was happy to relocate to Arizona. Secretary Taylor asked whether this is subsequent to the report. Dr. Steele stated that the last letter was on May 12, 2008 which was written after the VA approved 100% scepctrofranic disorder. Secretary Taylor asked whether it was before or after denial. Dr. Steele stated that it was after. Secretary Taylor asked whether there was a different opinion because the criteria were different. Dr. Steele stated that it was very difficult for him. Dr. Steele stated that the applicant was carefully examined by Dr. Kallingal and that Dr. Kallingal and Dr. Schroeder did not agree. Dr. Steele stated that he was feeling very pressured and is concerned. Chairman San Agustin stated that with the applicant being granted 100% disability from the VA disqualifies him/her from receiving disability on the same ailment. This would be the basis for not entertaining this case. The Retirement Fund processed denial before the VA disability. Chairman San Agustin stated that this is an automatic disqualification for the same ailment. Treasurer Cruz stated that the whole medical examination is moot. Trustee Taitano read a section of 4GCA Section 8123(a) regarding disability – "A member less than sixty-five (65) years of age, who shall become totally and permanently disabled for service, either mentally or physically, regardless of how or where the disability shall have occurred after joining the

Retirement Fund, shall be entitled to a disability retirement annuity; provided, that he is not receiving disability payment from the United States Government for substantially the same ailment...” Dr. Steel stated that the applicant was granted 100% total and permanent disability by the VA.

At this time Chairman San Agustin stated that the applicant will be given five to seven minutes to address the Board of Trustees and that if the applicant wishes to do so, he/she will be waiving his/her right of privacy. Chairman San Agustin indicated that no one came forward to address the Board.

Secretary James Taylor, seconded by Treasurer Gerard Cruz, moved to deny the application for Case No. 08-7788 on the basis of the 100% VA disability on the same criteria. With a unanimous vote of yes, the motion passed. Trustee George Santos was absent.

RECESS: 2:49 P.M.

RECONVENED: 2:58 P.M.

CASE NO. 08-7973

Dr. Steele stated that he has not been discussing all the information needed to reveal the background of the applicants. In this case Dr. Steele read out loud his August 14, 2008 report, August 2007 report, February 2008 report. Dr. Steele stated that the initial recommendation is to deny disability. Dr. Steele read out loud the 6th paragraph – third physician Did not warrant medical disability. Chairman San Agustin asked whether the applicant is receiving Social Security disability. Chairman San Agustin stated that Section 8134 Same medical disability. Chairman San Agustin stated that the third physician indicated 100% disability. Chairman San Agustin asked whether the process started before the Social Security disability was granted. Chairman San Agustin stated that the granting of the Social Security disability on the same ailment disqualifies the applicant.

At this time Chairman San Agustin stated that the applicant will be given five to seven minutes to address the Board of Trustees and that if the applicant wishes to do so, he/she will be waiving his/her right of privacy.

Applicant Enrique Torres addressed that Board at this time and acknowledged waiving his right of privacy. Mr. Torres stated that he has been ordered not to go back to work. The Department of Public Health and Social Services (PH&SS) will terminate his employment. Mr. Torres stated that his employer tried putting him in another lower position. Mr. Torres stated that he does not want to lose his retirement benefits. Mr. Torres stated that he will be more than happy to relinquish his 100% Social Security disability benefits and would like to undergo another evaluation. Chairman San Agustin stated that the fact is that he is receiving disability pension from the U.S. Government. Mr. Torres stated that he was not aware of the law and if he had known he would not have applied for Social Security disability. Chairman San Agustin asked whether if he rescinds the Social Security disability, what is its legality to receive annuity from the Retirement Fund. Secretary Taylor asked if Mr. Torres' statement that he is not allowed back to work means that the Government of Guam is making the decision that Mr. Torres is disabled. Secretary Taylor stated that the PH&SS's decision not to have Mr. Torres back to work affects the Board's decision. Trustee Leon Guerrero stated that the Retirement Fund can not give a disability pension to someone already receiving a disability pension on the same ailment. Vice-Chairman Leon Guerrero asked whether Mr. Torres could retire on a regular service retirement. Director Blas stated that Mr. Torres has 16 years of government service. Vice-Chairman Leon Guerrero stated that Mr. Torres has made an investment in the Retirement Fund.

Secretary Taylor stated that he is puzzled that someone qualified to return to work is not allowed to go back to work. Dr. Steele stated that Mr. Torres was being denied to return to work by two physicians. Mr. Torres' medical condition may cause injury at work. Chairman San Agustin stated that Mr. Torres did not meet the threshold and his receiving Social Security disability disqualifies him for a Retirement Fund disability annuity. Director Blas mentioned that the Retirement Fund received the Social Security Administration verification this year. Trustee Taitano stated that the Board needs to find a resolution. Vice-Chairman Leon Guerrero stated that Mr. Torres has the option to withdraw his contributions.

Treasurer Gerard Cruz, seconded by Trustee Antolina Leon Guerrero, moved to sustain the action of the Board of Trustees which is to deny disability for Case No. 08-7973, based on the reports and the Social Security law. With a unanimous vote of yes, the motion passed. Trustee George Santos was absent.

RECESS: 3:44 P.M.

RECONVENED: 3:52 P.M.

III. INVESTMENT COMMITTEE

Vice-Chairman Leon Guerrero reported on the Investment Committee's pending issues as follows:

1. *Funding of New Managers*

- a. REITS – Cornerstone Real Estate Advisers and Security Capital Research Management
- b. Domestic Small Cap – Thomson Hortsman & Bryant
- c. Domestic Large Cap Grown – Winslow Capital Management

Vice-Chairman Leon Guerrero stated that the Investment Committee's recommendation is to hold off on funding the new managers listed above. Chairman San Agustin stated that this will be reviewed at the December 2008 due diligence meetings.

2. *Income Research Management (IRM)*

Vice-Chairman Leon Guerrero stated that the Investment Committee's recommendation is for the Board to authorize the transfer of the remaining Aberdeen Assets to IRM and for the Board to grant IRM's request to segregate the Portfolio into two Portfolios (IRM Portfolio and Transition Portfolio) Treasurer Cruz stated that this is to agree with IRM's conditions.

3. *Credit Rating Issue Relative to Assets to be Transferred from Aberdeen to IRM*

Treasurer Cruz stated that staff provided the Investment Committee with a listing of the purchases which did not meet the law as it relates to the time of purchase. Treasurer Cruz stated that the best route is to have a third party look at the time of purchase. Director Blas stated that she will review the Investment Policy Statement (IPS) on whether it agrees with the statute. Vice-Chairman Leon Guerrero suggested keeping the list and monitoring it. Treasurer Cruz recommended for a report on a monthly basis.

Vice-Chairman Wilfred Leon Guerrero, seconded by Treasurer Gerard Cruz, moved to accept the Investment Committee's recommendations: 1) to hold off on funding the new managers (Cornerstone Real Estate Advisers and Security Capital Research Management; Thompson Horstmann & Bryant; and Winslow Capital Management); 2) to agree to the transfer of the remaining Aberdeen Assets to Income Research Management and to grant IRM's request to segregate the Portfolio into two Portfolios; and 3) determined that the listing is in compliance when originally acquired and that IRM should not be held liable. These recommendations are consistent with the Retirement Fund's Investment Consultant's advice. Without objection, the motion passed.

4. Informational Items: September 30, 2008 Asset Allocation Summary

Chairman San Agustin thanked the staff and management for preparing the chart. Secretary Taylor stated that the Board should be prepared to make a public acknowledgement of this.

Chairman San Agustin stated that it should show that income has not been disturbed. Secretary Taylor stated that he would like to see the report.

IV. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

V. ANNOUNCEMENTS

None

VI. ADJOURNMENT

There being no further business before the Board for the Defined Benefits Plan, on motion of Trustee Antolina Leon Guerrero, seconded by Trustee Katherine Taitano, and without objection, the meeting was adjourned at 4:05 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of October 3, 2008 Reconvened Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on March 6, 2009.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas