

Public Safety Memorial Fund Board Minutes November 6, 2006

The Public Safety Memorial Fund Board held a teleconference meeting on Monday, November 6, 2006 at the Oregon Public Safety Academy in Salem, Oregon. Chair Bob Wolfe called the meeting to order at 1:30 p.m.

Attendees

Board Members:

Bob Wolfe, Chair

Robert King, by teleconference

Steven Piper, by teleconference

Lane Roberts, by teleconference

Dave Sprando, by teleconference

DPSST Staff:

Eriks Gabliks, Deputy Director

Marilyn Lorance, Certification and Records Supervisor

Tammera Hinshaw, Executive Assistant



1. Minutes from July 18, 2006 and October 19, 2006

Lane Roberts moved to approve the minutes of the July 18, 2006 and October 19, 2006 Public Safety Memorial Fund Board meetings. Dave Sprando seconded the motion. The motion carried in a unanimous vote.

2. Staff follow-up

Marilyn Lorance gave a recap of the discussion during the last meeting and presented the information received from the Department of Justice and the Worker's Compensation Division. This information led to a recommendation of proposed rule changes to OAR 259-070-0010 dealing with Permanent Total Disability criteria. Applicants for Memorial Fund benefits must meet all criteria in the Worker's Compensation statutes.

3. Proposed Administrative Rule Change – OAR 259-070-0010

Permanent Total Disability

Issue: The Worker's Compensation Division of the Department of Consumer and Business Services (DCBS) has updated their rules relating to a permanent total disability determination in response to statutory changes to ORS 656.206 during the 2005 legislative session. In order to clearly apprise potential applicants of these new requirements, staff has amended the language in OAR 259-070-0010 to mirror the minimum qualifications required by DCBS.

The following revised language contains recommended additions (**bold and underlined text**):

259-070-0010

(1) Eligibility of award applies to public safety officers who died or became disabled as of October 23, 1999. Subject to availability of funds, the Board may award benefits to family members of public safety officers who died or became disabled.

(2) Prior to acceptance of an initial application, any individual applying for benefits based on a qualifying disability must provide satisfactory evidence that they meet the definition of “permanent total disability” found in ORS 656.206 and OAR 436-030-0055.

(3) Satisfactory evidence is established by submitting:

(a) Proof of Determination of Permanent Total Disability in compliance with the Worker’s Compensation Division of the Department of Consumer and Business Services; or

(b) Competent written vocational testimony by a person fully certified by the State of Oregon to render vocational services that the applicant meets the definition of “permanent total disability” found in ORS 656.206 and OAR 436-030-0055.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-070-0010 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-070-0010 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

Robert King moved to recommend filing the proposed language for OAR 259-070-0010 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Steven Piper seconded the motion. The motion carried in a unanimous vote.

The committee found no significant fiscal impact on small business.

4. Executive Session – David Hergert

Convened in executive session to discuss matters exempt from disclosure under ORS 92.660 (2)(f) related to whether the disability of Police Officer Hergert is a qualifying disability as set forth in ORS 243.954.

Marilyn recapped the reports on Officer Hergert's injuries.

Law: ORS 243.954 defines a "permanent total disability" as having the meaning given in ORS 656.206. It also defines a "qualifying disability" as a permanent total disability suffered by a public safety officer while on or off duty that is the direct or proximate result of:

- (a) An enforcement action, an emergency response or public safety training for an enforcement action or emergency response that the public safety officer is authorized or obligated to perform by law, rule, regulation or condition of employment or service; or
- (b) An act committed against the public safety officer because of the public safety officer's position as a public safety officer.

Law: ORS 243.956 states that "a person is eligible for an award of benefits from the Public Safety Memorial Fund if the person: (A)(ii) Is a public safety officer who has a job-related permanent total disability"

ORS 656.2061 defines "Permanent total disability" as:

"Permanent total disability means, notwithstanding ORS 656.225, the loss, including preexisting disability, of use or function of any portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation." As used in this section, a "suitable occupation" means one that the worker has the ability and training or experience to perform, or an occupation that the worker is able to perform after rehabilitation,"

For purposes of this section, a gainful occupation for workers with a date of injury prior to January 1, 2006, who were:

"employed for less than four weeks prior to the date of injury with no other employment during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three that are applicable to Oregon residents and that are published annually in the Federal register by the United States Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended by the parties at the time of initial hire"

Law: ORS 181.610(16) defines “Public safety personnel” and “public safety officer” as follows:

“* * corrections officers, youth corrections officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, telecommunicators and fire service professionals.”

5. Reconvene in regular session – David Hergert DPSST #1042
Portland Police Bureau

Action Item 1: Determine if Officer Hergert's injuries sustained on 3/15/99 were a “direct and proximate result” of “an enforcement action, an emergency response or public safety training” covered under the Public Safety Memorial Fund statute.

Lane Roberts moved that Officer Hergert's injuries sustained on 3/15/99 were a direct and proximate result of an enforcement action. Steven Piper seconded the motion. The motion carried in a unanimous vote.

Action Item 2: Determine if the disability of Police Officer Hergert is a direct and proximate result of those injuries.

Robert King moved to accept that Officer Hergert's disability is a “direct and proximate result” of the injuries sustained on 3/15/99. Lane Roberts seconded the motion. Bob Wolfe voted nay. The motion carried.

Action Item 3: Is Officer Hergert's disability a permanent total disability as defined in ORS 652.206(1)(a).

Robert King moved that the disability of Offer Hergert is a qualifying permanent total disability as set forth in Oregon Revised Statute 243.954. Receiving no second, the motion died.

The committee agreed to give Officer Hergert an opportunity to provide a written report from a vocational specialist needed to prove the disability. Marilyn will get more information from Workers Compensation and Bonnie Salle will follow up with Officer Hergert.

Recent Awards for Benefits – Information only

Marilyn Lorance reviewed a list of benefits awarded covering the time period July 1, 2006 through December 31, 2006 as follows:

- John Burreight \$12,277.44 health/dental benefits (January 1-December 31, 2006)
- Joseph Gymkowski \$10,667.16 health/dental benefits (August 1, 2006 – July 31, 2007)
- Robert Hanners \$6,144.00 health/dental benefits (January 1 - December 31, 2006) \$2,742.00 scholarship benefit (Ashley Hanners)

- Lucille Kochever \$11,576.52 health/dental benefits (July 1, 2006 – June 30, 2007)
- Louise Schuening \$2,334.00 health/dental benefits (July 1, 2006 – December 31, 2006)
- Sarah Schuening \$2638.00 scholarship benefit (summer and fall terms 2006)
- Kenneth Wilson \$2,603.04 health/dental benefits (September 1, 2006 – August 31, 2007)

There being no further business, Chair Wolfe adjourned the meeting at 2:30 p.m.