

PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM
 PAYSON FIRE DEPARTMENT LOCAL BOARD
 MINUTES OF THE January 26, 2023 MEETING

The duly posted meeting was called to order at approximately 8:30 am in the Council Chambers, located in Payson Town Hall. **Meeting Time & Place**

Present: Chairperson Chris Higgins, Member Dan Bramble, Member Doug Eckhardt, Member Jimmie Rasmussen and Member Jerry Montoya. **Roll Call**

OTHERS PRESENT: Andrew Apodaca, PSPRS Local Board Attorney via Zoom, Laura Cronk, Local Board Secretary and Daniel Malloy.

PURPOSE OF MEETING: Discussion/Possible action regarding the following:

Item #1 Acknowledgment of new Chairperson, Chris Higgins, Town of Payson Mayor. **New Chairperson**

Item #2 Motion to approve minutes of the October 5, 2022 meeting. **Approval of Minutes**

 Moved by Member Bramble, seconded by Member Rasmussen.
 Vote:5-0
 Yes: Mayor Chris Higgins, Member Daniel Bramble, Member Doug Eckhardt, Member Jerry Montoya and Member Jimmie Rasmussen.

Item #3 Review of confidentiality statement. Confidentiality statement signed by all members. **Approval of Procedure**

Item #4 Discussion and possible action to recess to Executive Session or modified-Executive Session regarding the medical disability application of Daniel Malloy for the purpose of discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law pursuant to A.R.S. §38-431.03(A)(2); and may enter executive session for the purpose of obtaining legal advice from the Local Board’s attorney pursuant to A.R.S. §38-431.03(A)(3). **Approval of Disability**

Motion to recess to Executive Session
 Moved by Member Rasmussen, seconded by Member Eckhardt
 Vote 5-0
 Yes: Mayor Chris Higgins, Member Daniel Bramble, Member

Doug Eckhardt, Member Jerry Montoya and Member Jimmie Rasmussen.

**Recessed to Executive Session at approximately 8:35 am with all board members present.
Returned from Executive Session at approximately 9:43 am.**

Discussion by Member Daniel Bramble who noted for the record that, based on information received from IME, Mr. Daniel Malloy is unable to perform the duties of a fire captain or any PSPRS position within the department. Member Jimmie Rasmussen agreed.

Motion:

There being no additional discussion, Member Eckhardt moved to approve the Ordinary Disability claim filed by Daniel Malloy on July 27, 2022, as all of the statutory requirements, as legally defined by A.R.S. §38-842 (34), including that of a permanently disabling condition, can be proven, based on the Medical Board opinion of Dr. Harry Tamm, dated December 12, 2022, and PSPRS Questionnaires dated December 12, 2022, and making the following additional findings:

- A) Captain Malloy voluntarily left his position as a Fire Captain, effective July 22, 2022, as a result of his disabling condition.
- B) The Medical Board evaluation confirmed the diagnosis of Kennedy's Disease.
- C) The Medical Board evaluation confirmed at page 3 that Captain Malloy's "degree of muscle weakness and atrophy which he already demonstrated will prevent him from safely and effectively performing his duties required of a fire Captain and it is likely that his deficit/disabilities will increase over time."
- D) The Medical Board evaluation failed to identify any condition(s) or injuries which existed prior to March 19, 2009.
- E) While the Medical Board only references Captain Malloy's ability to perform his duties as a Fire Captain, this is not in conflict with other medical evidence before the Board, as it is clear that Dr. Tamm answered question #2 in the affirmative, and it is clear that Dr. Tamm received and evaluated all PSPRS-eligible job descriptions within the entire department.
- F) Even if a conflict exists, the totality of the evidence weighs in favor of granting the disability, as it is clear that if Captain Malloy cannot physically perform the duties of a fire captain or firefighter, he would not be able to perform a reasonable range of duties of any PSPRS-covered position within the department.

Moved by Doug Eckhardt, seconded by Jerry Montoya.

Vote 5-0

Yes: Mayor Chris Higgins, Member Daniel Bramble, Member Doug Eckhardt, Member Jerry Montoya and Member Jimmie Rasmussen.

Item #5

Review, Discussion, Consideration regarding the return to work of Daniel Malloy.

**Approval of
Return to Work**

Member Jimmie Rasmussen asked to explain the ADA Accommodation that was granted to Mr Malloy.

Board Secretary Laura Cronk explained that Mr Malloy qualified for an ADA accommodation, that he was no longer able to perform the function of his fire captain position. A job reassignment to a vacant position is a reasonable accommodation. The Logistic & Physical Resources Coordinator position, a non-PSPRS position, was a position approved for the new fiscal year and was not specifically created for Mr Malloy. Mr Malloy qualified for this vacant position and was offered the vacant position as allowed by ADA.

Board Counsel asked Ms Cronk to explain the process of converting Mr. Malloy's Paid time off after his separation from the PSPRS position. Board Secretary Laura Cronk explained that Mr Malloy's time-off accrual was converted from the fire rate accrual to the 40 hour employee rate. This would be the same process for any employee that is moving from a fire PSPRS position to a non-PSPRS position.

Motion:

There was no further discussion had, and Member Daniel Bramble moved to approve the rehiring of Daniel Malloy, effective July 25, 2022, to the position of Logistics and Physical Resources Coordinator, and making the following additional findings:

- A) Pursuant to A.R.S. §38-849 (E) Mr. Malloy was reemployed by the Town of Payson in any capacity;
- B) After his final day of work as a Fire Captain Mr. Malloy had to do the following: discontinued his firefighter duties, converted his PTO accrual from fire accrual to 40 hour weekly employee and enroll in ASRS, all of which would have to be completed by any employee of the Town leaving a PSPRS covered position, and going to an ASRS covered position;
- C) Mr. Malloy has now been approved for an ordinary disability, and his hiring into the position of Logistics and Physical Resources Coordinator, was clearly done as an accommodation provided in accordance with the ADA, and was due to the same disability approved today;
- D) The position of Logistics and Physical Resources Coordinator is not a PSPRS eligible position, meaning no service credit can be added, and no additional contributions may be made to Mr. Malloy's PSPRS account;
- E) Because of these findings, Mr. Malloy is entitled to continue receipt of his Ordinary Disability pension payments as awarded today, and no ACR is owed.

Moved by Member Daniel Bramble, seconded by Member Jimmie Rasmussen.
Vote 5-0

Yes: Mayor Chris Higgins, Member Daniel Bramble, Member Doug Eckhardt,
Member Jerry Montoya and Member Jimmie Rasmussen.

Item #6 Discussion and possible action regarding the revised new
hire and lateral pre-existing condition protocols and 30-day
letter.

**Approval of
Procedure**

Motion:

No discussion was had on the record. Member Jimmie Rasmussen moved to approve the use of:
1) the draft 30-day letter, [and]
2) revised new hire and lateral hire pre-existing condition protocols as suggested by counsel,
effective May 1, 2022.

Moved by Member Jimmie Rasmussen, seconded by Member Jerry Montoya.
Vote 5-0

Yes: Mayor Chris Higgins, Member Daniel Bramble, Member Doug Eckhardt,
Member Jerry Montoya and Member Jimmie Rasmussen.

Item #7 Review, Discussion, and possible action for PSPRS membership and
pre-existing condition determinations for new hires: Thomas Ellingson,
Sidney Pearce, and Brandon French.

**Approval of
Membership**

Motion:

Thomas Ellingson

Member Jimmie Rasmussen moved to declare zero pre-existing conditions , as listed in the exam
report in the Board packet.

Moved by Member Jimmie Rasmussen, seconded by Member Jerry Montoya.
Vote 5-0

Yes: Mayor Chris Higgins, Member Daniel Bramble, Member Doug Eckhardt,
Member Jerry Montoya and Member Jimmie Rasmussen.

Sidney Pearce

Member Daniel Bramble moved to declare zero pre-existing conditions, as listed in the exam report
in the Board packet.

Moved by Member Daniel Bramble, seconded by Member Jimmie Rasmussen.
Vote 5-0

Yes: Mayor Chris Higgins, Member Daniel Bramble, Member Doug Eckhardt,
Member Jerry Montoya and Member Jimmie Rasmussen.

Brandon French

Member Daniel Bramble moved to table the pre-existing condition determination as to Brandon French, to allow for the statutory 30-day response period.

Moved by Member Daniel Bramble, seconded by Member Doug Eckhardt.

Vote 5-0

Yes: Mayor Chris Higgins, Member Daniel Bramble, Member Doug Eckhardt, Member Jerry Montoya and Member Jimmie Rasmussen.

Board counsel asked for clarification if the Board had already addressed the issue of membership in PSPRS for Firefighters Ellingson, Pearce, and French. It was determined that no such motion had been made yet.

Motion:

Member Daniel Bramble moved to find that Thomas Ellingson, Sidney Pearce, and Brandon French meets all applicable PSPRS membership definitions, including the definition of Member, A.R.S. §38-842 (31), and all its related definitions, and regular assignment to hazardous duty, pursuant to A.R.S. §38-842 (42).

Moved by Member Doug Eckhardt, seconded by Member Jerry Montoya.

Vote 5-0

Yes: Mayor Chris Higgins, Member Daniel Bramble, Member Doug Eckhardt, Member Jerry Montoya and Member Jimmie Rasmussen.

Meeting was adjourned at approximately 10:06 am.



Mayor Chris Higgins, Chairperson

12/18/23

Date Approved



Laura Cronk, Local Board Secretary