

BOARD OF TRUSTEES
Reconvened Regular Meeting
Friday, February 27, 2009, 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 12:25 p.m. Friday, February 27, 2009, 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
George A. Santos, Trustee
Katherine T.E. Taitano, Trustee
Antolina S. Leon Guerrero, Trustee

Staff Present:

Paula Blas, Director
Diana Bernardo, Controller
Rosalia Bordallo, General Accounting Supervisor
Jackie Blas, Recording Secretary
Mike Perez, Great West Retirement Services
Dr. John C. Steele, Retirement Fund Medical Consultant (*1:39 p.m.*)
Kenneth Dunstan, Benefit Program Administrator
Jackie Sablan, Benefit Specialist II
Lena Sanchez, Benefit Specialist II

Legal Counsel Present:

Elyze McDonald, Carlsmith Ball (*1:07 p.m.*)

Public Present:

Mark Health, Metropolitan West Capital Management
Attorney Randall Cunliffe
Reverend Jeffrey Johnson
Emiliana M. Perez

Chairman San Agustin stated that the Board of Trustees will now reconvene its regular meeting from Thursday, February 26, 2009. Chairman San Agustin stated that the Board of Trustees will be entertaining, at today's meeting, the rest of the Agenda items except for the Investment Committee Report which will be entertained on March 6, 2009.

RECESS: 12:28 P.M. (To go into the Defined Contributions Meeting)
RECONVENED: 12:46 P.M.

II. REVIEW AND APPROVAL OF BOARD MINUTES

A. September 26, 2008 Regular Meeting, October 3, 2008 Reconvened Meeting, October 31, 2008, December 5, 2008 and January 16, 2009 Regular Meetings

Treasurer Gerard Cruz, seconded by Trustee George Santos, moved to table the Minutes of September 26, 2008 Regular Meeting, October 3, 2008 Reconvened Meeting, October 31, 2008, December 5, 2008 and January 16, 2009 Regular Meetings. Without objection, the motion passed.

III. CORRESPONDENCE

A. Letter from Asia Pacific Group at Smith Barney Regarding Formation of a Joint Venture

Chairman San Agustin stated that he received a letter from Asia Pacific Group at Smith Barney regarding Morgan Stanley and Citi's formation of a joint venture. Chairman San Agustin stated that the letter states that the joint venture does not change the commitment that the Consulting Group places on its paramount mission to deliver unbiased objective investment advice that helps their clients meet or exceed their financial objectives. Chairman San Agustin stated that this is provided for the Board's information.

B. February 11, 2009 Letter from Gary Lisenbee, Metropolitan West Capital Management, Regarding Evergreen's Ownership Percentage

Chairman San Agustin stated that he received a letter from Metropolitan West Capital Management (MWCM) regarding the change of Evergreen's ownership percentage from 77% to 80%. Chairman San Agustin stated that this is provided for the Board's information.

C. February 18, 2009 Email from Don Quinata Regarding Partial Withdrawal of Retirement Contribution due to Financial Hardship

Chairman San Agustin stated that he received an email from Don Quinata requesting for assistance for a partial withdrawal of his retirement contributions. Chairman San Agustin stated that Mr. Quinata is aware that he does not meet the criteria for a hardship withdrawal but would like to know what other options are there. Chairman San Agustin stated that Mr. Quinata is requesting for an exemption.

Director Paula Blas stated the hardship criteria is for medical expenses, funeral expenses, and eviction/foreclosure. Director Blas stated that Mr. Quinata does not meet the hardship criteria.

Trustee Antolina Leon Guerrero, seconded by Trustee George Santos, moved to stand by the Retirement Fund's policy regarding hardship eligibility and to confirm Management's earlier decision to deny Mr. Don Quinata's request. Without objection, the motion passed.

IV. INFORMATIONAL ITEMS

None

V. DIRECTOR'S REPORT - EXECUTIVE SUMMARY

1. *Candelaria Rios, et al. vs. Joseph Ada, et al. (Special Proceeding Case No. SP206-93)* –

Director Blas stated that GEDCA will not be issuing the credit for the General Obligation Bond at this time due to the current market environment. Director Blas stated that Bill 51 passed. Section 30 monies will be obligated to pay COLA, Tax Refunds and the Earned Income Tax Credit (EITC). The General Fund will be used for the Dump Closure. Director Blas stated that certain amendments were made on the bill. Funds can not be expended without the authorization by the Legislature. Secretary James Taylor stated that the bond trustee is obligated to disburse funds.

2. *Global Custody Services* - Director Blas stated that at the January 16, 2009 Board meeting, the Board continued to suspend participation in Securities Lending. Director Blas stated that Mr. Terry Dennison of Mercer Investment Consulting, Inc. will discuss this matter next week.

3. *Real Estate Investment Trusts (REITS)* - Director Blas stated that at the December 5, 2008 Board meeting, the Board approved a 2.5% investment in REITS. Funding for Cornerstone Real Estate Advisers and Security Capital Research & Management has been completed. Director Blas stated that the asset listing is provided in today's meeting packet.

4. *U.S. Domestic Small Capitalization Core Equity* - Director Blas stated at the January 16, 2009 Board meeting, the Board continued to defer funding for Thomson Horstmann & Bryant. Director Blas stated that Mr. Dennison will discuss this matter next week.

5. *Request for Proposal (RFP): Banking Services* – Director Blas stated that evaluations are ongoing.

6. *Public Law 28-38* - Director Blas stated that the monthly interest payments for February 2008 for the Guam Public School System (GPSS) and Guam Memorial Hospital Authority (GMHA) were paid.

7. *Bernstein Litowitz Berger and Grossmann (BLBG)* - Director Blas stated that BLBG filed on February 23, 2009, the second amended consolidated class action complaint against Lehman Brothers to include securities and bonds. Director Blas stated that BLBG is currently reviewing the portfolio Aberdeen was managing prior to their termination to ensure that all trades were proper.

8. *Health Plan Study* - Director Blas stated that the Health Study is currently being conducted by Milliman, Inc. The anticipated completion date is expected around March 11, 2009. Director Blas mentioned that the FY 2010 GovGuam Health Insurance negotiations are ongoing. Vice-Chairman

Wilfred Leon Guerrero inquired about Mrs. Ana San Nicolas' letter of resignation. Director Blas stated that a letter was sent to Mrs. San Nicolas thanking her for her services. Chairman San Agustin stated that Mrs. San Nicolas' term has expired.

Financial Report

1. ***Contributions*** - Director Blas stated that all agencies are current with their Fiscal Year 2009 employee and employer contributions.
2. ***Financial Statements*** - Director Blas stated that the books for the month ending January 2009 were closed on February 13, 2009.
3. ***Fiscal Year 2009 Retirees' Supplemental Benefits*** - Director Blas stated that the supplemental benefits for retirees and survivors for the month of January 2009 were paid. February 2009 benefits are scheduled to be paid today, February 27, 2009.
4. ***Medicare Reimbursements*** - Director Blas stated that the Retirement Fund continues to receive the Fiscal Year 2009 monthly allotments and payments are processed accordingly.
5. ***Government of Guam Retirement Fund Fiscal Year 2009 Budget: Transfer Authority*** - Director Blas stated that, in compliance with the Retirement Fund's Fiscal Year 2009 Approved Budget, all transfers made within the budget must be reported to the Board on a monthly basis. Director Blas stated that for the month of January 2009, \$30,500 was transferred from Medical Examinations and \$14,000 from Internal Auditor to fund the Actuarial Health Study Plan.

VI. LEGAL COUNSEL'S REPORT

A. Letter Dated January 29, 2009 Regarding Disability Applications

Legal Counsel Elyze McDonald stated that based on her participation and observation from the last Board meeting, her recommendations to the Board regarding the disability benefit proceedings are as follows:

1. Elimination of appeals to the Board
2. Repealing 4 Guam Code Annotated Section 8126 – Appeal of Medical Certification
3. Modifying the Disability Benefit Application
4. Handling the Hearing

Legal Counsel McDonald stated that appeals should go to Superior Court. There is no need to appeal at Board level. Treasurer Gerard Cruz asked whether the Court could overturn the Board's decision. Legal Counsel McDonald stated that the Court could ask the Board to exercise its authority to reconsider its decision. Legal Counsel McDonald stated that the Board should make a decision at the first review and if the decision is appealed it should go directly to the Superior Court. Vice-Chairman Leon Guerrero mentioned that there was a previous case where the applicant was denied disability because the applicant was in remission and then the cancer came back. Trustee Katherine Taitano stated that the applicant could come back as a new applicant. Trustee Antolina Leon Guerrero stated that she agrees with recommendation No. 3 – “Modifying the Disability Benefit Application.” Trustee Leon Guerrero stated that the application should be modified so that the applicant should be asked if they had applied before and how has their condition changed since the last application. Secretary Taylor asked, based on Legal Counsel's recommendation, which cases will still be heard at the Board

level. Legal Counsel McDonald stated that it would be the initial applications and if the case has been appealed already, the Board should move forward with that. Legal Counsel McDonald stated that the Board will no longer hear appeal cases. Treasurer Cruz asked who will hear the appeals if the applicant is not satisfied with the Board's decision. Legal Counsel McDonald stated that it will go to court. Legal Counsel McDonald stated that, on the recent appeals, new reports were submitted. Legal Counsel McDonald stated that the Board has the option to review or reconsider a decision. Chairman San Agustin stated that the Court can not change the Board's decision if it is sufficiently supported and justified based on medical evidence. Legal Counsel McDonald stated that Chairman San Agustin is correct to say that the Court can not change the Board's decision if it is sufficiently supported and justified based on medical evidence. Chairman San Agustin stated that the Court could find that the Board did not exercise due diligence in the processing of the applicant. Legal Counsel McDonald stated that it should be made clear to the applicant that if there is additional information, it should be provided to the Retirement Fund and that the case may again go before the Board. Trustee Leon Guerrero stated that the question is whether the Board should be hearing appeal cases. Trustee Leon Guerrero stated that Legal Counsel is saying that the Board could continue to reconsider if the applicant comes back with new information. Trustee Leon Guerrero asked whether the Board would like to hear all the applications and make a decision and if the applicant appeals, the appeal will go before the Board. Treasurer Cruz stated that he would like for the Board to hear and settle all the applications before it goes to Court. Mrs. Rosalia Bordallo, General Accounting Supervisor, stated that, unless new evidence is provided, the Board should not be entertaining appeals. Chairman San Agustin stated that this item will be tabled for further discussion.

VII. TREASURER'S REPORT OF FINANCIAL STATUS

Treasurer Cruz stated that the Treasurer's Report is provided, at this meeting. It covers the Retirement Fund's Statement of Plan Assets (unaudited) for both the Defined Benefit (DB) Plan and the Defined Contribution (DC) Plan for the month ended January 31, 2009.

Treasurer Cruz stated that the Retirement Fund's total net asset as of January 31, 2009 is \$1.165 Billion. Chairman San Agustin inquired about the market value. Controller Diana Bernardo stated that the market value is \$893 Million as of February 26, 2009. Treasurer Cruz stated that the Retirement Fund is still operating within the approved level of authority. The Retirement Fund does not need to pull any money down from principal to cover payroll. Treasurer Cruz stated that going into March, the Retirement Fund's projection of principal drawdowns is \$4 Million and \$2.5 Million every month thereafter.

VIII. MEMBERS AND BENEFITS DISABILITY APPLICANTS

Chairman San Agustin stated that the Board of Trustees will hear the disability cases currently before the Board.

CASE NO. 08-4401

Chairman San Agustin requested for a brief summary of the case. Legal Counsel McDonald stated that there is a Writ of Mandate and the Board is supposed report back to the Court on its compliance with the Writ. Chairman San Agustin stated that with the new procedure, the full Board has to hear the full application.

Dr. John Steele, Retirement Fund's Medical Consultant, read out loud his summary and conclusion report dated August 31, 2005. "This 60 year old Caucasian and veteran who has been employed by the Department of Corrections since March 9, 1994 has developed symptoms of shortness of breath since early 2005. The applicant's chest x-rays and CT scan of the lungs show an abnormality but the nature of the disease process is uncertain and lung biopsy has been recommended. By pulmonary function studies performed in June, the applicant suffers impairment of 10 to 25% because of a Force Volume Capacity (FVC) of 64% and an FEV1 of 69%. However, the applicant has a slightly greater diffusion defect and a DCO of 43% predicted value which places the applicant in a Class 3 rating and 26-50% impairment of the whole person by AMA Guidelines [i.e. 5th Edition, Page 107, Table 5-12 Impairment Classification (book available for review)] for respiratory disorders using pulmonary function and exercise test results. The applicant does suffer post-traumatic stress syndrome which dates from Vietnam before the applicant's employment with the Government of Guam. The applicant is also prone to depression with stress at work. Those symptoms, when they were last recorded in 2004 were controlled by medication and counseling at the Veterans Center, therefore, no disability for depression or Post-Traumatic Stress Disorder (PTSD) is given. The applicant's symptoms relating to joint pain are attributed to osteoarthritis by the Veterans Clinic during 2004. There is no indication in those notes that the applicant suffers a more serious underlying disorder such as rheumatoid arthritis or polymyalgia rheumatica. The symptoms of joint pain are minor and are unassociated with joint deformity or impairment of function. Therefore, I have not assigned a disability rating for those symptoms of polymyalgia/arthritis. Because the applicant's disability is no greater than 50%, I recommend denial of disability pension."

Dr. Steele's comment was that, from his review of the records, the applicant is not totally disabled. Furthermore, the applicant clearly requires a lung biopsy to establish the cause of the applicant's pulmonary disease and then, if indicated, referral to a transplant center for an opinion about transplantation. Dr. Steele stated that if transplantation were to be recommended by a responsible physician at a transplant center, then he feels that the Retirement Fund Board of Trustees should give a recommendation to this application. Dr. Steele stated that he is very reluctant to make that recommendation on a basis of the evaluation by Dr. Eric Crawley, a Navy physician, at the present time. Dr. Steele stated that his recommendation is to deny medical disability. Vice-Chairman Leon Guerrero asked what will happen if the applicant gets transplantation. Dr. Steele stated that the applicant may get worse. The lung transplant is a very major end stage procedure.

Dr. John Steele read out loud his report dated May 2, 2006. "On August 31, 2005, I evaluated this 60 year old Property Management Officer with the Department of Corrections who had been employed by the Government of Guam since March 9, 1994 and who had made application for Disability Retirement on July 14, 2005. At that time, I did not feel the applicant was totally disabled and I felt the applicant's disability was no greater than 50%. The applicant's reason for application was for pulmonary fibrosis and I felt a lung biopsy to establish the cause of the applicant's disease was required. In 2005 at the recommendation of the applicant's physicians at the U.S. Naval Hospital, the applicant moved to Asheville, North Carolina, to be close to major medical facilities and a transplant center since the applicant had been advised that lung transplantation might be needed for the management of the applicant's pulmonary disease. In October 2005, the applicant was evaluated at the Veterans' Administration in Asheville. The applicant's diagnosis was pulmonary fibrosis. The applicant has been followed up as a patient in the VA system since that time. On December 28, 2005, the applicant was evaluated by Dr. Khalid Bashir, Chief of Pulmonary Medicine at the Veterans' Administration Medical Center (VAMC). Dr. Bashir concluded that the applicant had interstitial lung

disease with evidence of pulmonary fibrosis. The exact etiology was unclear at that time. Connective tissue disease was strongly in the differential diagnosis as the applicant had an elevated ESR and a RA. Dr. Bashir indicated a rheumatology consultation was pending. Dr. Bashir increased the applicant's Prednisone [an anti-inflammatory agent used to treat autoimmune disease] to 60mg each day. Dr. Bashir felt bronchoscopy of an open lung biopsy would probably be necessary to establish the diagnosis and to decide if the applicant required further medication to suppress the fibrotic process. In Dr. Bashir's note [which was provided to the Retirement Fund], he noted that the pulmonary function tests the applicant had at VAMC were "consistent with mild restrictive defect with a decrease in diffusion capacity. There does not seem to be a significant decline since May 2005. High resolution computed tomography scan done in VAMC is similar to the computed tomography scan the applicant brought from Guam which was done in May 2005." Dr. Steele stated that the applicant was in stable condition for one year. In the Dr. Bashir's history, he noted that the applicant had begun to develop shortness of breath and dyspnea on exertion about December 2004, a year before his evaluation. Investigation on Guam had established the diagnosis of pulmonary fibrosis. The applicant's shortness of breath had progressed and the applicant had developed a dry cough in the interval. The applicant had moved to Asheville to be close to medical facilities there that were capable of providing lung transplantation should that become necessary. On February 8, 2006, the applicant was evaluated for the Retirement Fund by a Dr. Trent Melum of the Asheville Veterans' Administration Hospital. Dr. Melum indicated that the applicant was diagnosed to suffer "rheumatoid lung." The applicant was having increasing trouble breathing and required oxygen with activity. Dr. Melum estimated the applicant's impairment as 100% though Dr. Melum did not refer to AMA Guidelines in his determination. Dr. Steele stated that there is no justification to the 100% rating from Dr. Melum. On March 31, 2006, Dr. Bashir wrote on the applicant's behalf. At that time, "the applicant was being treated with high dose immunosuppressive drugs and required oxygen around the clock. The applicant's lung functions are significantly decreased and the applicant suffers from severe shortness of breath with minimal exertion." Despite this clinical evaluation, a CAT scan of the chest of March 22 was unchanged from the examination of December 2005. At that time, Dr. Bashir felt the applicant's pulmonary fibrosis was most likely related to rheumatoid arthritis. The applicant was to continue 40mg of Prednisone each day and was to return in six weeks when Dr. Bashir would evaluate the applicant's exercise tolerance [i.e. 6 minute walk test] and the optimum dose of Prednisone. Dr. Steele stated that 40mg is a modest dosage of Prednisone. The dosage should be the maximum dosage of 120mg.

Dr. Steele stated in his summary and conclusion is that since December 2005 and during seventeen months this 60 year old Property Management Officer with the Department of Corrections has had increasing trouble in breathing which is due to pulmonary fibrosis in consequence of an autoimmune disorder termed "rheumatoid lung." Since October 2005, the applicant has been undergoing therapy to arrest this condition at the Asheville Veterans' Administration Hospital in North Carolina. The applicant's most recent evaluation in March indicates that the applicant's chest x-ray has not altered but there is an increasing need for oxygen. The applicant is presently on immunosuppressive medications to arrest the process. Dr. Steele stated in his comment that he has discussed the applicant's situation of pulmonary fibrosis with Pulmonologist Muhammad Madantschi on Guam. Dr. Steele stated that they both agreed that the applicant has progressive impairment by the history of the applicant's current attending physicians. Despite an increasing need for oxygen supplement during activity, the applicant's imaging of the lungs and the applicant's pulmonary function tests have not altered significantly and they indicated a diffusion defect of greater than 50% by the most recent pulmonary function test of December 2005. Thus, by AMA criteria, the applicant's disability based on

pulmonary function studies remains 26-50% impairment. Dr. Steele stated that Dr. Madantschi has advised that we wait for further monitoring. The applicant is awaiting a rheumatology consultation, a lung biopsy is being considered, and the Prednisone the applicant is presently receiving may modify the disease process. Dr. Steele stated that the lung biopsy was never done. Dr. Steele stated that Dr. Madantschi pointed out that the best method of following the applicant's disability is by the "6 minute walk" as Dr. Bashir is monitoring. Dr. Steele stated that Dr. Bashir did not provide his report on the applicant's 6 minute walk test.

Dr. Steele stated that he had carefully reviewed the opinions from the applicant's physicians. Dr. Steele stated that he feels that the applicant is permanently but not totally disabled and the current medication the applicant is receiving may alter the applicant's prognosis and improve the applicant's independence and lessen the applicant's disability. Dr. Steele stated that he recommends denial of medical disability at the present time.

Chairman San Agustin asked why written certifications were not provided in compliance of Section 8124. Chairman San Agustin stated that Dr. Madantschi did not examine the applicant. Chairman San Agustin stated that Dr. Madantschi's report is based only on information provided to him. Dr. Steele stated that the applicant could never be assessed because the applicant left Guam. Dr. Steele stated that before the applicant relocated to the states, he relied on information provided by Dr. Crawley. Dr. Steele stated that the applicant made the decision to move to Asheville. Chairman San Agustin stated that we should not hold the applicant's decision to relocate against the applicant. Dr. Steele stated that the applicant and the applicant's medical physicians did not communicate with the Retirement Fund. Chairman San Agustin asked whether it is possible that the applicant may have been misdiagnosed and that the applicant had a fatal condition. Chairman San Agustin asked what was the cause of death shown on the applicant's death certificate. Dr. Steele stated that the death certificate indicated: a) Respiratory Failure, b) Pulmonary Fibrosis, c) Rheumatoid Arthritis, and d) Pneumothorax with Pneumomediastinum. Treasurer Cruz stated that the applicant went through the application process in August 2005 and then the appeal process nine months later at which time the applicant showed the additional need for oxygen. Treasurer Cruz asked whether there is anything showing progression on the disease from when the decision was made by the Board of Trustees. Dr. Steele stated that his report of May 2006 has information from Dr. Bashir. Chairman San Agustin stated that the appeal was that the Board's decision was of lack of full determination of the full Board. Chairman San Agustin stated that the appeal was on the process issue. Now the full Board is now considering the applicant as a new application. Chairman San Agustin stated that there is no documentation that the disease has progressed. Treasurer Cruz asked whether Dr. Steele's decision on August 31, 2006 on the initial application was based on all the reports from the physicians. Dr. Steele replied, "Yes."

Chairman San Agustin recognized Attorney Randall Cunliffe. Attorney Cunliffe stated that the Retirement Fund and Dr. Steele refers to the AMA standards. Attorney Cunliffe stated that the law states what the standards are. The Retirement Fund can not pass rules that go against the law. Attorney Cunliffe stated that if the Retirement Fund is relying on the AMA standards, the Retirement Fund is applying the wrong law. Attorney Cunliffe read the statute out loud - "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.” Attorney Cunliffe stated that in regards to the Board’s resolution adopting the use of the AMA standards, rules and regulations of Boards and Commissions have to go through the AAA process to become effective. Attorney Cunliffe stated that Mr. Saville worked for the Department of Corrections for about eleven years. Chairman San Agustin pointed out that the applicant’s name was never mentioned up to this point. Chairman San Agustin stated that by the mention of the applicant’s name, Attorney Cunliffe has just waived his client’s right to privacy. Attorney Cunliffe stated that he understands. Attorney Cunliffe proceeded and stated that his client applied for disability, was denied, appealed and was denied and then that was appealed to Court. Attorney Cunliffe stated that since his client could not work, the Director of Corrections told his client that he would have to terminate him. Attorney Cunliffe stated that his client was able to retire on age retirement. Attorney Cunliffe stated that, as per his client’s physician’s recommendation, his client moved to Asheville, North Carolina to be close to a Pulmonary Hospital and was treated until his death of pulmonary fibrosis on September 2, 2007. Attorney Cunliffe stated that the original report from Dr. Crawley, a Pulmonologist from Hawaii, indicated that the applicant’s “prognosis was poor and there was a very high likelihood of progression of his lung disease to possible death from respiratory failure. He must be near a lung transplant center.” Attorney Cunliffe stated that Dr. Crawley indicated that the applicant’s AMA disease was 100%. Attorney Cunliffe stated that his client was being treated for two diseases – one was for pulmonary fibrosis and the other was for polymyalgia rheumatic. Attorney Cunliffe stated that Dr. Crawley also indicated that the applicant will need oxygen with walking. Attorney Cunliffe stated that Dr. Lim also reported that the applicant is 100% disabled pursuant to AMA regulations. Attorney Cunliffe stated that Dr. Taitano also found the applicant to have pulmonary fibrosis and polymyalgia rheumatic. Attorney Cunliffe stated that a certification dated March 31, 2006 from Dr. Bashir stated that the applicant “suffers from severe pulmonary fibrosis of unknown etiology. He is being treated with high dose immunosuppressive drugs and requires oxygen around the clock. His lung functions are significantly decreased and he suffers from severe shortness of breath with minimal exertion. In my opinion his condition is irreversible and he is totally and irreversibly disabled.” Attorney Cunliffe stated that Drs. Crawley, McCain, Bashir, and Dr. Lim indicated that the applicant was 100% disabled. Dr. Steele stated that he did make reference in his report to Dr. Bashir’s March 31, 2006 certification.

Secretary James Taylor, seconded by Trustee Antolina Leon Guerrero, moved to sustain the decision of the Board of Trustees to deny disability retirement on Case No. 08-4401 as of November 10, 2005 based on evidence that the applicant was not medically disabled. With a unanimous vote of yes to deny, the motion passed.

Secretary James Taylor, seconded by Treasurer Gerard Cruz, moved to approve disability retirement for Case No. 08-4401 based on additional evidence as of May 2, 2006. Yes votes: Chairman Joe T. San Agustin, Treasurer Gerard Cruz, Secretary James Taylor, and Trustee Katherine Taitano; No votes: Vice-Chairman Wilfred Leon Guerrero, Trustee Antolina Leon Guerrero, and Trustee George Santos. With four affirmative votes, the motion passed.

Chairman Joe T. San Agustin and Trustee George Santos were excused from the meeting at this time (3:26 p.m.)

CASE NO. 08-1722

Dr. Steele read out loud his summary and conclusion report dated December 24, 2008. "This 62 year old Maintenance Custodian with the Guam Public School System who works at the Merizo Elementary School first applied for disability retirement on April 18, 2007. The applicant cited a work injury and auto accident in 2003 as the cause of "severe impairment in my body causing dizziness and body fatigue. A metal rod is inserted in my femur causing pain and weakness several times throughout the day, heart problems, blockage, diabetic, hypertension, cold sweat." Dr. Steele stated that in the application, the applicant stated "the accident has caused my body to drastically slow down its movements. My body seems to tire out quicker. My heart condition also can cause my body not to be able to handle my duties at work. I also went through a heart procedure in 2006. A stint was placed in my artery to assist in blood flow to my heart." Dr. Steele stated that during the applicant's disability evaluation, the applicant has been seen by Dr. Alix Chenet, the applicant's primary physician and consultants for the Retirement Fund including Drs. Vincent Duenas, Fred Schroeder, and John Taitano. All of them agreed that the applicant had permanent disability but that the applicant was not totally disabled. All have given disability ratings by AMA Guidelines below the threshold of 75%. Dr. Steele stated that his recommendation is to continue to deny medical disability.

Director Blas stated that the applicant was referred to a third physician. Trustee Leon Guerrero stated that it was not clear whether the applicant's condition has changed. Acting Chairman Wilfred Leon Guerrero asked whether Dr. Taitano followed the AMA Guidelines. Dr. Steele stated that Dr. Taitano applied the AMA Guidelines and is usually correct on the use of the AMA Guidelines. Secretary Taylor stated that the new opinion does not support the appeal. Dr. Steele stated that the report states that the applicant's prognosis is fair. Secretary Taylor stated that there is not enough information that requires reconsideration of the Board's previous decision. Trustee Leon Guerrero stated that the Board could now take everything into consideration. Dr. Steele stated that the physicians' ratings were all below 75% including Dr. Taitano's recent opinion.

At this time Acting Chairman Leon Guerrero 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.

Applicant Emiliana M. Perez addressed the Board at this time and acknowledged waiving her right of privacy. Mrs. Perez spoke in the vernacular. Mrs. Perez stated that her body aches but goes on doing her work as a custodian because she is embarrassed of what her co-workers would say. Mrs. Perez stated that she met with Dr. Taitano. Mrs. Perez stated that the doctors are not feeling her pain but herself. Mrs. Perez stated she can no longer do her work and she is too embarrassed trying to keep up with her work as a custodian. Mrs. Perez stated that she is hesitant about discussing her problem. Mrs. Perez stated that she had fallen in the bathroom and goes to therapy for the pain in her shoulder and hips. Mrs. Perez stated that she has gone through x-rays and CAT scans. Mrs. Perez complains of pain in her arm and has bad headaches. Mrs. Perez stated that she can not do an MRI because of a rod in her thighs. Mrs. Perez stated that Dr. Taitano told her to lose weight. Mrs. Perez stated that Dr. Taitano prescribed medication which made her break out in hives. Mrs. Perez stated that Dr. Taitano told her to go see her own physician. Mrs. Perez concluded by saying that she is afraid to fall again and who knows what will happen to her.

Secretary James Taylor, seconded by Trustee Antolina Leon Guerrero, moved to deny disability retirement for Case No. 08-1722. With a unanimous vote of yes to deny, the motion passed. Chairman Joe T. San Agustin and Trustee George Santos were absent at this time.

Dr. Steele stated for the record, that he has been the Retirement Fund's Medical Consultant for the past ten years and has guided the Retirement Fund in evaluations. Dr. Steele stated that the past two days has been a great disappointment to him. Dr. Steele stated that he feels that the Board should find a new medical consultant. Dr. Steele stated that he would like to step down. Dr. Steele stated that he tried to put things in order. Dr. Steele stated that with the Board's decision in the last two days, he feels that he did not succeed. Dr. Steele stated that he does not have the Board's trust and credibility. Dr. Steele stated that the Board is not capable of making medical decisions. Trustee Leon Guerrero stated that the Board's decisions are based on Dr. Steele's recommendations and reports. Acting Chairman Leon Guerrero asked Dr. Steele to think about his decision to resign.

IX. TRAVEL REPORT

A. Wilfred P. Leon Guerrero: IFEBP Trustees and Administrators Institutes February 9-11, 2009, Orlando, Florida

Acting Chairman Leon Guerrero stated that his travel report on the IFEBP Trustees and Administrators Institutes he attended on February 9-11, 2009 in Orlando, Florida, is submitted for the Board's information.

X. OLD BUSINESS

None

XI. NEW BUSINESS

A. Government of Guam Retirement Fund Board of Trustees Elections

Director Blas stated that the election for the Retirement Fund Board of Trustees will be conducted by the Guam Election Commission on Saturday, June 27, 2009 from 7:00 a.m. to 5:00 p.m. at the University of Guam Filed House in Mangilao. The purpose of the election is to elect two active members and two retiree members to serve on the Board. The term of office of a Trustee is five (5) years from the date the Trustee first takes the oath of office following the Trustee's election. Director Blas stated that the nominating packets may be obtained at the Guam Election Commission and must be filed by April 28, 2009. Trustee Leon Guerrero asked how the retirees and active members would be notified. Director Blas stated that an advertisement regarding the election has been placed in the Pacific Daily News and also through the newsletter.

XII. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

XIII. ANNOUNCEMENTS

None

XIV. RECESS

Trustee Antolina Leon Guerrero, seconded by Treasurer Gerard Cruz, moved to recess, and without objection, the Board of Trustees meeting for the Defined Benefits Plan recessed at 3:59 p.m. on Friday, February 27, 2009 and will reconvene on Friday, March 6, 2009, at 12:00 Noon in the Retirement Fund Conference Room. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of February 27, 2009 Reconvened Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on April 24, 2009.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas