

Bolingbrook Firefighters Pension Fund
Disability Meeting Minutes
January 26, 2017
Bolingbrook Fire Station #5
1900 Rodeo Drive
Bolingbrook, IL 60490

CALL TO ORDER:

President Bramwell called the Disability Hearing of the pension fund to order at 10:00 a.m.

ROLL CALL:

Present: President: Kevin Bramwell
 Board Members: Ron Spindel (retired), Secretary
 Trinidad Garza, Trustee
 Chris Jostes, Trustee
 Absent Members: Ricardo Morales, Trustee
 Rosa Cojulun, Finance Director/Treasurer

Recording Secretary: Meghan Strimel

Pension Attorney: Jeffrey Goodloe, Pension Attorney -
 Puchalski Goodloe Marzullo, LLP

Guests: Bethany Frisby (Foy), Firefighter/Paramedic
 Thomas Duda, Attorney –
 Law Offices of Thomas W. Duda
 Michelle Marvin, Court Reporter

Public Present: List Attached (Appendix A)

OLD BUSINESS:

- ✓ *Disability Pension Hearing of Bethany Frisby (Foy) continued from June 21, 2016.*
- ✓ *Meeting is to be transcribed by transcriptionist, Michelle N. Marvin. See attached. (Appendix B).*

- On a motion made by Trustee Garza and seconded by President Bramwell:
 “Enter into Closed Session at 10:10 a.m.”

Roll Call:

President Bramwell Aye
Secretary Spindel Aye
Trustee Garza Aye
Trustee Jostes Aye
Trustee Morales Absent

MOTION CARRIED

- On a motion made by President Bramwell and seconded by Secretary Spindel:
“Return to Open Session at 10:19 a.m.”

Roll Call:

President Bramwell	Aye
Secretary Spindel	Aye
Trustee Garza	Aye
Trustee Jostes	Aye
Trustee Morales	Absent

MOTION CARRIED

- On a motion made by President Bramwell and seconded by Secretary Spindel”
“Deny the Applicants application to continue the hearing.”

Roll Call:

President Bramwell	Aye
Secretary Spindel	Aye
Trustee Garza	Aye
Trustee Jostes	Aye
Trustee Morales	Absent

MOTION CARRIED

- On a motion made by Trustee Garza and seconded by Secretary Spindel:
“Enter into Closed Session at 11:10 a.m.”

Roll Call:

President Bramwell	Aye
Secretary Spindel	Aye
Trustee Garza	Aye
Trustee Jostes	Aye
Trustee Morales	Absent

MOTION CARRIED

- On a motion made by President Bramwell and seconded by Trustee Garza:
“Return to Open Session at 12:26 p.m.”

Roll Call:

President Bramwell	Aye
Secretary Spindel	Aye
Trustee Garza	Aye
Trustee Jostes	Aye
Trustee Morales	Absent

MOTION CARRIED

- On a motion made by President Bramwell and seconded by Secretary Spindel”
 “Motion to grant a Non-Duty Disability and to deny a Line-of-Duty Disability for applicant Bethan Foy.”

Roll Call:

President Bramwell	Aye
Secretary Spindel	Aye
Trustee Garza	Aye
Trustee Jostes	Nay
Trustee Morales	Absent

3 – 1 vote to approve the motion to grant the Non-Duty disability application and deny the Line-of-Duty Disability.

MOTION CARRIED

ADJOURNMENT:

- On a motion made by Trustee Garza and seconded by President Bramwell:
 “Adjournment at 12:28 p.m.”

MOTION CARRIED

 Kevin Bramwell, President

 Date

 Ronald Spindel, Secretary

 Date

Prepared by: Meghan Strimel

Approved at the 04/17/2017 board meeting

Bolingbrook Firefighter's Pension Fund
Special Meeting – January 26, 2017
Disability Hearing of B. Foy (continuation)

Public Present

Name	Address
1. David P Butcher	
2. George Roy III	
3. Frank R. H.	
4. George Foy	
5. John Marino	
6. James C.	
7. Tom Ross	
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BEFORE THE BOARD OF TRUSTEES OF THE
BOLINGBROOK FIREFIGHTERS' PENSION FUND

IN THE MATTER OF THE
DISABILITY APPLICATION OF:

BETHANY FOY,

Applicant.

REPORT OF CONTINUED PROCEEDINGS had
at the hearing of the above-entitled cause, before
the BOARD OF TRUSTEES OF THE BOLINGBROOK
FIREFIGHTERS' PENSION FUND, held on the 26th day
of January, 2017, at the hour of 10:00 a.m., at
1900 Rodeo Drive, Bolingbrook, Illinois, before
MICHELLE N. MARVIN, C.S.R., Notary Public.

BOARD MEMBERS PRESENT:

- MR. KEVIN BRAMWELL, President;
- MR. RON SPINDEL, Secretary;
- MR. TRINIDAD GARZA, Trustee;
- MR. CHRIS JOSTES, Trustee.

1 COUNSEL PRESENT:

2 THE LAW FIRM OF PUCHALSKI, GOODLOE &
3 MARZULLO, LLP, by
4 MR. JEFFREY A. GOODLOE
5 2100 Sanders Road, Suite 110
6 Northbrook, Illinois 60062
7 (847) 666-5680
8 jgoodloe@pgmlaw.com
9 on behalf of the Bolingbrook
10 Firefighters' Pension Board;

11 THE LAW OFFICES OF THOMAS DUDA, by
12 MR. THOMAS DUDA
13 330 W. Colfax Street
14 Palatine, Illinois 60067
15 (847)577-2470
16 tduda@zipduda.com
17 on behalf of the Applicant.

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21 ALSO PRESENT:

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23 MS. MEGHAN STRIMEL, Recording Secretary.

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EXAMINATION OF

BETHANY M. (FOY) FRISBY

By Mr. Duda 125, 139

By Mr. Goodloe 135

By The Board 138

EXHIBITS RECEIVED INTO EVIDENCE

Board Exhibits 17-25 123

Applicant Exhibits 7 & 8 124

Applicant Exhibits 9, 10, 11 134

1 MR. BRAMWELL: All right. We'll call the
2 special meeting of the Bolingbrook Firemen's
3 Pension Fund to order at 10:00 a.m. on Thursday,
4 January 26th, 2017.

5 Meghan, will you please do a roll
6 call for us?

7 MS. STRIMEL: President Bramwell?

8 MR. BRAMWELL: Present.

9 MS. STRIMEL: Secretary Spindel?

10 MR. SPINDEL: Present.

11 MS. STRIMEL: Trustee Garza?

12 MR. GARZA: Present.

13 MS. STRIMEL: Trustee Jostes?

14 MR. JOSTES: Present.

15 MS. STRIMEL: Trustee Morales is absent.

16 MR. BRAMWELL: At this time, we will open
17 the meeting up to public comments. Are there any
18 public comments?

19 Hearing none, we will move to
20 number four, Bethany Foy's disability pension
21 hearing, and at this time I'll turn the meeting
22 over to Jeff Goodloe.

23 MR. GOODLOE: Okay. Thank you very much.
24 All right. This is the continuation of a hearing

1 being conducted pursuant to Article 4, Section 112
2 of the Illinois Pension Code to adjudicate the
3 disability pension application of Bethany Foy, who
4 is the Applicant in this case.

5 The Applicant was previously sent a
6 Notice of Hearing advising her of these
7 proceedings on this date and advising her of her
8 right to be represented by legal counsel; to
9 present evidence and to respond to any evidence
10 before the Pension Board.

11 Will the Applicant and her attorney
12 please identify themselves for the record?

13 MS. FOY FRISBY: Bethany Frisby.

14 MR. DUDA: Thomas Duda, attorney from
15 Palatine, Illinois.

16 MR. GOODLOE: Thank you very much. And
17 do you both acknowledge receipt of the Notice of
18 Hearing and are you both ready to proceed today?

19 MS. FOY FRISBY: Yes.

20 MR. DUDA: I acknowledge receipt. I'm
21 ready, but I did prepare and forward to you a
22 letter relating to the fact that I think certain
23 evidence is not ripe to be presented to the Board,
24 and that for the Board to make a decision in this

1 case today would be premature.

2 So I'm ready, meaning I am prepared
3 to go forward to the extent required, but I -- by
4 doing so, I'm not saying that this case is ready
5 to be decided.

6 MR. GOODLOE: I understand, and we will
7 get to that shortly.

8 The Pension Board, by way of
9 background, previously convened for a hearing in
10 this matter on June 21st, 2016. The matter was
11 continued in order for the parties to take the
12 evidence deposition of Dr. Gregory Primus. That
13 deposition took place on August 19th, 2016.

14 The Notice of Hearing for today's
15 hearing was sent to the Applicant and her counsel
16 on December 13th, 2016. And then on January the
17 11th, 2017, I received correspondence from Mr.
18 Duda requesting to continue today's hearing.

19 So, Mr. Duda, why don't we begin
20 this way? How about you present your argument
21 with respect to why you believe that today's
22 hearing should be continued. Once you do that, I
23 expect that the Pension Board will then go into
24 closed session pursuant to 2(c)4 of the Open

1 Meetings Act to deliberate over that, and then it
2 will come out and make a decision.

3 MR. DUDA: Thank you.

4 MR. GOODLOE: Yes, sir.

5 MR. DUDA: I appreciate the Board's
6 attention. I would ask the Board not to construe
7 my comments in any fashion as trying to make your
8 proceeding more difficult, more time consuming and
9 more expensive.

10 But since the first hearing and,
11 actually, since the evidence deposition of Dr.
12 Primus, who is one of the three doctors selected
13 by the Board, the employer, the Village, has
14 changed the Applicant's status and has secured
15 evidence that is going to be -- in the near future
16 is going to be pursued through a deposition as
17 well.

18 The Applicant was ordered to submit
19 by the Village to an examination by Dr. Neal,
20 N-E-A-L. Dr. Neal, and I -- I have his report. I
21 don't remember the date of the report. Dr. Neal
22 opined that Firefighter Foy was able to return to
23 work. In reliance on that report, Firefighter Foy
24 was ordered to report to work and Firefighter Foy

1 has, in fact, reported to work.

2 Now, my understanding of the
3 process is normally when a firefighter who is on
4 prolonged absence is required to return to work,
5 before they actually do active duties, they're
6 required to submit to a functional capacity
7 evaluation.

8 The Applicant reported to work
9 January the 9th as ordered, but to this date has
10 not been asked to submit to a functional capacity
11 evaluation. Whether or not her return to work
12 will be successful, whether or not she'll pass any
13 functional capacity evaluation is yet to be
14 determined.

15 The opinions of Dr. Neal and the
16 opinions of the treating orthopaedic surgeon are
17 going to be the subject of an evidence deposition
18 between the Village and the worker's compensation
19 attorney on behalf of Firefighter Foy in the next
20 60 days.

21 So there are really two tiers of
22 reasons that this case is premature. Number one,
23 should the circumstances prove that Firefighter
24 Foy, in fact, returns to work, then this hearing

1 is moot. If she's back to work, she's not
2 disabled and there's nothing to be done.

3 You have had three examinations
4 during her absence, but you're not liable and
5 haven't paid any benefits. So it's not like
6 you've lost any money during the period of time
7 that she's been under active treatment.

8 The second thing is you are going
9 to have available to you the medical reports of
10 the treating orthopaedic surgeon and Dr. Neal, but
11 I would think that the Board would be interested
12 in cross-examination of those two experts; and I
13 think the Board would be interested, when the
14 Village follows through on its regular policy of
15 having a functional capacity evaluation, in that
16 one of the doctors had a problem with the
17 functional capacity evaluation that was ordered by
18 the treating physician.

19 So with those evidentiary issues
20 hanging, I simply think it's premature for the
21 Board to make a decision at this point in time.

22 The law clearly gives the Board
23 discretion. Probably the best known case where
24 the shoe is on the other foot is the Marconi

1 versus, I think Chicago Heights, where the
2 Board -- the Board spent over five years
3 conducting numerous hearings and deliberations
4 before they made a decision.

5 The Illinois Supreme Court said
6 that the Board should -- the Board has the
7 discretion to take as long as it needs to make an
8 accurate decision.

9 So with that understanding, that's
10 the reason for my request that the Board not
11 decide the case today, and that's why I wrote the
12 letter of January the 11th. I wrote the 11th,
13 because I actually thought part of my letter was
14 going to be Firefighter Foy is scheduled for a
15 functional capacity evaluation on such and such a
16 date. But that never came to fruition, so I can't
17 tell you that it's really going to happen, but we
18 are going to have testimony that that's a routine
19 that the Village has done in the past.

20 MR. GOODLOE: Okay. Thank you very much,
21 Mr. Duda. Has the evidence deposition of the
22 treating physician, Dr. Marra, been scheduled yet?

23 MS. FOY FRISBY: Yes.

24 MR. DUDA: Is it?

1 MS. FOY FRISBY: Yes.

2 MR. GOODLOE: What's the date?

3 MR. DUDA: What's the date?

4 MS. FOY FRISBY: It's in March. I don't
5 know. My attorney, Patrick Saroka (phonetic), has
6 those scheduled.

7 MR. GOODLOE: And then --

8 MS. FOY FRISBY: Which Neal as well.

9 MR. GOODLOE: Same question for Dr. Neal.
10 That's also scheduled?

11 MR. DUDA: Yes.

12 MR. GOODLOE: Also in March?

13 MS. FOY FRISBY: (Nodding.)

14 MR. GOODLOE: Any of the Trustees have
15 any questions for Mr. Duda regarding his position?

16 MR. BRAMWELL: I do not.

17 MR. GOODLOE: Okay. So the Board has two
18 options right now.

19 Number one, you can entertain a
20 motion with respect to the request for a
21 continuance.

22 Number two, you can go into closed
23 session pursuant to 2(c)4 of the Open Meetings Act
24 to discuss the issue and then come out and render

1 a decision. So whatever the Board's pleasure is.
 2 MR. GARZA: I make a motion to go into
 3 closed session.
 4 MR. BRAMWELL: I second.
 5 MR. GOODLOE: There's a motion to go into
 6 closed session and, again, that's pursuant to
 7 Section 2(c)4 of the Open Meetings Act. I expect
 8 it could also be pursuant to Section 2(c)11 of the
 9 Open Meetings Act, possibly.
 10 But there's a motion and a second.
 11 Any discussion? If not, you need a roll call
 12 vote. An aye is to approve the motion to go into
 13 closed session.
 14 MS. STRIMEL: President Bramwell?
 15 MR. BRAMWELL: Aye.
 16 MS. STRIMEL: Secretary Spindel?
 17 MR. SPINDEL: Aye.
 18 MS. STRIMEL: Trustee Garza?
 19 MR. GARZA: Yes.
 20 MS. STRIMEL: Trustee Jostes?
 21 MR. JOSTES: Aye.
 22 MS. STRIMEL: And Trustee Morales is
 23 absent.
 24 MR. GOODLOE: Thank you. If everybody

1 could please excuse us. Thank you.
 2 (WHEREUPON, the Board adjourned
 3 into closed session.)
 4 MR. BRAMWELL: Make a motion to return to
 5 open session.
 6 MR. SPINDEL: Second.
 7 MR. BRAMWELL: All in favor?
 8 (WHEREUPON, all Board Members
 9 responded aye.)
 10 MR. BRAMWELL: All opposed?
 11 MR. GOODLOE: Okay. So the Pension Board
 12 has deliberated with respect to the Applicant's
 13 request to continue this matter, and they did that
 14 in closed session.
 15 Is there a motion with respect to
 16 the Applicant's request to continue the hearing?
 17 MR. BRAMWELL: Make a motion to deny the
 18 application.
 19 MR. SPINDEL: Second it.
 20 MR. GOODLOE: Is there any discussion?
 21 If not, roll call vote. An aye is to approve the
 22 motion to deny the request to continue.
 23 MS. STRIMEL: President Bramwell?
 24 MR. BRAMWELL: Aye.

1 MS. STRIMEL: Secretary Spindel?
 2 MR. SPINDEL: Aye.
 3 MS. STRIMEL: Trustee Garza?
 4 MR. GARZA: Aye.
 5 MS. STRIMEL: Trustee Jostes?
 6 MR. JOSTES: Aye.
 7 MS. STRIMEL: Trustee Morales is absent.
 8 MR. GOODLOE: So, Mr. Duda, we're going
 9 to move forward today.
 10 MR. DUDA: Absolutely.
 11 MR. GOODLOE: So at this point, let's
 12 talk about the exhibits. So Pension Board
 13 Exhibits 1 through 16, 18 and 19 are already in
 14 evidence.
 15 Do you have any objection to the
 16 admission into evidence of Pension Board Exhibit
 17 17? And then I've also provided to you 20, 21,
 18 22, 23, 24, 25.
 19 MR. DUDA: Let me find my copies of your
 20 exhibits that you provided. Okay, 17, I take it,
 21 is the report of Dr. Primus?
 22 MR. GOODLOE: Correct.
 23 MR. DUDA: And, of course, we put his
 24 deposition as an exhibit.

1 MR. GOODLOE: That's 22.
 2 MR. DUDA: Yeah, okay. With respect to
 3 Board Exhibit 20, which is an IME report by the
 4 worker's comp carrier, we -- the Applicant does
 5 not assert the hearsay objection, but we do not
 6 stipulate to this document being admitted in the
 7 record. It's an exam for a different purpose, but
 8 we are not going to raise the hearsay objection
 9 with respect to that report.
 10 MR. GOODLOE: Do you have an objection
 11 based on authentication or foundation?
 12 MR. DUDA: No.
 13 MR. GOODLOE: Okay.
 14 MR. DUDA: But by not cross-examining Dr.
 15 Shadid, that doesn't mean we agree in any fashion
 16 with the medical conclusions contained in the
 17 report.
 18 MR. GOODLOE: I understand.
 19 MR. DUDA: With respect to 21, we have no
 20 objection. Twenty-two, we have no objection.
 21 That's the evidence deposition of the doctor.
 22 Twenty-three, we will not raise the hearsay
 23 objection, but by not raising the hearsay
 24 objection we by no means endorse the opinions of

1 Dr. Neal.
 2 MR. GOODLOE: And the same question. Any
 3 objection on foundation or authentication?
 4 MR. DUDA: No.
 5 MR. GOODLOE: Okay.
 6 MR. DUDA: I have no objection to 24.
 7 MR. GOODLOE: Do you have 25?
 8 MR. DUDA: What is 25?
 9 MR. GOODLOE: Twenty-five, I actually
 10 e-mailed early this morning. So 25 is any
 11 correspondence and e-mails between you and me from
 12 January 4th, 2017 to the present.
 13 MR. DUDA: That includes my January 11th
 14 letter?
 15 MR. GOODLOE: That includes the January
 16 11th letter.
 17 MR. DUDA: Yeah, I have no objection.
 18 MR. GOODLOE: Okay.
 19 MR. DUDA: And then I provided to you --
 20 MR. GOODLOE: The Applicant exhibits?
 21 MR. DUDA: Applicant exhibits.
 22 MR. GOODLOE: Let's stop with those real
 23 quick.
 24 MR. DUDA: Okay.

1 MR. GOODLOE: I'm going to distribute
 2 Board Exhibit Number 25 to the Trustees now.
 3 Okay. So Pension Board Exhibits 17
 4 through 25 are admitted into evidence subject to
 5 Mr. Duda's clarification regarding Board Exhibit
 6 20 and 23.
 7 You don't agree with the opinion,
 8 you don't stipulate to the opinion, but you have
 9 no objection based on hearsay, authentication or
 10 foundation; correct?
 11 MR. DUDA: Correct.
 12 MR. GOODLOE: Okay. So those exhibits
 13 are admitted into evidence. So let's talk about
 14 Applicant exhibits.
 15 MR. DUDA: Yes.
 16 MR. GOODLOE: All right. So I have
 17 Applicant Exhibit 7 and Applicant Exhibit 8.
 18 Seven is the report of Dr. Guido Marra dated
 19 September 22nd, 2016. Applicant Exhibit 8 is the
 20 report of Dr. Guido Marra dated January 5th, 2017.
 21 Do you have any other Applicant
 22 exhibits?
 23 MR. DUDA: I do, but I was going -- I'm
 24 going to recall the Applicant to bring the record

1 up-to-date, and I was going to have her identify
 2 these in the course of her testimony.
 3 MR. GOODLOE: Okay.
 4 MR. DUDA: I have Applicant Exhibits 9,
 5 10 and 11, and I'll let her identify what they
 6 are, and then offer them after she -- as she's
 7 testifying.
 8 MR. GOODLOE: Okay. So any objections to
 9 -- or I don't assume Applicant 7 and 8. Those
 10 come into evidence, no objection.
 11 MR. DUDA: Correct.
 12 MR. GOODLOE: Okay. That's fine.
 13 MR. DUDA: And just for the record, I
 14 mean, I fully understood that should I have raised
 15 the hearsay objection to Neal or Shadid, then the
 16 Board would have insisted on deposing Dr. Marra.
 17 So that was -- that's why -- that was my strategy.
 18 MR. GOODLOE: I understand.
 19 MR. DUDA: I would like to recall the
 20 Applicant.
 21 MR. GOODLOE: That's fine. Go ahead,
 22 sir.
 23 MR. DUDA: She's still under oath?
 24 MR. GOODLOE: Just go ahead and have her

1 sworn in again just so there's no question about
 2 it.
 3 (WHEREUPON, the court reporter
 4 swore in the witness.)
 5 **BETHANY M. FRISBY,**
 6 **called as a witness herein, having been first duly**
 7 **sworn, was examined and testified as follows:**
 8 **FURTHER EXAMINATION**
 9 **BY MR. DUDA:**
 10 **Q.** Once again, state your full name for the
 11 record.
 12 **A. Bethany May Frisby.**
 13 **Q.** Spell your last name for the reporter.
 14 **A. F-R-I-S-B-Y.**
 15 **Q.** And at the time of the accident, you were
 16 not married; correct?
 17 **A. Correct.**
 18 **Q.** And your maiden name was Foy?
 19 **A. Correct.**
 20 **Q.** And what was the date of marriage again?
 21 **A. 10-17-15.**
 22 **Q.** And you have no children or child care
 23 obligations at home; correct?
 24 **A. No.**

1 **Q.** Now, since the last hearing, you
2 mentioned at the last hearing that you were
3 scheduled to have an EMG test prescribed by Dr.
4 Marra. Did you, in fact, have that test?

5 **A. Yes.**

6 **Q.** And you had it the Friday after the
7 hearing; correct?

8 **A. Yes.**

9 **Q.** And the test was normal?

10 **A. Yes.**

11 **Q.** Have you had occasion to see Dr. Marra
12 since the EMG test in June of 2016 concerning your
13 left shoulder?

14 **A. I had a follow-up with him for the**
15 **results.**

16 **Q.** And at that time, did he render any
17 treatment for you?

18 **A. He referred me to Dr. Kim for -- she is a**
19 **rehab physiatrist for continued care.**

20 **Q.** You say he referred you. He scheduled
21 you to see a Dr. Kim, K-I-M?

22 **A. He gave me a referral, and I scheduled --**
23 **I contacted -- I sent them the referral and**
24 **scheduled the appointment.**

1 **Q.** And what type of a doctor is Dr. Kim?

2 **A. Rehab physiatrist.**

3 **Q.** Did you follow through on Dr. Marra's
4 recommendation?

5 **A. Yes. I saw her on August 26th.**

6 **Q.** And did she make -- strike that.
7 What did she do for you?

8 **A. She had me continue with at home rehab**
9 **exercises that I had before, and then wanted to do**
10 **a cortisone injection into my left biceps tendon.**
11 **We needed to wait for the work comp insurance to**
12 **approve that.**

13 **Q.** Did that take place?

14 **A. Yes. That took place in September.**

15 **Q.** And how did that -- how did the injection
16 help you?

17 **A. It helped for about two weeks, relieved**
18 **some of the pain, and that was it.**

19 **Q.** Did you have occasion to go back to Dr.
20 Kim?

21 **A. She left for maternity leave. We have an**
22 **appointment scheduled in February. I have been**
23 **contacted by her office several times since I have**
24 **been back at work to move up the appointment to --**

1 **I even got called yesterday to see if I could come**
2 **in yesterday, but I have not been able to**
3 **follow-up due to being ordered back to work.**

4 **Q.** And you were ordered back to work. The
5 order came earlier, but the date for return to
6 work was January 9th, 2017; correct?

7 **A. Yes.**

8 **Q.** And you had not been ordered back to work
9 at any time before that during your -- during this
10 leave for this injury?

11 **A. I was not ordered back to work. I was**
12 **ordered to produce a note from my doctor clearing**
13 **me for full-duty in May of last year.**

14 **Q.** And it was that order that led to the
15 interrogation that took place before the last
16 hearing; correct?

17 **A. Yes.**

18 **Q.** Disciplinary?

19 **A. (Witness nodding.)**

20 **Q.** And you, in fact, have complied with that
21 order?

22 **A. I showed up, but I did not have the**
23 **order, the note clearing me.**

24 **Q.** I see. The order to return to work on

1 January 9, 2017, you complied with that?

2 **A. Yes.**

3 **Q.** And have you returned to work?

4 **A. Yes.**

5 **Q.** Do you work a 24-hour shift?

6 **A. No. I work 8:00 to 4:00 Monday through**
7 **Friday.**

8 **Q.** And where do you work?

9 **A. I report to Station 4.**

10 **Q.** And what do you do?

11 **A. The first two weeks, I was catching up on**
12 **my paramedic continuing education hours. This**
13 **week, I have been reading the department SOPs and**
14 **AR's. I have also gotten vaccinations and did my**
15 **spirometry testing.**

16 **Q.** And have you -- have you, during the time
17 you've returned to work since January 9th, worn
18 turn-out gear?

19 **A. No.**

20 **Q.** Have you engaged in any fire suppression?

21 **A. No.**

22 **Q.** Are you allow to engage in fire
23 suppression?

24 **A. No.**

1 **Q.** Have you gone on any EMS calls?
 2 **A. No.**
 3 **Q.** Are you allowed to go on EMS calls?
 4 **A. No.**
 5 **Q.** Now, earlier in your testimony you had
 6 indicated that you had been off of work for a
 7 period of months, I think in 2008, for a back
 8 injury. Do you recall that?
 9 **A. Yes, I sprained my SI joint.**
 10 **Q.** And when you returned to work, did you
 11 have to submit to any type of physical testing of
 12 your physical agility?
 13 **A. Before I could return to work, they -- I**
 14 **needed to be cleared by a functional capacity**
 15 **evaluation.**
 16 **Q.** And do you know why that was necessary in
 17 2008?
 18 **A. I was -- that was just department policy,**
 19 **as far as I recall.**
 20 **Q.** And since you've been back to work
 21 January 9th, 2017, have you been ordered to
 22 undergo a functional capacity evaluation?
 23 **A. No.**
 24 **Q.** At the June hearing, questions were asked

1 concerning records of the injuries you sustained
 2 on December 28, 2013. Do you recall that?
 3 **A. Yes.**
 4 **Q.** Since returning to work or -- strike
 5 that.
 6 Is there a computer log of
 7 incidents that occur during the course of a shift?
 8 **A. Yes.**
 9 **Q.** I'm showing you a document that's been
 10 marked as Applicant Exhibit 9, and it's a copy of
 11 a document that says staff activity-miscellaneous
 12 log. Could you describe for the Board what this
 13 is?
 14 **A. This is the log that Lieutenant Peck**
 15 **entered into the firehouse report of me and him**
 16 **slipping in the station.**
 17 **Q.** And this is -- this is part of the
 18 record, a computer record of the Village; is that
 19 correct?
 20 **A. Yes.**
 21 **Q.** I'm showing you now a document that's
 22 been marked as Applicant Exhibit 10, and ask if
 23 you can identify that.
 24 **A. This is the building maintenance log for**

1 **Station 2 that Lieutenant Peck filled out stating**
 2 **we hung all 20 gear grid lockers for a period of**
 3 **12 hours.**
 4 **Q.** And are those the lockers that you
 5 described in your testimony to the Board?
 6 **A. Yes.**
 7 **Q.** Now, in the hearing in June of 2016, you
 8 were asked a number of questions about the
 9 necessity of the -- strike that.
 10 Questions about the time that you
 11 had to report to work as part of the Village
 12 Department's policy. Do you recall that?
 13 **A. Yes.**
 14 **Q.** And you were asked questions about
 15 whether jump calls that occurred before your shift
 16 actually began were mandatory. Do you recall
 17 those questions?
 18 **A. Yes.**
 19 **Q.** And you were also questioned as to
 20 whether or not if you wore your uniform to work,
 21 if you could get to work exactly at 7:00 a.m. Do
 22 you recall those questions?
 23 **A. Yes.**
 24 **Q.** Okay. Have you discovered an e-mail

1 relating to the necessity of reporting to work
 2 early?
 3 **A. Yes.**
 4 **Q.** All right. I haven't had this marked,
 5 but I'm going to mark this as Applicant Exhibit 11
 6 and ask to you identify this, if you can.
 7 **A. This is an e-mail sent from**
 8 **Superintendent of Public Safety, Tom Ross, and one**
 9 **of the things -- his number one bullet point on**
 10 **the e-mail says, "If you're not early, you're**
 11 **late. I appreciate you looking out for each other**
 12 **at shift changes."**
 13 **Q.** Does this written e-mail comport with
 14 your understanding of what your obligation on
 15 reporting to work was during your whole tenure
 16 here at the Village?
 17 **A. Yes.**
 18 **Q.** Have you been released from treatment by
 19 Dr. Marra?
 20 **A. I have no documentation stating that I've**
 21 **been released.**
 22 **Q.** He referred you, and you don't know if
 23 you'll ever go back to him?
 24 **A. Correct.**

1 **Q.** Okay. And but for the maternity leave of
2 the physiatrist, you would have an ongoing
3 relationship with her?

4 **A. Correct.**

5 **Q.** And you were being paid worker's
6 compensation up through January 8, 2017, the day
7 before you returned to work; correct?

8 **A. Correct.**

9 **Q.** One of the exhibits that's been admitted
10 into evidence is a report from December 19, 2014
11 of Dr. Shadid. Do you remember seeing Dr. Shadid?

12 **A. Yes.**

13 **Q.** He's a worker's compensation IME doctor?

14 **A. Yes.**

15 **Q.** After you saw Dr. Shadid, was there any
16 interruption in the payment of your worker's
17 compensation benefits?

18 **A. No.**

19 MR. DUDA: I have no further questions.
20 I move to admit Applicant's Exhibits 9, 10 and 11.

21 MR. GOODLOE: Those are admitted into
22 evidence. Do you have copies of those, Mr. Duda?

23 MR. DUDA: I sure do. I will pass them
24 out now.

1 (WHEREUPON, a discussion was held
2 off the record.)

3 MR. BRAMWELL: Tom, do you have an extra
4 one of 11 or no?

5 MR. DUDA: I thought I had enough.

6 MS. FOY FRISBY: Here's one.

7 MR. DUDA: Here.

8 MR. GOODLOE: I just have a few
9 questions, and then the Trustees may have some
10 questions.

11 **EXAMINATION**

12 **BY MR. GOODLOE:**

13 **Q.** Firefighter Frisby --

14 **A. Yes.**

15 **Q.** How many times did Dr. Marra examine you
16 following your EMG in June?

17 **A. One.**

18 **Q.** And he then referred to you Dr. Kim;
19 correct?

20 **A. Yes.**

21 **Q.** You testified that right now you are not
22 working full and unrestricted firefighting duty;
23 correct?

24 **A. I've been cleared without restrictions,**

1 **but I have not been -- I am not cleared by the**
2 **Department to the perform firefighting or EMS.**

3 **Q.** What do you mean you've been cleared
4 without restrictions?

5 **A. I had a letter from --**

6 MR. DUDA: I have it.

7 MS. FOY FRISBY: Okay.

8 MR. DUDA: For the record, it's in Board
9 Exhibit 23. It's subparagraph 2. It's
10 correspondence from the Village dated December 19,
11 2016. It's signed by Deputy Chief Trinidad.

12 BY MR. GOODLOE:

13 **Q.** So when you say you've been cleared --

14 MR. DUDA: Deputy Chief Trinidad Garza.

15 I apologize. Is this the letter?

16 THE WITNESS: I had a police sergeant
17 deliver a letter -- or stating that Dr. Neal's
18 medical report cleared me; that I am full-released
19 to return to work without any restrictions.

20 BY MR. GOODLOE:

21 **Q.** Okay.

22 **A. And that I was ordered to return to work.**

23 **Q.** And you've returned to work?

24 **A. Yes.**

1 **Q.** But you're not working full and
2 unrestricted firefighting duties?

3 **A. Correct.**

4 **Q.** All right. And you haven't since you
5 returned to work?

6 **A. Correct.**

7 **Q.** Okay. And there's been discussion about
8 an FCE. Do you know if any FCE has been
9 scheduled?

10 **A. No, not to my knowledge.**

11 **Q.** You testified that it was your
12 understanding that there is a department policy
13 that requires an FCE before return to duty; is
14 that correct?

15 **A. The last time that I had been injured, I**
16 **was required to pass an FCE before I could return**
17 **to duty.**

18 **Q.** And that was the time in 2008?

19 **A. Yes.**

20 **Q.** Okay. And do you know whether that's an
21 official department policy, or is that just
22 something that occurred before you returned to
23 work in 2008?

24 **A. I believe others have had to go through**

1 **that process as well.**

2 **Q.** Do you know who?

3 **A. No.**

4 **Q.** Did you tell -- strike that.

5 Do you recall being examined by Dr.
6 Neal for worker's compensation?

7 **A. Yes.**

8 **Q.** Did you tell Dr. Neal about the injection
9 that you received from Dr. Kim?

10 **A. Yes.**

11 MR. GOODLOE: I don't have any more
12 questions for you, so I will open it up to the
13 Trustees to see if they have any questions.

14 MR. BRAMWELL: I do not.

15 **EXAMINATION BY THE BOARD**

16 **BY MR. GARZA:**

17 **Q.** I guess the only question I have is: You
18 talked to a department policy. I don't know of
19 any that exists. Was this an on-duty or off-duty
20 injury when you returned?

21 **A. On-duty.**

22 MR. GARZA: Okay. All right.

23 **BY MR. JOSTES:**

24 **Q.** What was the -- in 2008, what was the

1 functional capacity evaluation? What did they
2 have you do? Can you explain what it was?

3 **A. It was the same process that I went**
4 **through that Dr. Marra sent me to. It was through**
5 **Bolingbrook ATI West. It was several hours long.**
6 **I don't -- I don't remember the exact, but I**
7 **believe it was the same exact FCE.**

8 **Q.** So that ATI was not the Department? That
9 was really my question. It was done outside, not
10 at the fire department?

11 **A. Correct.**

12 MR. JOSTES: That was the only question I
13 had.

14 MR. GOODLOE: Anybody else? Any
15 redirect?

16 **REDIRECT EXAMINATION**

17 **BY MR. DUDA:**

18 **Q.** Have you received any indication from
19 your supervisor when the Department is going to
20 assign you to the fire suppression?

21 **A. No.**

22 MR. DUDA: I have no further questions.

23 MR. GOODLOE: Okay. Thank you very much.

24 Any other witnesses, Mr. Duda?

1 MR. DUDA: I have no other witnesses, no
2 other reports.

3 MR. GOODLOE: Do you rest?

4 MR. DUDA: Within the -- I mean, without
5 waiving my January 11th, letter, I rest.

6 MR. GOODLOE: I understand. Okay. So --

7 MR. DUDA: I've presented all the
8 evidence that exists as of today.

9 MR. GOODLOE: Very well. I understand.

10 So Pension Board Exhibits 1 through 25 are in
11 evidence. Applicant exhibits 1 through 11 are in
12 evidence.

13 Now would be an appropriate time to
14 make a closing argument. I don't have any
15 witnesses that I know of, but as you know,
16 sometimes pension boards go into closed session
17 and deliberate and determine that they want to
18 hear from some additional witnesses. If that
19 happens, we will address it. But I think now is
20 the appropriate time to make a closing argument.

21 MR. DUDA: Yes. May it please the Board,
22 thank you for your time and attention. I am not
23 going to be referring to a lot of pages in the
24 record, but you have over 2,500 pages of paper.

1 But there are certain pages that I think are
2 important for you to look at, so I'm going to
3 direct you to those pages for your deliberations.

4 I kind of break down issues that
5 came up in the course of cross-examination of the
6 Applicant, and with respect to the examinations of
7 her physical condition and to the accuracy of the
8 history of injury that she provided to the medical
9 providers.

10 The conclusions of all of the
11 treating physicians, you know, we -- in the course
12 of this hearing, I think focused a lot on Dr.
13 Marra, who is the treater who spent the most time
14 with this Applicant. But I'm going to direct your
15 attention to the progress notes of Dr. Sauer whose
16 opinions are fully congruent with the opinions of
17 Dr. Marra, and then I'm going to end with a
18 comparison of -- of the objective findings in the
19 treating doctors' reports and the examining
20 doctors' reports, with the final conclusion that
21 the Applicant has never been ordered to report to
22 full duty -- report or assigned full duties.

23 The question that she was asked
24 numerous times is did she have the same history --

1 give the same history to all of the doctors at the
2 emergency room, her treating doctor and to the
3 examining physicians.

4 And interestingly enough, the
5 history that she gave to this Board is identical
6 to the history that this Board conveyed to all of
7 your examining doctors. All right?

8 So we begin with the emergency room
9 record in December of 2003. And when you look at
10 the emergency room record, the emphasis is
11 strictly on the slipping and falling in the
12 parking lot on her way into work at 6:40 the
13 morning of December 28, 2013, and there is no
14 mention of the lockers with the emergency room.

15 But then when you go to the
16 treating orthopaedic surgeon to whom she was
17 referred by the emergency room in writing, if you
18 look at Dr. Sauer's records -- and I believe this
19 is page 164 and 165 of your record.

20 On page 164, the date of service is
21 December 30, 2013, two days after the injury.
22 "This is the first visit for me for this
23 30-year-old, right-hand dominant female who works
24 as a firefighter and paramedic. Two days ago, on

1 December 28, 2013, she was at work getting out of
2 her car. Tried to get out with her left hand on
3 the side of the door. She slipped and had a pull
4 to her left shoulder, and then slipped and fell
5 onto the ground, landing on her left shoulder with
6 throbbing pain."

7 Oddly enough, throbbing pain is
8 exactly the words she used to this Board.

9 "She was seen in the emergency room
10 on the date of the injury, on December 28th, and
11 had some x-rays taken of the left shoulder."

12 Two sentences later it says, In
13 addition, she was hanging some gear lockers, which
14 are large 6.6-foot steel doors, but felt a pulling
15 on her -- no. I'm sorry. I lost my place.

16 "In addition, she was hanging some
17 gear lockers, which are large 6.6-foot steel
18 doors, and then really noticed a lot of increased
19 pain later. This was on Saturday." And then he
20 goes into her past history.

21 So the history given to the
22 treating -- the history of the treating physician
23 is exactly the history that she provided to this
24 Board.

1 And the point I'm trying to make
2 here -- and we're going to go into your examining
3 physicians -- what people say to their doctors,
4 particularly in emergency rooms, when they're
5 translated by the receiver isn't necessarily --
6 these are not word-for-word transcriptions.

7 So the fact that the emergency room
8 truncated the history provided is no indication
9 that the Applicant gave an inconsistent history.

10 She testified to you, and I think
11 these records reflect that when people listen and
12 take it down correctly, they get it correctly.

13 The history of your three examining
14 physicians was provided not only by the Applicant,
15 but it was in writing. And yet when we take a
16 look at Dr. Garelick on page 2531, he says, "In
17 brief, I am confident that the factual history as
18 it relates to this case is relatively
19 straightforward. In brief, Miss Foy works as a
20 paramedic/firefighter for the Village of
21 Bolingbrook. She was on her way to work on
22 December 28th. At approximately 6:40 in the
23 morning, she slipped on some ice in the employee
24 parking lot and fell onto the back of her left

1 shoulder. Her work was evidently supposed to
2 start at 7:00 a.m. Bethany Foy did not note any
3 pain at that time, but as the day went on, she
4 noted increasing pain in her left shoulder and
5 presented to Bolingbrook Hospital emergency room."

6 There's no mention of the lockers,
7 there's no mention of her arm developing heaviness
8 by Dr. Garelick. And not only was he given that
9 history by the Applicant, he was given the history
10 by the Board.

11 Dr. Primus accurately states the
12 history in his report. But when you look at Dr.
13 Tu on page 2568, he relates, "She is employed by
14 the Village of Bolingbrook as a
15 firefighter/paramedic. She states on her date of
16 injury, she slipped on some black ice and landed
17 on her left shoulder. After her injury, she
18 started hanging steel lockers for approximately
19 two hours, when she started having increasing pain
20 and decreased motion in her left shoulder."

21 So at this point, he has it right.
22 But when you get to the end of his report on page
23 2572, he completely eliminates the locker part in
24 rendering an opinion. The question he's answering

1 is, impression: "Ms. Bethany Foy's history,
2 examination and imaging studies as it relates to
3 her work injury on December 28th is left shoulder
4 SLAP tear."

5 Let's see here. Paragraph one,
6 "Her mechanism of injury of December 28, 2013,
7 which is a fall to the left shoulder, is
8 consistent with the development of a SLAP tear."

9 So although he initially gives the
10 full history, he shortens that history to simply
11 the fall. Everyone emphasizes the slip and fall
12 in the parking lot as the event that began the
13 pain in the left shoulder that progressed to the
14 point that she had to be seen in the emergency
15 room. So any inconsistency in the history is on
16 the receiving end, not the giving end.

17 The opinion of Dr. Primus is
18 premised on his disregarding range of motion
19 findings and complaints made by Firefighter Foy
20 Frisby, and opinions that he rendered that, in his
21 opinion, the MRI that was initially done was
22 normal and there was no evidence of a SLAP tear.

23 So the question is: Is that -- is
24 that conclusion accurate? Is it supported by the

1 medical records? And that's when you have to go
2 back to the record of Dr. Sauer, because Dr. Sauer
3 was the treater and the one who ordered the first
4 MRI.

5 And initially on December 30, 2013,
6 Dr. Sauer's impressions were that he was dealing
7 with a simple left shoulder strain, and he
8 anticipated -- in fact, he said she had a
9 contusion since she landed directly on the left
10 shoulder. I'll see her in a week. I'll give her
11 Naproxen of 500 milligrams, keep her off of work
12 since she has not really been able to tolerate
13 heavier demands. It's pretty simple.

14 MR. GARZA: Can we get a page number on
15 that?

16 MR. DUDA: That is page 164.

17 MR. GARZA: Thank you.

18 MR. DUDA: And on page 164, he did a
19 number of orthopaedic tests that are mentioned
20 frequently in the records. He performed the
21 O'Brien's Test. He did the Empty Can Test, which
22 on December 30, were completely negative.

23 But on January 9th, 2014, when Dr.
24 Sauer next saw her, he again didn't view this as a

1 particularly significant injury. But on physical
2 exam, he indicates she had -- she does have good
3 strength on testing of her deltoid at 90 degrees
4 of abduction with resisted external and internal
5 rotation. But she has positive impingement sign,
6 positive O'Brien's Test and positive Empty Can
7 Test.

8 So even though the first visit,
9 these same tests were negative, she now has all of
10 the orthopedic tests that he administered are
11 positive. He says that he thinks that an MRI is
12 justified. He does the MRI test, which does not
13 reflect the MRI tear.

14 What's important for the Board to
15 consider is the MRI test that was done, first at
16 the request of Dr. Sauer, was without contrast
17 material. It was strictly a straightforward MRI.
18 There was no injection of radio opaque dye, and
19 that failed to disclose the labral tear.

20 Later on, you're going to find that
21 even though that MRI was negative, Dr. Sauer
22 himself believed that there was a labral tear; and
23 the labral tear was, in fact, discovered when an
24 MRI with an arthrogram was performed, and that did

1 disclose a torn labrum, which is contrary, was not
2 considered by Dr. Primus in his cavalier
3 assessment that there was -- his assessment was
4 there was really no significant injury that should
5 have been operated on in the first place. That's
6 simply not borne out by the record.

7 So Dr. Sauer orders the MRI, and he
8 notes on January 23, page 173, "The MRI was
9 reviewed and there is no evidence of a rotator
10 cuff or biceps tendon tear. The labrum is also
11 intact. " And then he decided to start her on
12 aggressive physical therapy, which he did, and
13 continued to see her every several weeks up until
14 March 24, 2014. This is page 185.

15 Now, at this point, Firefighter
16 Frisby is going to change doctors. This is going
17 to be her last visit. But this is Dr. Sauer.
18 This is not Dr. Marra. This is not a doctor hired
19 by anybody.

20 But on March the 24th, 2014, he
21 reports -- and incidentally, the history is
22 interesting. He describes it as a slip and fall
23 with her arm catching on a door and then landing
24 on her left shoulder back on December 28th, 2013,

1 which is slightly different than the history he
2 started with.

3 But in his plan, he states, "It has
4 now been three months and she is still having
5 significant pain. We did discuss the possibility
6 of a subacromial injection. I think a lot of her
7 symptoms are related to her cuff, but I cannot
8 fully rule out a labral tear. Although the MRI
9 did not suggest a labral tear, it is still a
10 possibility. We are going to give her a
11 subacromial injection. This was done after
12 sterile prep and injecting 2 milliliters of
13 Kenalog, 40 plus 4 milliliters of Marcaine, and 4
14 milliliters of lidocaine. I'm going to see her in
15 three weeks. We will keep her off of work. If
16 this did not help her at all and she is still in
17 as much pain as she is, I would recommend
18 arthroscopy with inspection of the humeral joint
19 and a subacromial decompression with possible
20 labral repair or biceps tendonesis or possible
21 rotator cuff repair depending on what is found."

22 So although Dr. Primus makes a big
23 deal out of this first MRI, the doctor who ordered
24 the MRI did not think it was significant. He did

1 not think that it was evidence that there was no
2 labral tear, which, of course, there was a labral
3 tear.

4 The second MRI turns out to be
5 positive, and Dr. Marra actually does surgery on
6 July 2, 2015.

7 The important thing about Dr.
8 Marra's surgery is, number one, he's an eyewitness
9 to what the pathology was. He saw the joint. He
10 was in there with a scope. He saw the labral
11 tear.

12 And, number two, this wasn't a
13 simple repair. I do a lot of this work and I've
14 seen a lot of labral tears in my career. It is
15 not customary to apply two suture anchors,
16 permanent anchors that are still in her shoulder,
17 that were necessary to reattach what was left of
18 the labrum back to the -- back to the joint in
19 order for her to have a successful surgery.

20 So the reality is there was, in
21 fact, a labral tear caused by the injury that she
22 sustained at work for the Village, and it was
23 repaired. She underwent extensive physical
24 therapy, which did not improve her to the point

1 that she was able to function at a level to do
2 very heavy work, which is required for a
3 firefighter in the Village.

4 Which brings us to the three
5 examination reports of your doctors. And the
6 interesting thing in these reports, if we start
7 with Dr. Garelick, which is the first report in
8 your packet, in his physical examination of the
9 firefighter on page -- I think it's 2544 -- nope.
10 I'm sorry, page 2532, his physical examination.

11 Now, this is a test that was --
12 this was an exam conducted by Dr. Garelick on
13 November 25, 2015, and he performs a series of
14 orthopedic tests on her left shoulder, and he
15 finds -- he finds that the Hawkins Test is
16 negative, the O'Brien's Test is negative, the
17 Speed Test is negative, but the Neer Test is
18 positive. So we have one out of four tests that
19 are -- that is positive on November 25th, 2015.

20 Dr. Tu, who did an examination on
21 December 17th, less than a month after Dr.
22 Garelick, Dr. Tu, on page 2570 in his examination,
23 disclosed there is a positive Neer impingement
24 sign, a positive Hawkins Reinforcement Test, a

1 decrease in supraspinatus strength 4+ over 5,
2 there's a positive O'Brien's Test and a positive
3 Speed Test. So all but one orthopedic test for
4 him is positive in less than a month.

5 These are all orthopedic tests that
6 the treater found to be positive. And when we go
7 over Dr. Marra's report, he found them to be
8 positive. And yet Dr. Primus couldn't find any of
9 these tests to be positive. He saw the same
10 individual at the same period of time, and two of
11 your three doctors found positive orthopedic
12 tests, although they didn't agree, but the one
13 doctor couldn't find any positive tests.

14 So Dr. Marra is the doctor who did
15 the surgery, and he's written two reports to the
16 Board explaining his opinion, explaining the
17 surgery, and explaining his opinion on causal
18 connection.

19 And in the most recent report,
20 which is Applicant Exhibit 8, he addresses
21 specifically the opinions of Dr. Primus. And he
22 -- I don't think that he had Dr. Neal's report.
23 But Dr. Primus doesn't -- doesn't say that she has
24 a full range of motion, and Dr. Primus doesn't say

1 that her left shoulder is normal.

2 What he says is that -- that he
3 can't -- he can't explain her complaints in the
4 left shoulder and the findings in the left
5 shoulder by a torn labrum.

6 So the question is: What does Dr.
7 Marra think? And Dr. Marra's opinion is that in
8 an MRI that Dr. Marra performed after the surgery,
9 it said the December 4th, 2014 MRI did not
10 demonstrate any recurrence of a superior labral
11 tissue. There were findings consistent with
12 postsurgical changes in the region of her SLAP
13 repair. There is evidence of increased edema in
14 the distal aspect of the supraspinatus tendon, the
15 T-2 weighted images of changes in the labrum which
16 are consistent with postoperative changes. I do
17 feel that the symptomatology that she has is
18 related to her repair.

19 He goes on to say in paragraph
20 three, I do believe that these findings correlate
21 with the MR arthrogram findings. She did undergo
22 a SLAP repair. And he says there is a subset of
23 patients who will continue -- will have continued
24 pain, particularly with stressing the superior

1 labrum, and can cause abnormal kinematics of the
2 shoulder resulting in rotator cuff tendonesis. I
3 disagree with the opinion that she can return to
4 work without restrictions, which is why I obtained
5 an FCE, which evaluated her current level of
6 function, which falls very -- below a very heavy
7 physical demand level.

8 In fact, Dr. Marra opines that 20
9 -- 15 to 20 percent of patients undergoing SLAP
10 repair have residual symptoms from the site of the
11 repair.

12 So I believe what all of this
13 leaves the Board -- the decision to make is either
14 she is -- either the Board believes that the
15 current problems in her left shoulder prevents her
16 from being a firefighter or they don't. It's
17 either she's disabled or she's not disabled.

18 All of the doctors opine that the
19 problem in the left shoulder, Dr. Garelick, Dr.
20 Tu, Dr. Marra, Dr. Sauer -- Dr. Sauer and Dr.
21 Primus, doesn't think it's -- there's any
22 causation, because he doesn't think there's any
23 pathology. There's nothing to be caused.

24 So there's not an issue here where

1 the Board could find that she is disabled, but it
2 wasn't the result of the injury she sustained on
3 December 28, 2013. The choice for the Board is
4 going through the medical evidence is whether or
5 not she remains disabled to perform the full
6 duties of firefighter and EMS.

7 The one remaining issue is the
8 question of -- in my opinion, that this is one
9 continuous injury. She slipped and fell December
10 28th getting to work in accordance with the
11 Collective Bargaining Agreement and the
12 instructions of her superior, the head of the
13 Department, Tom Ross. And that the increasing
14 pain with the -- with the heavy work that she did
15 was simply one continuous process. She hurt
16 herself, and the pain got worse the more activity
17 and more stress and strain she placed on the
18 shoulder.

19 But I think the evidence is clear
20 that she meets the definition that she injured
21 herself in an act of duty even if you only focus
22 on the parking lot, because she was engaged in an
23 activity that is prescribed by the written and
24 verbal rules and regulations of the Department.

1 And under the cases that apply, the
2 act of duty definition in the Pension Code, she
3 was performing an act of duty when she was hurt.

4 So in my opinion, the issue for the
5 Board to determine is: Is she disabled or is she
6 not disabled? There is no issue of causation in
7 this case, and I don't think there's any evidence
8 to establish she was not engaged in an act of duty
9 when she injured her shoulder.

10 With that, I appreciate the Board's
11 attention, and that concludes my comments this
12 morning.

13 MR. GOODLOE: Thank you very much, Mr.
14 Duda. I expect the Pension Board will want to go
15 into closed session to deliberate. So if you want
16 to do that, you need a motion pursuant to Section
17 2(c)4 of the Open Meetings Act.

18 MR. GARZA: I'll make that motion.

19 MR. SPINDEL: I'll second it.

20 MR. GOODLOE: Any discussion? If not,
21 roll call vote. An aye is to approve the motion
22 to go into closed session.

23 MS. STRIMEL: President Bramwell?

24 MR. BRAMWELL: Aye.

1 MS. STRIMEL: Secretary Spindel?
 2 MR. SPINDEL: Aye.
 3 MS. STRIMEL: Trustee Garza?
 4 MR. GARZA: Aye.
 5 MS. STRIMEL: Trustee Jostes?
 6 MR. JOSTES: Aye.
 7 MS. STRIMEL: Trustee Morales is absent.
 8 MR. GOODLOE: Okay. Thank you.
 9 (WHEREUPON, the Board adjourned
 10 into closed session.)
 11 MR. GOODLOE: Okay. I need a motion to
 12 return to open session.
 13 MR. BRAMWELL: I'll make the motion to
 14 return to open session.
 15 MR. GARZA: Second.
 16 MR. GOODLOE: All in favor?
 17 (WHEREUPON, all Board Members
 18 responded aye.)
 19 MR. GOODLOE: Thank you. Okay. The
 20 Pension Board has deliberated in closed session
 21 pursuant to Section 2(c)4 of the Open Meetings
 22 Act. Is there a motion with respect to the
 23 Applicant's pending disability applications?
 24 MR. BRAMWELL: I make the motion to grant

1 a non-duty disability and to deny a line-of-duty
 2 disability for Applicant Bethany Foy.
 3 MR. GOODLOE: Okay. So that's the
 4 motion. Is there a second?
 5 MR. SPINDEL: I second it.
 6 MR. GOODLOE: Second. Any discussion?
 7 If not, you need a roll call vote. An aye is to
 8 approve the motion.
 9 MS. STRIMEL: President Bramwell?
 10 MR. BRAMWELL: Aye.
 11 MS. STRIMEL: Secretary Spindel?
 12 MR. SPINDEL: Aye.
 13 MS. STRIMEL: Trustee Garza?
 14 MR. GARZA: Aye.
 15 MS. STRIMEL: Trustee Jostes?
 16 MR. JOSTES: This is to approve the
 17 motion?
 18 MR. BRAMWELL: To --
 19 (Inaudible.)
 20 MR. GOODLOE: You have to talk on the
 21 record. So the motion is to grant the application
 22 for a non-duty disability pension and to deny the
 23 application for a line-of-duty disability pension.
 24 So it's to approve that motion.

1 MR. JOSTES: Okay. I deny it.
 2 MR. GOODLOE: So you vote nay or --
 3 MR. JOSTES: Nay.
 4 MR. GOODLOE: So nay. So 3-to-1 to
 5 approve the motion to grant the non-duty
 6 disability application and deny the line-of-duty
 7 disability.
 8 Any questions, Mr. Duda?
 9 MR. DUDA: No. I assume that there will
 10 be a written decision explaining --
 11 MR. GOODLOE: Correct. The Pension Board
 12 will prepare a written decision and order. Under
 13 the Howe case, it has to vote to approve that at a
 14 meeting. So I'm not really sure when that will
 15 take place, but we'll start working on that and
 16 get that the done as soon as we possibly can.
 17 We will serve a copy of that on
 18 Firefighter Frisby as well as yourself, and that
 19 will trigger the 35-day Administrative Review Law
 20 time period. Any questions?
 21 MR. DUDA: No, no. The only question is:
 22 Is this an act of duty issue or some other issue?
 23 I'll get that in the written decision.
 24 MR. GOODLOE: That will be in the written

1 decision, correct.
 2 Keep in mind that when you're on
 3 disability, you have to be -- you're subject to a
 4 medical examination each year until you turn 50.
 5 Okay? So you will be receiving notice from that
 6 and you will be required to comply with those
 7 notices. Any questions about that?
 8 MS. FOY FRISBY: Hu -- huh, no.
 9 MR. GOODLOE: No?
 10 MS. FOY FRISBY: No.
 11 MR. GOODLOE: Any questions, Mr. Duda?
 12 MR. DUDA: No.
 13 MR. GOODLOE: All right. If there are no
 14 questions from the Trustees, you need a motion to
 15 adjourn.
 16 MR. GARZA: So be it.
 17 MR. BRAMWELL: Second.
 18 MR. GOODLOE: All in favor?
 19 (WHEREUPON, all Board Members
 20 responded aye.)
 21 END OF PROCEEDINGS ON THIS DATE
 22 * * * * *
 23
 24

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3
4 I, Michelle N. Marvin, a Certified
5 Shorthand Reporter and Notary Public within and
6 for the State of Illinois, do hereby certify:

7 That the foregoing hearing was
8 reported stenographically by me, was thereafter
9 reduced to a printed transcript by me and
10 constitutes a true record of the testimony given
11 and the proceedings had to the best of my ability;

12 That said hearing was taken before
13 me at the time and place specified;

14 That I am not a relative or
15 employee or attorney or counsel for any of the
16 parties hereto, nor interested directly or
17 indirectly in the outcome of this action.

18 IN WITNESS WHEREOF, I do hereunto
19 set my hand and affix my seal of office in Cook
20 County, Illinois, this 31st day of January, 2017.

21
22
23

C.S.R.

24 Notary Public, Cook County, Illinois
C.S.R. No. 84-003211

25

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