

BOARD OF TRUSTEES
Special Board Meeting
Tuesday, October 17, 2006, 12:00 Noon
Retirement Fund Conference Room

MINUTES

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Special Meeting was called to order at 12:25 p.m. Tuesday, October 17, 2006, 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
Anthony C. Blaz, Trustee
Katherine T.E. Taitano, Trustee

Board of Trustees Absent:

James J. Taylor, Secretary
George A. Santos, Trustee

Staff Present:

Paula M. Blas, Director
Jackie Blas, Recording Secretary

Legal Counsel Present:

Pat Mason, Carlsmith Ball

Public Present:

George Castro, Certified Court Reporter
Rosie Creelman, Certified Court Reporter

Chairman San Agustin stated that the Board of Trustees present at today's Special Board meeting have signed the Declaration of Emergency and the Waiver of Notice of a special meeting of the Board. Chairman San Agustin further stated that a written recommendation to the Board of Trustees for an executive session was submitted, at this meeting, by the Retirement Fund's Legal Counsel regarding the Order to Show Cause scheduled for October 18, 2006. Chairman San Agustin stated that the Board of Trustees will consider their position for tomorrow's hearing.

Treasurer Gerard Cruz, seconded by Trustee Katherine Taitano, moved to approve that the Board of Trustees go into Executive Session. Without objection, the motion passed.

II. EXECUTIVE SESSION

A. Saville vs. San Agustin et al., Superior Court of Guam Special Proceedings Case No. SP0146-06

Chairman San Agustin asked Legal Counsel Pat Mason to explain the case to the Board of Trustees. Legal Counsel Mason stated that the plaintiff in this case has filed a petition for a Writ of Mandate asking the Court to order that the disability benefits be paid to the plaintiff. The Court has issued an order for the defendants to appear in Court on October 18, 2006 to show cause why the decision was made to deny disability benefits. Legal Counsel Mason stated that he will prepare an opposition and the basis of the opposition would be based on Dr. John C. Steel's statements. There were three (3) physicians that were asked by the Retirement Fund to do an examination of Mr. Saville. There was an examination after the decision was made but before the appeal was made in January 2006. This examination was carried out by Dr. Trent W. McCain. Dr. McCain found 100% impairment based on AMA criteria. Two other physicians had previously been requested by the Retirement Fund to perform an examination. The first physician was Dr. John Taitano. Dr. Taitano, in July 2005, found 50% impairment based on AMA criteria. The other physician, Dr. Doris Lim, also in July 2005, found 100% impairment based on AMA criteria. Legal Counsel Mason stated that when Dr. Steele reviewed the reports and then did his report, he found the disability to be 65-50% based on AMA criteria. The physician at the VA Medical Center in North Carolina, Dr. Khalid Bashir, gave an opinion that Mr. Saville was totally and irreversibly disabled. Legal Counsel Mason stated that he will focus on the reports of the physicians that were appointed by the Board. Two of the three examining physicians found that there was a 100% disability. The other physician found a 50% disability. Dr. Steel found no more than a 50% disability. Legal Counsel Mason stated that it is hard to draw a conclusion based on the disparity between the physicians who made the estimates.

Legal Counsel Mason stated that when the Board issued its decision, it stated that Mr. Saville could reapply in six months if there was new evidence regarding his medical condition. Legal Counsel Mason stated that Mr. Saville's physician is considering whether the dosage of his prednisone could be adjusted. They are also looking at a stress test or exercise test to see the status of his lungs. Legal Counsel Mason stated that the Retirement Fund's decision rested on the information that the disability was not sufficient, but the Retirement Fund left open the possibility other tests could change things. Chairman San Agustin stated that Mr. Saville has the window of opportunity to reapply in six months if further evidence shows his impairment. Legal Counsel Mason stated that two physicians found 100% impairment and two physicians found 50% impairment. The potential issue is that Dr. Steele did not do an actual examination. He looked at the record. Chairman San Agustin asked whether Dr. Steele evaluated all three examinations. Legal Counsel Mason replied, "yes."

Legal Counsel Mason stated that Dr. Steele consulted with another physician who advised further monitoring. Legal Counsel Mason stated that Mr. Saville's physician in North Carolina, Dr. Bashir, found a 100% disability. Dr. Eric A. Crawley from Tripler Army Medical Center in Honolulu submitted an initial report of a 100% disability. The three physicians asked by the Retirement Fund to do an examination were Dr. Lim who submitted a report of a 100% disability, Dr. Taitano who submitted a report of 50% disability and Dr. McCain who submitted a report of a 100% disability. Dr. Steel was the one who reviewed the evaluations made by the three physicians and had then submitted a report of 65% disability.

Mason stated that the argument is that there were four physicians who gave their reports to the Board as per the Board's request. Chairman San Agustin stated that Mr. Saville suffers from a lung disease. Chairman San Agustin stated that Mr. Saville was not examined by a lung specialist. Legal Counsel Mason stated that Dr. Crawley is a lung specialist.

Legal Counsel Mason stated that the plaintiff has a lot of medical opinions that favor his side of the case. Chairman San Agustin stated that Mr. Saville has an option to reapply for disability retirement in six months. Director Paula Blas stated that Mr. Saville can not reapply for disability retirement since he has retired under age retirement. Chairman San Agustin stated that disability should, therefore, not be an issue. Chairman San Agustin asked whether Mr. Saville's option for age retirement could be reversed. Legal Counsel Mason stated that Mr. Saville has the right to appeal the decision on the disability retirement. Chairman San Agustin stated that Mr. Saville's request for disability should be disregarded. Chairman San Agustin stated this may open a Pandora's Box. Trustee Katherine Taitano asked whether Mr. Saville could, after retiring by age, go back and apply for disability. Chairman San Agustin asked whether there was an urgency to retire at age. Director Blas stated that Mr. Saville had requested for the information on age retirement. Director Blas stated that Mr. Saville was advised that if he retires on age, he may be ineligible to apply for disability retirement. Director Blas stated that Mr. Saville was forced, by his department, to retire or resign. Trustee Taitano stated that Mr. Saville opted to retire on age. Chairman San Agustin asked Legal Counsel Mason to include the fact that Mr. Saville opted for age retirement after being advised that he may be ineligible to apply for disability retirement. Chairman San Agustin asked whether the Retirement Fund could alter Mr. Saville's decision to retire at age. Legal Counsel Mason stated that the Retirement Fund could argue this issue.

Treasurer Gerard Cruz stated that there may be only one physician on island who is AMA-certified. Chairman San Agustin stated that the Board has formally adopted the AMA guidelines. Chairman San Agustin suggested that Legal Counsel Mason include the adopted AMA guidelines. Chairman San Agustin stated that the AMA guideline is the Board's governing criteria. Legal Counsel Mason stated that he will incorporate the additional documents. Legal Counsel Mason stated that he will also show the fact that Mr. Saville voluntarily retired at age.

Treasurer Gerard Cruz, seconded by Trustee Anthony Blaz, moved to incorporate the additional information discussed, in Defendants' Answer and Response to Plaintiff's Petition for Writ of Mandate. Without objection, the motion passed.

III. ADJOURNMENT

There being no further business before the Board of Trustees, on motion of Trustee Anthony Blaz, seconded by Treasurer Gerard Cruz, and without objection, the Special Board Meeting was adjourned at 1:08 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of October 17, 2006 Special Board Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on March 9, 2007.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas