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>> Sean Kaldor: Good morning everyone. We'll call to order the September 6th meeting of the San José Police and Fire retirement plan board of administration. We have present today Sean Kaldor, Dick Santos, David Bacigalupi, Sean Bill is not present, Damon Krytzer is not present, Drew Lanza is not present, James Mason is not present, Bettina Rounds is present, and Vince Sunzeri is present. Our nonvoting board member is not present, I thought we were going to have a replacement. Okay. Okay. For the agenda, there's a few orders of the day. Item 4.2 E, the disability retirement of David Gonzalez has been deferred at the applicant's request. Item 4.2 G, there is a correction for Officer Eric Kurz. The effective retirement date should be June 23, 2012. On Item 4.2 H, there is a correction, for firefighter Steve Moraldo, the effective retirement date should be effective April 14, 2012. On item 4.2 J, there is a correction for Joe Ysselstein. It should be a nonservice connected disability application. It was applied correctly, just posted incorrectly on the agenda. Under item 2.3. There was a correction to some preliminary committee makeups. Those have been corrected and included in the packet now. Item 6.2 was simply received late so we now have that. And finally, item 2.4, I'll ask the board for a motion and to approve waiving sunshine. We just received the June 2012 plan expenses handout.

>> Move to approve.

>> Sean Kaldor: So we have a motion by Santos and a second by Bacigalupi. Any discussion on the motion? All those in favor, aye, seeing none opposed we've waived sunshine on that. The last thing I'm going to do under orders of the day, is pull forward something which is item 7.4 F. We've recently had a transition in the department which you may notice by the person sitting here to my immediate left. With the retirement of the director of retirement services, Russell Crosby, there has been a field promotion. Our new acting director of retirement services is Donna Busse. Donna has been a key instrumental person within this department in keeping us working, knowing how everything is working, knowing the laws and policies and procedures, how things work within the city, and really, seeing this through quite a lot of the behind the scenes. So we're happy to have her step forward, to the forefront. And we appreciate all the staff who's going to have to step in behind her as she takes on this responsibility to make sure we're still getting things done in the department. Welcome Donna. So let's begin then. Item 1, investments. Item 1.1. Presentation by NEPC, of the quarterly investment performance report for period ending June 30, 2012.

>> Good morning. You have a slightly revised report in front of you. Which I'll explain in a minute. We're talking about performance for periods ending June 30, 2012. Since that time the S&P is up about 3.5% and on a preliminary basis your July result is up about 1.3%. What I wanted to mention here, is we, in the last six months, have reengineered our investment reporting system. So we took a system that was a 20-year legacy system, and converted it to a new platform. I would liken that to running an ocean liner back and forth between New York and London and changing the engines as you were en route. So it was a fairly significant redo. We took the time to go back and contact all your managers, and revalidate the entire history, including fees paid. And we operated this in parallel. It will provide going forward better more accurate data capture. It allows your managers to reconcile things on a more timely basis which will plain one of the changes that has actually happened since we issued this to the investment committee. It will provide better risk diagnostics so going forward a better insight to where risk was taken in the portfolio particularly at the manager level. As I said, we did a parallel in quarter 1. This is the first report generated off the new system. So you're going to see more diagnostics but in fact there will be more commentary going forward. We concentrated on getting the data right and accurate as this first one was released. There's a little bit less commentary in summary than we will be adding going forward. In the process between the time we issued this to the investment committee, we did have one of your managers in reconciling with us, we found that there was a cash flow that included a fee. And we, in fact, had not picked up the fee already being in the cash flow. So there was an adjustment to that manager's performance and your custodian for one of your commodities managers passed us a lagged data that in the reconciliation we caught and updated. The net effect of those two changes is on the five-year return number, no impact at all. On the one-year number, the original report to you had a negative 20 basis points for the one-year. And you'll see in this report, negative 10 basis points. So a fairly de minimus change. But I wanted you to be aware of it. And in some sense, the exception proves the rule. Both of those were captured as part of this reconciliation process. From an economic standpoint, I'm going to try to summarize for you quickly, and not go through every page. From an economic perspective, there are charts on pages 48 to 50 that outline what's going on in the economy in the quarter. At a top-line level the U.S. economy continues to grow modestly but at a decelerating rate. The growth rate was about 1.5% down from 3% in quarter 1. Last week the commerce department revised that number up to 1.7. So you're looking at an economy that's growing very slowly and certainly not with enough vigor to generate

job growth and reduce unemployment. Housing and consumer confidence, while higher, remain subdued. But at least housing is no longer a drag on GDP. It's not a driver of positive results but it's reduced drag on the economy. Retail sales were up but at a slow rate. The bright spot is corporate profits which continue to be very high but most of that profit growth continues to be good expense management as opposed to top line sales growth. And inflation and interest rates have remained low. The interesting observation is, if you look at the global economic cycle, it's actually stronger despite its weakness in this recovery than historically. That does suggest that a deceleration in China, which is a major fear, is tolerable, if the U.S. continues a modest growth path despite what we've seep is a shrinkage in Europe. It looks like a muddle-through process is the most likely event with the potential for a serious slow down in Europe to be damaging. The stock market and bond market, if you turn to page 1 of your report, this table, the blue bars, show you the quarterly returns. The yellow bars show you the annual returns. You've heard the terminology, risk on, risk off. Risk off is when markets do very poorly. And risk on is where risk-taking is rewarded. If you look at the blue bars for the most recent quarter, they all point to the left, at least for the equity categories. And they are bigger left-ward pointing as you move down the page from domestic U.S. equities down to international and emerging. That is a risk-off market. Those who took risk with a higher equity exposure were rewarded with negative returns during this period. The fixed income returns are still positive. And later on you'll see the yield curve has continued despite being very low to shift lower. So we've had a little bit of artificial impetus to fixed income returns in this quarter because of that decline. That is the fundamental problem we have going forward, is interest rates at 1.5%, mean it used to be fixed income was your anchor to windward, the protection in choppy times. Now, with interest rates at 1.5%, A, they're low to again with. So if you buy a 20-year government you're only getting 1.5% and five years from today, the value of that bond will be determined by where interest rates are on a 15-year bond at that time. It's highly unlikely that the yield curve will shift lower in the next five years. So if you hold the long government you're getting paid very little to hold it and you face the prospect of a capital loss on a holding period. So what used to be safe and the anchor to build a portfolio is now risky, and the only thing it anchors is an inability to deliver a 7.75, 7.5 rate. That creates a challenge for your investment strategy which we'll talk about. If you look at the one-year returns, again, just modestly positive. Small positives for domestic equities. Big negative for international equities. Strong fixed income, especially credit and the alternatives are positive, ex-commodities. Also if you look at that five year column, for five years only credit, TIFs and emerging market debt delivered more than 7.75%. This was a very

challenging period over five and ten years to earn 7%. That's the market environment. If you turn to page 2, just again, a verbal summary. Risk off is back. We had a very difficult quarter due to the souring economic backdrop which we mention there. The equity markets experienced a fairly significant selloff although as I indicated they're up about 3% since the report was issued. Credit markets generally held their ground. Benefiting from positions in cap structure and declining treasury yields. So you had a tale of two quarters here. The commodities in the quarter did significantly worse. From an investment strategy standpoint on page 3, you'll see this in your current portfolio positioning. Diversified broadly. Allocate to attractive segments of markets such as emerging markets, credit in particular. You are going to hear a presentation from a manager today, which is part of this. Take advantage of the distress in this case in Europe to create higher returns in the portfolio going forward. Be dynamic. Use active strategies where merited. I'm going to skip over the next few pages which are just snapshots of yield curves and sort of economic back drops. But take you all the way to page 14 which is really the summary of how your plan did. From a dollar standpoint, the fund experienced a net investment loss of 7.7 million for the year, and that was largely a first or second quarter loss of $54 million. So a bad quarter for the markets. A significantly negative quarter for you. Assets at the end of the year, as you can see below, are now at $2.654 billion, which is really almost what it was in 2008. And you'll see below, one of the challenges your fund has is, you are a negative cash flow fund. Most public funds are. I have one client, Harvey also works for them, that does have positive cash flow. But most public funds experience what you do, which is why you have the fund. If we look at the one-year fund, negative ten basis points, that ranks you in the 86th percentile of your peer group. Remember here this is not the teacher's 99 is good. 99 is bad. 1 is the best. 99 is the worst. You're in the fourth quartile on that one-year return. If you look to the line below that, your policy benchmark, positive 1.3%, top third. The policy benchmark to remind you is taking your long term policy target, and multiplying those allocations times the benchmark return. So that's what you would have earned, had every manager achieved their benchmark, and had the plan been allocated exactly in line with their long-term target. The biggest difference for you, if you look below that to the allocation index, the difference between the total fund and the allocation index is really your manager contribution or decriment. And you could see that the same number shows up in the allocation index. Meaning on balance your manager's performed in line with your benchmark. So the reason for your underperformance is the lag in implementing your long term target. That is something -- and you'll see here, it largely has to do with being underallocated to real estate which is a slow-build asset class. And because when

you are under -- you can't -- you have to end up at 100 here. So if you are underinvested in real estate you have to be overinvested somewhere else.. The overinvested somewhere else was in equities which did poorly in this period. So that is essentially the summary for the quarter. If you go back across and look at two years, five years, rather you see the same sort of pattern. It's the lack of implementing the long term, as opposed to manager underperformance. It's also interesting to note that for the 20 and 25-year period you did earn higher than your assumed rate, although I don't think you want to take great comfort in that given we're starting at a very low point in the interest cycle. But for those who are -- there is a lot of pressure as you know on the public funds to lower the assumed rates. It's happened when we've had two major market break downed in the past five years. I am one that would say what you have done in lowering your assumed rate is good and prudent. But I don't think those critics that are suggesting you have an assumed rate of 4%, that that is an unreasonable. So I think the assumed rate while it's challenging is doable, and certainly in historic times you have. I would now take you to page 16. This is just a snapshot of your current allocation.

>> Sean Kaldor: Just one thing. Can I ask you to clarify just that last statement you said, the critics who say you should go to 4%, that is not unreasonable?

>> You know, the fundamental equation that governs what you do is C plus I equals B plus E. Contribution plus investment return equal benefits plus expenses. If you take no investment risk, then something else in that equation has to give. So I think that is the challenge you have as a board, is to take a prudent amount of risk to enable your plan to earn a rate of return that gets close to what you need to have to amortize your liabilities. What that number is, is debatable. I do have one client where we have a board member who has suggested that we should invest the entire or 50% of the portfolio in long governments, that that would be a safe course of action. I find that to not be a safe course of action. But in any event that is your challenge. And we do think that your asset allocation is well diversified and you've seen from the numbers in adopting that, that somewhere between 7, 7.5 is what your actuary will certify when they do their work.

>> Sean Kaldor: I didn't mean to throw you off.

>> That's all right. I think it's really important that you as a board understand the most important decision you make is taking enough risk to have that investment income be a contributor here. You can get too conservative here and that, in our opinion, would not be the right course, particularly when the markets are at, we think, a relative low point. They could stay here for a while, but we don't see a lot lower as an expected outcome. Page 16 is just the snapshot of your current allocation versus your long term policy targets. And you can see the current allocation is larger in equity. And so that is one of the factors that drives performance. If you look to the far right within range the staff is operating the plan within the board-approved targets. But when you look at the over and underage there you do see where the underage is at real estate being fairly significant under and if you sum up the equity categories being over. I will say we have been working with the investment committee. Part of that is that your long term target for real estate, it's a slow-build asset class. You hire a manager, they make commitments, the commitments are drawn down. What we've talked with the investment committee about doing is as we have the plans for each of these slow-build asset classes developed, we then use those plans in terms of what we can expect over the next year. And develop what's called an interim policy benchmark. So you'll be comparing your actual with, in fact, an implementable plan as opposed to a long term plan here. It just will take you time to build the asset allocation in some of these asset classes. Page 17 is just a snapshot of where you are versus your target and where other public funds are. You'll see that your long term target is slightly more conservative than the average public fund, as you saw earlier that would have served you very well in the last year and would have put you in about the top third. Pages 18 and 19. Are risk return charts for your portfolio over various periods. So the returns we've already talked about in these periods, your red square, which is your return, in all cases is below the median for your public fund peers. If you look at the blue diamond, which is your policy benchmark, you'll find in most periods the policy benchmark is to the left of, meaning less risky, and above that red box. So your policy has been effective over the period. And in fact if you look at the five-year versus the one-year you can see that the portfolio today has less volatility risk than it did five years ago. You've migrated your plan to a more conservative asset allocation, that's been good in this environment we think it will be good going forward. The issue is to get the returns moved up into that top quartile. I'm not going to do too much on the next two pages. These are charts, giving you more granularity with how you rank with respect to return, standard deviation, sharp ratio and sortino ratios. I'm going to skip all the way to page 25. And have Dan talk a little bit about -- again, your policy has been effective. We think the positioning of your portfolio going forward is a good

one. We need to accelerate the pace of implementation and manager selection and we've been working with the investment committee to do that. Over the next few months you'll see an accelerated pace of manager allocations coming before you. Your managers, certainly in large cap, have been indexed anyway, so you don't have negative drag on average two-year managers. You'll see on page 25 the khaki bars there are the allocation impact, and they're negative. The manager impact, while it's been negative over the longer period, more recently and again a lot of it's because you've indexed and taken away negative alpha in your public market equity space, have started to turn positive. So with that, I was going to stop for questions. Dan can get into more detail at the manager level if you'd like. But that's the summary of the -- of the report. Hopefully a low point in terms of relative performance.

>> Sean Kaldor: Are there any questions or comments? Vince.

>> Vincent Sunzeri: I'll just make some comments here because I think it's important to recognize this. When you look at the information, in the last fiscal year, it's fairly disappointing. A flat return. Relative to the assumed return that we have. Taking the plan like this is like trying to turn a supertanker. It takes a while. And as Allen had kind of concluded here on page 25, one of the most significant changes that we made as a board was to terminate a majority of our active equity managers. And you can see on this report that that drag to the performance has now shifted. At least so far year-to-date. So that's one very positive step to point out. The second thing is, the policy benchmark. Although our plan has had difficult performance, even the policy benchmark hasn't been spectacular. As a reminder? The last board meeting we adopted a new asset mix and we are working with NEPC to start the implement process, so that should address that part of things. And then the other or the third element of this stool if you will is the allocation impact. And that is, are you in line with your policy or not? And I think they have some really good thoughts on how to address the transition. And looking at an interim policy benchmark. So I'm encouraged that we are taking steps in the right direction. I think NEPC is very engaged. I want you to be aware of that. They're committed to this process. And they're really helping to move this along.

>> Sean Kaldor: Any other questions or comments? Would the board like to see a review of the manager-level information or was the information in the packet sufficient?

>> David Bacigalupi: Information's here.

>> Sean Kaldor: Okay. I when it comes down to manager level performance it's here and I don't think we need to go into detail for this meeting. Thank you for that update. So that is to be noted and filed. For our next step we are going to go into closed session. This should not be a longed closed session. This is for item 1.2, conference with investment consultant pursuant to government code section 54956.81 to consider the purchase of a particular pension fund investment. The board will adjourn to the room --

>> Drew Lanza: Mr. Mayor, this is one issue, I was surprised to see the name of my brother-in-law as one of the investment fund managers. I want to recuse myself, neither I nor my spouse nor my children have any moneys invested with that fund nor am I aware of any trusts corporations or companies I'm involved with, but for all involved I'll just recuse myself from that item. Thank you.

>> Sean Kaldor: Thank you very much. We'll adjourn to the other room. [Closed session]ize

>> Sean Kaldor: We're reporting out from closed session there is nothing to report out from closed session. Item 2.1, discussion and action on report Back from actuary Cheiron regarding service purchases. I'm going to turn it over to Cheiron.

>> Bill Hallmark: Gene are you on?

>> Gene Kalwarsky: Yes, everyone, I'm Gene Kalwarsky. Unfortunately, plane complications prevented me from getting out there last night. Given that I'm not there, I think it would be more efficient, Bill, if you gave the entire presentation. I'll chime in if there's any points I want to make.

>> Bill Hallmark: Okay. With that, I'll go through some background on the purchase and service credit, and we'll talk about the total impact to the plan and then look at some illustrations and some principles, and I think we'll have some discussion. So back in March the board had asked us to review the ordinances that had been drafted to implement the memorandum of agreement between the city and local 230. On three different benefit changes or service purchase changes. The primary purpose was, there was a requirement in the MLA that the actuary certify that there's no impact to the plan due to the ordinances. We were also asked to look at the similar ordinances for the police department that were implemented in 2007. We came up with some questions that went to council and staff and to the city and got some responses. One of the key responses was, the concept of total impact to the plan, was whether that should include future experienced gains and losses and the answer was no. So the changes we're talking about were the elimination of the 90-day window for withdrawn contributions, to restore that service. The elimination of the 90-day window to purchase credit for Federated service, and the ability to purchase service credit for time on unpaid leave of absence. The ordinances for the police that are already in place put a specific formula in the ordinance for calculating the first two items. And there was no specific certification that those ordinances had no impact to the plan. Segal developed a methodology for the unpaid leave of absence purchases. And as we go through this we're suggesting a modification to that methodology. The fire ordinance, the draft fire ordinances were virtually identical to the police ordinances. So we've been asked to independently develop the best methodology to get a fair cost for those service purchases. And the key thing is, that the MOAs state that the total impact to the plan is to be paid by the employee. And so while the expected total impact to the plan can be determined at the time the service is purchased, the actual amount can't be known until many years later. And the response we got from the city was that the intent of the MOA was to set the cost based on the expected total impact. So we just want to be sure everybody is clear on that. However, since the options to purchase the service can be exercised any time before retirement or termination of retirement, there is a significant risk of anti-selection against the plan. And we'll talk about some of that, some of those pieces. But it's essentially that the plan makes assumptions that are our best estimate of behavior and experience in the whole. But an individual often has additional information about their particular situation and then can make choices against that assumption that we've made. So if you look at what the value of the total cost of additional service is, there are a whole bunch of factors that affect that. Everything from you know, the pay increases, how long someone actually lives, whether or not they become disabled at a later date, when they terminate or retire,

and their marital status and the age difference. Those assumptions we make are for the population as a whole and individual members really know a lot more, I think particularly about the last three items on that list than we do. They have a sense of when they plan to retire, or terminate implement and so forth.

>> Drew Lanza: So what you're tells me is an intelligent population will always exceed the expected cost?

>> Bill Hallmark: Yes.

>> Drew Lanza: Thank you.

>> Bill Hallmark: So I wanted to illustrate one of the -- what I think is probably the key dynamic, and cost for anti-selection, which is the time of retirement. The blue bars here, I just created a hypothetical member hired at age 26 for this illustration. And this is the police formula here. We'll look at the fire formula in just a minute. But the blue bars represent what this -- the value of the person's benefit as they go through each year of service. And we're just showing from age 45 to 55. And you can see that from age 50 to 51 there's a huge jump in the value of their benefit. And that's because of the plan provision that allows them to get an unreduced retirement benefit, once they have 25 years of service. So this particular sample person gets that at age 51. Before they have that 25 years of service, they don't get the unreduced benefit until age 55. And so that creates that huge jump between age 50 and 51. Now, if they purchase an additional year of service, in addition to getting that year of service into the benefit formula, they get the right to an unreduced benefit starting at age 50. So there's two things they're purchasing here. One is the eligibility piece. And one is the additional value of the applying the service in the formula.

>> Sean Kaldor: So that's the value to the member, that's not the cost to the plan, right?

>> Bill Hallmark: Well, it's -- it's both. And we'll get into that.

>> Sean Kaldor: Okay.

>> Bill Hallmark: A little bit here. The fire formula has the same dynamic. There's one additional piece which is at age 45, you see a little bump because once you get to 20 years of service, you get a higher multiplier applied to all your prior service. But otherwise, the pattern's essentially the same here. You still have that dynamic, once you get 25 years of service. So given that we proposed some pricing principles that the same method should apply to all three types of service purchased. So if you're trying to set the price, as the total impact to the plan, then you can apply the same methodology to all three types. And the cost to purchase the service should be the expected cost of the benefits after the purchase, less the expected cost of benefits prior to the purchase of service. Now, we are suggesting that we adjust the valuation assumptions to limit the opportunity for anti-selection. So we don't just use what we are assuming for the population as a whole but make some adjustment. And so there are some choices we're going to go through here about how we do that. That we want to discuss with you. The first is: To assume retirement at the most valuable retirement age. Which could be after the service purchase or under each option. So in the example if we assumed it just after the service purchase, we'd assume -- we'd do the chasing of the expected cost of benefits, assuming they retire at age 50, both before and after the service purchase. Or under each option, the most valuable would be after the purchase, it would be age 50, but before it would be age 51. So let me go back here so you can see that. So what we're saying here is, under the second option, before you purchase the service, the most valuable age is actually age 51. Beyond that the benefit is greater but it's discounted. And so it's not quite as valuable. In this particular example. And -- but after you purchase the year of service, it changes so your most valuable retirement age would be age 50. Now, controlling anti-selection for some of the other assumptions is very difficult. Only the possible exception is pay increases. If someone knew, for example, that they were going to get a promotion with a significant pay increase, they might be incented to go purchase the service before that pay increase became effective because after that service is obviously more valuable. Here's some examples. Looking at different purchase ages, and different methods. So on the left-hand side we have someone who purchases at age 26. Part of the problem we have here is that people can purchase at any time before retirement. So we don't know if they're purchasing you know 20 years before retirement or the day before retirement. Which can make a significant difference. So if they purchased at age 26, the value before is shown for age 50 and 51. And the value after for 50 and 51. And you can see that before, the value goes from 370 to 595, depending on the retirement age. And so the question is how do we determine the price, given all

those four numbers? And the option 1 was, you look at the age 50 retirement column and do the value after, minus the value before, which gives you a very large number. $245,000 in this case. The option 2 is, you look at age 50 for the value after, but age 51 for the value before. Essentially, assuming that they would not retire at age 50 if they didn't have that additional year of service. And that gives you a value of $20,000. Now, you can go through the same thing if they purchase at age 50, and the numbers are larger but you have a similar dynamic. I sensed a question coming here.

>> Harvey Leiderman: Sure, thanks. Bill, in the option 1, the value appears to include not only the value of the benefit attributed to an additional year of service but also the value that is attributable to qualifying for a nonreduced benefit. Is that right?

>> Bill Hallmark: Yes. On here, where the lines where it says value, that's the value of the total benefit.

>> Harvey Leiderman: Right.

>> Bill Hallmark: Not just the value of the --

>> Harvey Leiderman: But you're counting not only the boost that an additional year of service is giving the individual but the fact that it also boosts them into an unreduced benefit.

>> Bill Hallmark: Exactly.

>> Harvey Leiderman: So we'll have to go back and look at the language specifically of the agreement as to what impact is supposed to be neutral to the plan. Is it just the impact of the year of service or is it the total impact?

>> Bill Hallmark: The language in the M OA is the total impact to the plan.

>> Gene Kalwarsky: Can I say something?

>> Sean Kaldor: Please.

>> Harvey Leiderman: I thought I'd get Gene.

>> Sean Kaldor: Gene, please.

>> Gene Kalwarsky: Bill and I have already had this discussion but he hasn't said it yet. On the first example someone who's aged 26, we would highly doubt that a 26-year-old would know when they're going to retire down the road. So our thinking is that if a 26-year-old didn't purchase the service they'd probably retire at 51, and if they did they could retire at 50. At least on that example I think both Bill and I are comfortable that the cost would be based on option 2. It gets tricky when you get very, very close to retirement. So if you look at the purchase age 50, if I'm a 50-year-old and I know that I just hang on one more year I can get a much higher benefit because no early reduction, I'm still guessing that that person is likely to wait the year. So again, option 2 is probably the best way to go. All's we're pointing out here is there may be a few instances of some people where that isn't the case. So you know, maybe someone who's got a terminal illness or something. But where a chance for antiselection is significant, but Bill can you add any comments here but I think we're both -- option 2?

>> Bill Hallmark: Yes, I think we're both leaning towards option 2. The only thing is, I want to make sure the board is aware of the potential especially for someone who is that age 50 who for some reason has to terminate employment. If they have to terminate employment at age 50, the ability to purchase that additional year of service in this particular case is really worth the $776,000 but that's a very limited case where they'd have to. I think in most cases you're looking -- they would be considering either working another year, until they got the unreduced benefit, or purchasing it and then retiring. So I think option 2 is probably the reasonable assessment.

>> Gene Kalwarsky: Bill, we didn't mention this but there's also the potential for some gains as well. Not only a potential for loss. The person's salary may not increase as much as we expected, he may retire much later. Example there may not be only a down side, there could be some upside as well.

>> Sean Kaldor: Harvey.

>> Harvey Leiderman: Thank you, Mr. Chairman. As a follow-up Bill and Gene, would it make sense to price this on an individual basis the way we price optional settlement choices, at the time that the contract to purchase service is entered into, as opposed to trying to put a system-wide price on it?

>> Bill Hallmark: Well, we do price them individually. But it is a system-wide methodology for developing that price. That's what we're talking about here. We'll look at the individual and run them through here. But the question is, what system should we use, and assumption should we use to set that price for the individual.

>> Sean Kaldor: I think he was getting to a thought that I'm kind of having, if at the time someone says I want to purchase six months or a year, usually it's not a whole year, I mean that's kind of the upper end but usually a few months of maternity leave or whatever it was, if they could at that time say okay if you retire at age 50 the bill is going to be X. If you retire at age 51 the bill is going to be Y and we would basically -- they would see the value of making sure they don't go the -- you know the year earlier. If that assumption is made up front, is that possibility to factor in?

>> Bill Hallmark: Well, it's possible. I guess my understanding was that the requirement here was to allow them to purchase at any time, and make one payment and not have it adjusted later. So if they're purchasing at age 30, they --

>> Gene Kalwarsky: Bill, would you talk into the mic?

>> Bill Hallmark: If they purchase at age 30 you don't know when they're going to retire at age 50, 51, 52. So we could set the price -- set various prices for that. But I don't know how they'd pay the various prices. They'd have to make adjustment at the time of retirement.

>> Sean Kaldor: So the risk is say I work till I'm 51, and then at 50 they say I'm going to retire and then they owe us the difference? That would be the risk.

>> Bill Hallmark: Right. Yeah. I guess the other thing is the leave of absence service purchases are small. I'm not as sure on the refunds, how many -- how much time people may be purchasing.

>> Sean Kaldor: Okay. Vince.

>> Vincent Sunzeri: Just ironically I had not in this system but someone in another system come up to me and ask to help evaluate their personal situation. At age 50 do they buy that extra year. To so this scenario is probably a more common scenario that we would experience, where they are trying to determine do they come out of pocket, to get that extra benefit? So getting this piece right is really critical.

>> Sean Kaldor: Sorry, just to jump onto that wouldn't we already have a situation where someone is already 53 years old?

>> Bill Hallmark: Yes then it's not a significant issue.

>> Sean Kaldor: In the process could that be --

>> Bill Hallmark: That would be yeah, so we didn't put up all the examples. If they were already eligible for unreduced retirement.

>> Sean Kaldor: Then this wouldn't be a cost factor.

>> Bill Hallmark: Yes, then that eligibility piece would not be a cost factor and you would just get the value of that additional service.

>> Sean Kaldor: In that situation you could have someone who you'd think about people saying I've got six months I can buy. Well if you buy it before you turn 50 it's going to be very expensive. Because of the risk to the plan you could retire earlier, wait until you're age 50 then we know you're not going to do that, it will be somewhat cheaper but then you have to pay for time gone by that we haven't earned money.

>> Bill Hallmark: Yes.

>> Sean Kaldor: Okay, please continue.

>> Bill Hallmark: Well, this was the discussion that we just had, I think, on the different options. So either methodology we propose, we think is consistent with the ordinances for the leave of absence service purchases. Because it specifically says the value after, minus the value before. But they differ significantly from the methodology in the ordinances for the restoring the service for refunds in the Federated service. So I'm not sure how that would be handled on the police case. But certainly on the fire case where the ordinances have not been effective, we would say the draft ordinances do not result in the employee paying the total impact to the plan. So that's the end of the potential presentation. I think there may be some more discussion about this --

>> Sean Kaldor: Is there a recommendation or a suggestion?

>> Gene Kalwarsky: I think Bill, on this, I think option 2 works for most cases. Except people that purchase service let's say 45, between age 45 and 50, we take a special look at those. And anybody that gets a pay increase that substantially greater let's say it's 10% within a year of the purchased service there's an adjustment made.

>> Sean Kaldor: Dick.

>> Richard Santos: Just a question or a concern. Wouldn't option 1 be more that you're buying into the plan you're being more consistent and it helps with funding as opposed to option 2? To me, option 1, a person would invest in more or less saying I'm going to be here. And that's what I would think we'd want, to have funding, the consistency, to make it actuarially sound.

>> Bill Hallmark: Option 1 is, I think, charging the largest amount that it would cost the plan.

>> Sean Kaldor: Assuming they're going to leave.

>> Bill Hallmark: That they are going to leave. That would certainly protect the plan the most.

>> Vincent Sunzeri: Would you consider an option where maybe option 2 would be appropriate for individuals under age 45, but because the significant impact to the plan when they go the 45 to 50 range that a different option is proposed, maybe option 1 so it's more onerous?

>> Bill Hallmark: Yes, I think as we were thinking through this, the only issue with doing that is, you create another cliff. Where at the point whether it's 45 or some other age where you change the methodologies, the price suddenly changes. So I don't know if you want a continuous price or not. That's you know a board policy issue. I think that would certainly protect the plan. The issue on option 1 is, really, if the date of termination or retirement is known, then option 1 clearly provides the appropriate price. But if it's not known, it --

>> Gene Kalwarsky: I want to add that under -- if we had that rule option 1 after age 45 the impact is likely to be that it would just stop some people who otherwise would have purchased service, costs are so prohibitive.

>> Vincent Sunzeri: Right which might be I would imagine partly the goal we're trying to accomplish.

>> Gene Kalwarsky: Yes.

>> Sean Kaldor: We're trying to make it neutral right, it should be neutral to us, it shouldn't be a punishment. If that's the cost that's the cost.

>> Vincent Sunzeri: The cost is what's the impact to the plan.

>> Sean Kaldor: I agree.

>> Vincent Sunzeri: The impact to the participant versus the impact to the plan.

>> Sean Kaldor: Do we have a comment from the City Manager's office?

>> Alex Gurza: Yes, good morning, Alex Gurza, deputy City Manager. I wanted to provide the board with a little bit of perspective. I personally negotiated these items with the POA on behalf of the city and with Fire. So I have a very good background from the city's perspective. What I'd like you to know is that the city is very hesitant on purchases of service credit. There's been a lot as you read about in pension service, of air time, purchase of air time, where the cost does not reflect the actual impact of the plan and the purchase of that credit. So we agreed to it on only -- we actually were hesitant to agree to it at all. Let me be very up-front with you. We did it to reach an agreement on overall contract and on certain very explicit conditions. And that was that the member pay the total impact to the plan, as is stated there. I can tell you that even though I didn't know exactly what the numbers would turn out to be, that I said I think hardly anybody's going to do it. And because the total impact to the plan is very expensive. And so I wanted you to know that. So -- and there was an acknowledgment who knows when people saw the price tag whether they would make that decision. Clearly the issue is here, yes, how long somebody is going to live that is difficult to predict. But the issue that's been raised now about whether somebody purchases it and then can retire early is a very important issue. But to tell you how detailed we got, we understand that it has to be by individual. Once the actuary determines the methodology, I come in and I say okay, how much will it cost me? We even specified that that individual has to pay for that actuarial analysis, because we didn't want to put on

the Department of Retirement services and you having to run all these calculations, because we understand that it's highly individual. So that's how detailed we got to it, and now we leave it up to the board to determine what is the best method to most closely approximate the total impact of that purchase of service credit.

>> Sean Kaldor: Thank you. Harvey.

>> Harvey Leiderman: Mr. Chairman, we're talking about a voluntary choice, voluntary economic choice that the member would be making. And essentially it is a risk-transfer choice. This is a transfer of risk from the individual member to the city. Quite frankly. Because it's the risk of underpricing. And since there is no mechanism for trueing it up either at the date of retirement or at death, because ultimately you can't really know what the true cost is and the impact until the death of not only the member but the member's survivor, it's a risk-shift frankly to the plan sponsor because it will create an unfunded liability if the member does not pay the full amount. And that risk is borne entirely by the plan sponsor, the city in this case. So and we have seen in other situations where that risk is significant and huge. So it seems to me that we ought to be pricing this at a risk-free rate as best we can, estimate actuarially at the time of the choice, that the person is making, because it's a voluntary choice, and a voluntary choice ought to include assuming the risk that they get it wrong, that they die the day after they retire, or they live 30 years after they retire. But that risk should stay with the member in my view as opposed to being shifted to the plan sponsor.

>> Alex Gurza: If I could just add thank you. Understand the issue of the risk to the plan sponsor and the intent here was to minimize that risk to the plan sponsor, so we absolutely agree with what you're saying. And we understand that you won't know the ultimate cost, for example, how much somebody lives, if they outlive the actuarial assumption or not. But it's really before they retire, how we best estimate it. And maybe it does need to be discussed different for somebody who purchases at a younger age versus later. Thank you for your time.

>> Sean Kaldor: Thank you. So I'm seeing where we get into areas where the costs are so big, if I look at the purchase age 50, three-quarters of a million dollars to buy back one year. A year is about maybe 3% so maybe 3,000, 4,000, $5,000 a year, you have to live a long time for that to make any sense to anybody to buy. But also

look at the $145,000. And I think they're already making $130,000, that's an immediate extra year if they do retire early, you have $97,000 at 75%, plus an extra 3% right thereafter for all the future years. So I can see the challenges on both sides of it. Would there be a way to allow this using formula 2 if you said you have to make the purchase within five years? It's less expensive if you buy it sooner, right?

>> Yes.

>> Sean Kaldor: If you take a year off when you are 22 and buy it at age 50, it is a very expensive proposition.

>> Bill Hallmark: That's correct. It depends on when you buy it.

>> Sean Kaldor: So if we give them a cap of five years would that make it a lot easier? Because we know there's going to be a lot of time that's probably going to transpire.

>> Bill Hallmark: Meaning five years from --

>> Sean Kaldor: Correct, they took a year off at age 27, said okay you have five years to initiate that repurchase, to have us price it and say here's the dollar amount, it may take you a while to pay it back or however we work those contracts, but that would limit, that would reduce the dollar amount of these things to $100,000, I purchase this where an employee has multiple years to go. They're not taking these leaves at age 45, right, it's usually, tell me if I'm wrong, anybody?

>> Gene Kalwarsky: Can I ask a question, Sean?

>> Sean Kaldor: Sure.

>> Gene Kalwarsky: I thought I heard you say, don't allow the purchase to take place if a person retires within five years, in other words, make the purchase deposit the money but if they make the retirement in five years give them the money back?

>> Sean Kaldor: My thought is to say that if you take a leave of absence, we will use formula 2 if you initiate the repurchase of it within five years of having taken that leave of absence. If you wait more than five years, then we go to formula 1. And these are the people who might be doing it the last minute before they retire. And there's that big risk they're doing it to go right at the end and we just use formula 2 and we eliminate the risk for the plan. Formula 1 can be used where it's happening so early in the process the risk is minimized.

>> Gene Kalwarsky: I could live with at a.

>> Vincent Sunzeri: I'm not sure I understand the benefit of the five-year time frame and the bottom line is, what's the impact to the plan? Whether we're using formula 1 or formula 2, we need to look at it on the impact of the plan.

>> Sean Kaldor: So my thinking is formula 1 is the worst case scenario. Formula 2 is, they retire any other time other than being able to retire one year earlier than age 50, the minimum retirement age. So if they're buying back the time, so early in the process the plan has already been made whole, it's made its investment returns, it's like there was no -- they were actually here this year and we got the money and it's been in the plan and everything is just like the normal plan risk. If they do it the last minute they haven't had the money in the plan for 20 years.

>> Bill Hallmark: Yes, so the risk to the plan is really measured more by the time before retirement tan the time from the service. But I think you're trying to capture the same thing with that methodology.

>> Sean Kaldor: I'm trying not to create a cliff, that oh, we'd make it 45 years of age you have buy it, then everyone is going to make the decision at 44. If I say from the time that you used it, that gives them a reasonable period of time to make that decision. Maybe it's two years, you have two years to do it. It's just that we didn't get

the money in 1994 but we got it by '96 for your retirement in 2007. All the risk has been really -- it's almost -- to us it's almost the same as you were here that year, it's a year or two later that we got the money, versus 20 years later where they may be influencing in retirement conditions, where we have to use formula 1. Harvey and Baci.

>> Harvey Leiderman: So Mr. Chairman, perhaps Bill and Gene could give us what I think what they call a swag, right? Slide 10 does not tell us, let's take the first column, purchase age, this would be the age that the purchase took place?

>> Bill Hallmark: Yeah.

>> Harvey Leiderman: Could you take the first column on the left, the purchase age 26, and at the same current pay, and then say purchase age at 49? And how would those numbers differ?

>> Bill Hallmark: Well, the purchase age 49 would be very close to the purchase age 50.

>> Harvey Leiderman: So call it 50. But compare it to purchase age 56. That's what we're not seeing on the board because you haven't held the current pay constant. So if you held the current pay at 70,000 constant what would be the difference between a purchase age at 20? Because I think this gets to the chair's time value of money, if the money comes in at 26, it has the opportunity to grow with investment returns and help pay for that benefit. CI equals B plus E. You know. But we're not seeing that on the chart and so it's difficult for the board to understand what the time value of money would make in terms of impact on the system.

>> Bill Hallmark: Well, it's more complex than that, unfortunately. Because the current pay at age 26 of $70,000 we're projecting that to increase until they retire. And so that projected pay, it is actually higher than the $130,000 shown at age 50 there. So we picked those examples because if you look at a new hire, in Police and Fire, 70,000 is a reasonable estimate of the pay. And if you look at someone age 50, 130 is a reasonable number for the current pay levels. But for someone currently age 50, we're not projecting that to grow a whole lot. For someone currently age 26, that's expected to grow quite a bit over the 25 years.

>> Harvey Leiderman: If I may Mr. Chairman, in example 1 you're not backing out the growth of the dollars that came in at age 26, and netting that out somehow in terms of the impact on the system, are you?

>> Bill Hallmark: I'm not sure --

>> Harvey Leiderman: If that money came in, if the purchase price whatever it was came in at age 26 and grew for 24 years wouldn't the impact on the system, to get the true impact, net impact on the system wouldn't you have to back out the value or growth of those dollars?

>> Bill Hallmark: Yes, we are. So the $20,000 for example, it is, looking at that, the value -- and the values shown above are all discounted back to the age 26 at the assumed rate of return. And so that assumes that if you put the $20,000 in it will grow at the assumed rate of return until all the benefits are paid.

>> Gene Kalwarsky: Would the board be interested in seeing us, I know this will take another month before the next board meeting, but take another crack at coming up with variations between 1 and 2 as opposed to just 1 or 2 with more illustrations?

>> Sean Kaldor: We have some more questions going on. Let's keep going down the question list and maybe that's what we get to, Baci and then Vince.

>> David Bacigalupi: The only thing I was going to comment on instead of making it wide open changing it to five years or making it five years. For two of the three buy-backs all that's doing is expanding from 90 days to five years. Because we have a plan now if I understand correctly where, within 90 days, they can buy back their previously withdrawn contributions and their previous Federated time. The big difference would be unpaid leave being able to buy back. But I mean we have that now for 90 days. So would it be what this board's looking to do is open that up to five years? Or I mean I think the actual negotiations covered unlimited time which I think is

creating some of that problem. I mean it's a Rick to the plan it seems to me, the fact that it's just unlimited and they can just pick the best time that's best for me as an individual. And it doesn't protect the plan.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: Going back to slide 6 you had listed that you had to take the average experience. I'd be curious to know what those numbers are. What did you use for time of death, what did you use for spousal, or domestic partner age. Those factors are pretty critical. And to Drew's comment about an intelligent individual, looking at this, if I think I'm going to meet or exceed those factors that you've used, it's a pretty simple decision for me, if I've got the capital. I can either take my money and assume it's going to he grow at the risk-free rate, or I can assume it's going to grow at the plan assumed rate, that seems like a pretty good bet for me. I think it would encourage people to do this and I'm not sure that that's not what we're trying to do. So I want to make sure we get these numbers right.

>> Bill Hallmark: Yeah, the assumptions used here are all the assumptions from the valuation. So it's got all those mortality rates by year and the probability of disability, the pay increases --

>> Vincent Sunzeri: And the assumed rate of 7.5%.

>> Bill Hallmark: -- and the assumed rate of 7.5%.

>> Vincent Sunzeri: So I can guarantee myself that if I were to, in option 2, pay in $149,000, whatever that number was, that money is going to compound at that rate of return over my lifetime.

>> David Bacigalupi: Even if it cost you 3% to borrow against your house to put it in.

>> Vincent Sunzeri: Right. And if that plan isn't achieving that rate of return as we've seen in the last ten to 15 years, it's a negative for the plan.

>> Bill Hallmark: Yes and that would be true even under option 1 because that was kind of the fundamental premise was this was based on the expected cost to the plan and the expected cost to the plan assumes a 7.5% rate of return.

>> Sean Kaldor: Drew, and then Shane.

>> Drew Lanza: So let me ask a question, and then I have a comment. So if we go back to slide 10, let me just make sure I understand this correctly. In the age 50 case, if I think I'm going to die at age 55 and I pay in the $776,000 I break even. But if in fact I believe, because I come from long-lived people, that I'm actually going to die at age 95, even if I put in the $776,000, I'm still going to take more out of the system than I put in, correct?

>> Yes.

>> Drew Lanza: All right. Here is the comment: So slide 7 and 8 indicate you have a highly nonlinear system here. The question we are arguing about is which feedback loop should we stick around the nonlinear system? And if we stick a positive feedback loop around the nonlinear system, it's going to do a lot of damage to our fund, that was Harvey's question. It seems pretty clear to me we should put a negative feedback loop around this, that was Dick's comment, that's not rocket science. And you're pointing out that in any case, even when we wrap a negative feedback loop around this system, three or four of the inputs to the feedback loop are knowledge, I actually do come from long-lived people, my grandfather lived to 100, my great grandfather lived to 102, my great-great grandfather lived to 105. So even with a negative feedback loop wrapped around this, per Dick's suggestion, given the nature of the knowledge, we still think we could come out behind. Per Harvey's comment. So it seems to me, the decision Sean is actually even simpler than you said, we should wrap the strongest negative feedback loop around this that we can recognizing that even in that case actuarially, because of the knowledge, we may still come out behind. And if that didn't make any sense to anybody it made a lot of sense to me and you could verify it mathematically, right? So what Dick is saying is right. We should make them

pay the most you can justify actuarially, without putting in their own self-knowledge. I should sit there and say yeah, hell yeah I'm going to write a check for $776,000 because I'm going to live to 100. So tell me I'm crazy.

>> Gene Kalwarsky: Well I would answer that by saying instead of paying the 776,000 just work another year, and just work one more year and you'll be eligible and you'll be pretty close.

>> Drew Lanza: But the feedback loop is all around what if I can't? The feedback loop -- in the 145,000 case the feedback is positive that's why it doesn't make any case. But in the 776,000 case is the feedback is I can't work another year.

>> Gene Kalwarsky: But if you are going to live to 95, why can't you work another year?

>> Drew Lanza: That is a very good question. But I can think of a few scenarios.

>> Vincent Sunzeri: I don't think that's the only example, I think there's more -- I can, but I choose not to, and I'll come out of pocket to not have you do that.

>> Drew Lanza: My kids have all gone out to college, and I miss them a lot and I'll go out to move to where they are.

>> Gene Kalwarsky: If I gave you $600,000, would you work another year?

>> Drew Lanza: You know, I really love my kids a lot.

>> Sean Kaldor: Shane.

>> To that point, I was going to put a tail on something that Vince and Harvey was saying. So these numbers are really low in these examples if you are not considering -- because you're not considering a risk-free rate of return. And so you'd want that in your formula, I would think, to avoid that risk transfer.

>> Sean Kaldor: So some thoughts to the point. Sorry, see if you can address that.

>> Bill Hallmark: Yes, I think the idea of a risk-free rate of return versus the assumed rate, is an important distinction in the way you set the price. And the risk-free rate puts the price at what is the theoretical value to the employee that they could otherwise replicate it outside the plan. The assumed rate is based on the expected cost to the plan. Which definitely includes a risk transfer, because it's an expected cost. And there's uncertainty around that cost, and it could vary. So we used in this -- in all of this the assumed rate of return based on the understanding that the price was supposed to represent the expected cost to the plan. So I think if you change that, that's changing that concept of the price should be the expected cost to the plan. And that's completely different from the anti-selection issues, in terms of the mortality, in times of retirement and those sorts of things.

>> Drew Lanza: Can I just jump in real quick on the question? So I think the issue is, if I remember correctly, expected -- unfortunately it wasn't in the original language, and looking at a fellow statistician, expected has both a connotation and a denotation, right? And the denotation of expected is an actuarial mathematical number, but the connotation of expected is, I don't want the pension fund to lose money. So are we talking about the connotation or the denotation of the word expected, since it was added in after the fact? I would assume we're actually to some extent talking about the connotation of the word, we don't want the system to lose money, not just the statistical actuarial denotation of the word expected. And I know I'm having a weird day here, but this is a really complected subject.

>> Sean Kaldor: So one thing I'm thinking of is someone who takes a leave for four months, comes back, and wants to buy that time. If they were to buy that in a very reasonable period of time, months, 12 months, the risk to the plan is, I mean, you know, there's the time to earn the money back so it gives them the option to buy it back. If there's a reasonable period of time they could pay it. Then you go into this high-cost mode, where you're saying

now we don't know what's going to happen, at some point you could retire early, then we go into the high-cost, again risk-free mode for us. Once again going over 51, though, if you could real quickly on this purchase age 50, what's the value if they retire you know one year later? It goes down significantly right?

>> Bill Hallmark: It does.

>> Sean Kaldor: To how much?

>> Bill Hallmark: I don't have that number for this particular case. But it you know, it's that -- it's that year of eligibility that is very costly in that example.

>> Sean Kaldor: And so in this situation, someone who comes and says I want to buy back my service time at age 52, the cost is going to be significantly lower.

>> Bill Hallmark: Yes.

>> Sean Kaldor: So we're just encouraging everyone, we're saying the cost is this high to buy back your time until you turn 52, and then the cost will be that much. We're encouraging exactly the wrong behavior. That's why I'm thinking if there's something that says you just took some time off, and now it's going to cost you 20 grand to buy back that year, we can get people to do it right away. Then maybe we have to charge them the could-cost-us-anything rate, but they're all just going to wait until they passed that, and maybe that's eliminated our risk, and maybe that's what we want them to do, but that's the behavior we're going to create. Harvey. And then Dick.

>> Harvey Leiderman: Mr. Chairman if we had the ability and I don't know if we do, I'd have to think about this, but if we had the ability to say that the purchased time would not count towards your qualification for an unmodified benefit, that would take that entire boost off the table. Lawfully I'm not sure I haven't looked at that issue.

>> Sean Kaldor: So I'm trying to think of the negotiation process, we as a board I think have to get a formula that would eliminate the risk. So maybe it's formula 2 if it does not count towards service time. And formula 1 if it does.

>> Harvey Leiderman: Because if you look at the illustration on slide 7 what you're seeing is the value of that yellow bar.

>> Sean Kaldor: Yep.

>> Harvey Leiderman: Is solely, is almost entirely attributable to counting that purchase time towards the qualification for unmodified benefit. And if we neutralize that, whether we can do that by a board reg or we have to do that through an ordinance or regulation, I'm not sure. We might be able to do it through a board reg. Then we're just pricing truly the additional benefit attributable to the four months of leave time that's been purchased. And we take that risk off the table entirely.

>> Sean Kaldor: So who are we putting the risk on, the risk is on the employee. If you want that option to do that, you're going to have to pay for that option. It's not on the city, it's not on the plan.

>> Harvey Leiderman: And it's not going to be a booster rocket in terms of your attributable service, it's going to increase your benefit, but only for that purpose.

>> Sean Kaldor: Gene, Bill, what do you think of that?

>> Gene Kalwarsky: That's appealing to me. Bill.

>> Bill Hallmark: Yeah. I absolutely agree. I think we actually discussed that a little bit internally. We didn't see that as an option strictly interpreting what we were looking at. But if it could be accomplished I think that would -- it would help a lot because Harvey's exactly right. It's that one year, it's that eligibility piece that is so

expensive. And then it would be more intuitive to the employees purchasing, as well. Of what that cost is. Because you know I'm showing the cost of one year here, but it's actually gets down to the cost of one day. It's that day to get you over the 25-year line.

>> Drew Lanza: Harvey, I'm impressed by your ability to vote solve the Gordian knot and.

>> Harvey Leiderman: I'm going to wrap it in a negative feedback, whatever the hell that is. [Laughter]

>> Sean Kaldor: Okay so should we ask Cheiron to come back to us, need a further opinion from them on what that might be or whether that would be -- would you say that it would be --

>> Harvey Leiderman: I any they've done it, it would be their option too. So it's whether we could do it lawfully.

>> Bill Hallmark: Well, let us reconsider. Because we might -- it might be option 2, it might be what's currently the Segal method where we have the assumed retirement ages play out. And there wouldn't be a whole lot of difference between those two. Let us revisit that while you --

>> Gene Kalwarsky: I think we'd like to have a little bit more time now that we've got this feedback.

>> Sean Kaldor: Okay. So if everyone is in agreement on the board we'll just continue this to the next meeting to provide a deeper level of analysis or classification around pursuing that option 2.

>> Drew Lanza: And Harvey you will look at the rules and laws and stuff and see if we just as dictated 50 board see if we can do that.

>> Sean Kaldor: And with that we're going to take a break. We're going to take a 13-minute break at 10:30. We'll resume with the disability cases. [Recess]

>> Sean Kaldor: All right, we'll reconvene the meeting here. Thank you for the time for the break. A little change just because of the consultants we have here and everyone's schedules and the cost to the plan. We're e-going to resume with item 2.2, which should not be long and then item 2.6 as it relates directly to the retirements and then we will go into the retirements starting with 4 and 4.1 and moving through from there. So item 2.2 discussion and action on actuary Cheiron's letter regarding higher class and FLSA issue. Again we have our friends from Cheiron.

>> Bill Hallmark: Thank you. As we understand the issue, there were HCL and FLSA pay amounts reported as covered pension pay over a period in excess of ten years. And during that time, employee contributions were made on that. And city contributions made on that pay. The employee pay overpayments, we understand the correction, or at least part of the correction has been made, and the city had requested a refund of their contributions on those amounts that should not have been considered pensionable pay. Back in June you received a letter from Reed Smith suggesting that the city should not take a credit against their arc, and referring it to us for our opinion. We concur with Reed Smith that the city should not take a credit and point out that once you go past evaluation date, where we set rates, we have already taken into account the gain or loss associated with those amounts in setting the new rates. And so the new rates already incorporate that. And have incorporated adjustments throughout that period for the city contribution amounts. And so we concur that the city should not take a credit, and that it's reflected in the current rates.

>> Sean Kaldor: Any discussion from staff on this?

>> The only thing I would add is because the adjustments are happening more frequently a policy, a board policy on house corrections will be handled because in discussion with Cheiron, when there are adjustments that were not included in previous valuations, then those would be events where cash flow would have to move between the plan and the city. So I believe a -- or I think it would be a lot cleaner to have some sort of policy that would outline those pieces so that it would have guidance to staff as far as when to reach out to Cheiron on certain issues and when other adjustments can just be adjustments that get done on an employee level and not on city and plan

level. So Harvey had sent over a policy from another client that he has that we're hoping to modify and bring back to this board with cooperation with the city and Cheiron.

>> Sean Kaldor: We have a representative from city.

>> I'm Dan Kanamoto from city finance department. We just want to confirm that we have received the letter and we are in the review process and any follow-up we'll work out with the retirement service department so we'll try and get that done pretty quickly.

>> Sean Kaldor: Thank you.

>> Thank you.

>> Sean Kaldor: So our action then here is to accept the recommendation. Is that the -- all right. I'll take a motion.

>> Richard Santos: Does that meet your expectations? I didn't think it did it says it increases and one minimal I don't know if we're getting back to what we're paying.

>> Sean Kaldor: So to be -- to summarize this, I think trustee Santos is asking, what this is saying is that when we realized there was an overcharge or an undercharge, that was already factored in to all the previous assessments in setting the city's annual required contribution. So now that we've priced an exact dollar amount to it that should not offset this year's contribution from the city, is that correct?

>> Bill Hallmark: That's correct. The employee amounts have to be corrected to correct their account balances and so forth. But the city amounts are already correct as a part of the regular annual valuation process.

>> Richard Santos: Motion to approve then.

>> Sean Kaldor: We have a motion to approve from trustee Santos. Second by trustee Bacigalupi. All those in favor, opposed, seeing none, the motion passes unanimously. 2.6, discussion and action on conduct of closed board meetings to consider specific disability cases. So who wants to lead this? Harvey.

>> Richard Santos: I think that would be prompt because he was written up these guidelines and --

>> Donna Busse: Would you like me to do this? Okay. We've had discussion at the disability ad hoc committee regarding closed session. Harvey was asked to come back with an money on the discussion we have in our packet. I think what's not clear for staff is that in a lot of -- what Harvey has pointed out and reaps to go into closed session, we already do that for members who request when they have certain conditions that what we call stigmatizing we would go into closed session. I think what needs to be clarified is if that can be expanded because we do have some applicants that are have requested closed session that may not have a condition that is stigmatizing but may have something in their medical reports that could be. Now whether or not it is relevant to their cases probably for the board to decide and maybe we need to discuss a policy or procedure on that.

>> Richard Santos: Through the chair.

>> Sean Kaldor: Please.

>> Richard Santos: I think if there's anything that this board may deem harmful in any kind of way that we don't need the public to be engaged in, it may be something personal with a family issue or whatever have you. There are so many cases that come up I think you take case by case and the board takes a look at it.

>> Sean Kaldor: So what the recommendation is and what trustee Santos is trying to summarize, is that we understand there are situations that can be stigmatizing when someone applies for a disability retirement, when they come forward with their request, they could request a closed session hearing. We would then meet in closed session to hear the justification or the reason for it and if we decide it's warranted or meets that stigmatization

issue, we can meet in closed session. If it does not we will return to open session. And if there are specific things that they just don't want brought up out of the record, we could still meet in open session but not bring those things up if they're not relevant to the disability application.

>> Donna Busse: Right. I would leave that up to Harvey to discern. I think that's what we're talking about. I think it's pretty clear when there's a stigmatizing condition I think staff would agendize it that way. I think issues coming up when there are things in the medical records that we would not want brought up in public or at least the applicant wouldn't want that brought up in public when it is appropriate even it is appropriate to discuss.

>> Sean Kaldor: Baci.

>> David Bacigalupi: The other thing I'd bring up and we've seen this as a board is there is a lot of times that this is a major transition in life. There are people either prematurely or not, giving up their lifelong career. And we have seen applicants get very emotional about that and I think we ought to consider their feelings either as you know direction to the staff or as a board making the decision about them being considered being broadcast on TV in a very life-changing emotional situation. And I know I felt uncomfortable at some of the applicants that were here. I think the tradition has always been, most things were in open session. But I think if an applicant feels that, you know, they're going to have a hard time holding it together, we're on TV now. I mean people can watch this on TV and spread it to their friends and things like that. And I think we need to progress on the side of taking care of the members, if they request, for any of those type of reasons.

>> Sean Kaldor: Bettina.

>> Bettina Rounds: I agree with Dave completely. Is there any requirement that they be on TV, I mean is it possible for just the disability cases just to turn -- that's not part of the -- it's part of the --

>> Donna Busse: That's part of the sunshine issue. You may have to discuss the Brown Act.

>> Harvey Leiderman: Mr. Chairman, there's a great difference between open public meetings and televised public meetings. Here in San José it's treated one and the same. It is not one and the same under the Brown Act. There is nothing in the Brown Act that requires televised proceedings. That is a policy of the City of San José on its boards and other public agencies. So that's something we, you know, we have to grapple with and whether or not you can say one of the cameras can go off or something like that, I don't know physically whether that's permissible. But the default settings has to be that the board conducts its business in public. So I think the standard of stigmatization, if that's the best word to use, and I think I described a little more detail in my memorandum, but we can use stigmatization as a buzz-word, where the board finds that that situation in a limited number of cases will apply, then the board has the absolute right to go into closed session to hear that kind of testimony and that kind of evidence with the applicant present and the applicant's counsel if there is counsel as well. But by and large, these things need to be conducted in open session. The public has a right to know. The plan sponsor has a right to know, the members of the public and plan sponsor and departments have a right to come in and make statements as well. The board has the right to take public testimony under oath as well and put the applicant under oath if necessary and that all needs to be done in public unless there's some really specific stigmatizing condition that would occur. So I think this process that our acting director says we are following is to, if somebody -- if an applicant or applicants' counsel believe there is such a stigmatizing condition or material in the record we can go into closed session. The board can hear that, make a decision whether and to what extent it ought to be taken care of in closed session and then come out and do the rest in open session and I think that satisfies all the policies of the Brown Act.

>> Sean Kaldor: So the policy outlined here in the memorandum says that the applicant submits a request in writing to staff, staff makes a determination, makes a recommendation to the board, and then it's recommended for closed session, then the board can consider that or bring it back out. It doesn't address what happens if they ask for a closed session, the board or the staff says it should not. Is there -- this doesn't address a logic flow for the person to appeal to the board and say no please hear it in closed session. Is that intention am or --

>> Harvey Leiderman: No, because the staff is only making a recommendation. The board can hear it one way or the other.

>> Richard Santos: Board has final say.

>> Sean Kaldor: So your recommendation was to the ad hoc -- sorry to the disability subcommittee, the ad hoc disability subcommittee. This process outlined in your memo, item 2.6. Did the disability subs committee accept this or adopt it or recommend it also?

>> Richard Santos: They did.

>> Sean Kaldor: Okay, so we have a recommendation from our counsel and the ad hoc disability committee. Is there a motion?

>> Richard Santos: Motion to approve.

>> Sean Kaldor: We have a motion to approve from trustee Santos.

>> Drew Lanza: Second.

>> Sean Kaldor: Second from trustee Lanza. Any comments on the motion?

>> Richard Santos: Just a comment. It's nice to have legal counsel here during the process, so we can discuss around ask questions. I really appreciate it was very helpful.

>> Sean Kaldor: All those in favor, opposed, seeing none opposed the motion passes unanimously.

>> Richard Santos: Thank you.

>> Sean Kaldor: Completes item 2.6 so the process for today if there is a request for a closed session, to address that when the applicant comes forward or their attorney.

>> Richard Santos: A very good opportunity in this so-called news bulletin that we're going to put out to put that type of information in there. This would be very helpful.

>> Donna Busse: I just want to add one thing. You know when the trustees are reviewing the medicals I think they also need to be sensitive. There is material in the medicals that don't necessarily need to be brought out. And they should be sensitive to what would be stigmatizing to the applicant if it comes forward.

>> Sean Kaldor: Thank you. So move to item 4, retirements. Starting with item 4.1 service retirement. 4.1 A. Service retirement of Joe Hernandez, police sergeant With the police department, effective October 1, 2012, with 27.48 years of service.

>> Move to approve.

>> Second.

>> Sean Kaldor: We have a motion and second. Any discussion on the motion? Seeing no discussion, all those in favor, any opposed, seeing none the motion passes unanimously. Bacigalupi Mr. Chair, I just wanted to comment. I had the opportune to work with Joe many years and I'd just like to comment, the City of San José was really lucky with this individual. Joe's style of police work, was community policing before it became a buzzword. I mean he could just go in and he'd solve problems for people and he'd do it with a smile on his face. He's just a likable person. The department's really losing somebody valuable. Joe I wish you all the luck. It was a pleasure for me to work with you and I know anybody else that's worked with you around you or for you would say the same thing. Congratulations. Good luck.

>> Thank you for those comments. If I could just quickly say, I'd like to give thanks many of the members of the San José police department I'd have the pleasure to work with over these many years. Family, friend, especially my wife of 25 years, Abla for her love and support for all that time. God bless the member and women of the San José police department and fire department. Farewell. [applause]

>> Sean Kaldor: Mr. Spence.

>> Jim Spence of the retirement association. I had the opportunity to supervise Joe. For those of you who didn't know, he was very kitchen in the recreation department made Lake Cunningham a safe place to be out there, was willing to come out and assist other officers around that area. And that's one of the things that San José really is trying to upgrade themselves over the park and he was one of the first park detail officers did a great job. Again it's a great loss we're losing him because he's now a supervisor and hopefully we would like to keep those fellows around to show them how to do the job but good luck to him in the future.

>> Sean Kaldor: I missed one of the part of the formality. Tony could you read the full application into the record.

>> Joe Hernandez is a police sergeant with the police department --

>> Donna Busse: Albin -- Hernandez I thought you were going to read Albin into the record or --

>> Sean Kaldor: She is reading the correct one.

>> Donna Busse: I'm on the wrong one.

>> Joe Hernandez is a police sergeant with the police department. He is retiring October 1st, 2012, he has 27.48 years of service.

>> Sean Kaldor: Sorry for the little stumble there. Okay. And with that we'll continue to item 4.2, service-connected disability. We actually had a request, something's going to change here so we'll hear briefly item D Mark de Maria. Police officer with the police department, effective September 6, 2012, 11 years of service. We're going to do D. I understand there's a request to defer, correct?

>> Correct, Mr. Chairman. Officer de Maria wants to defer his hearing while he completes some further medical treatment so to see if he can't as Dr. Das has suggested improve his work tolerance and return to full duty. He is undergoing the treatment presently. He's had two epidural injections, he will schedule the third, and then see if he can return to full duty if possible. It's very difficult for Public Safety personnel both Police and Fire, to admit that they can no longer do their life's work. And after completing the treatment, if he can return to full duty then we won't be here. If he can't we'll come back and present the application.

>> Sean Kaldor: Okay, thank you very much. We will then defer that case until we hear from you further about the desire to proceed.

>> Thank you.

>> Sean Kaldor: Thank you. All right we'll then move to item 4A. the service connected disability application for Michael T. Albin, police officer, police department, effective September sic, 2012, 12.16 years of service. Tony.

>> Mr. Albin is a police officer, he has 12.16 years of service. He has applied for a service connected disability based on his left knee. His current work status is that he's on disability and at the time of application he was also on disability. His work restrictions are, he should be -- he should avoid extended height -- excuse me weight bearing on his left leg, he should avoid crouching and kneeling. Modified duty is not available at this time.

>> Sean Kaldor: Thank you. Dr. Das do you have anything to add to in record?

>> Dr. Das: No I don't.

>> Sean Kaldor: Thank you. Mr. Boyle.

>> Thank you, Mr. Chairman. Officer Albin has 12.16 years of service in San José and about six years of service in Redwood City before, so a little over 19 years of service as a police officer. His first injury to his knee was in February 6th much 2005. He twisted his left knee at an accident scene, felt a pop, page 78 of your materials. Then eventually he returned to full duty patrol on April 24th of 2006. His second injury to his left knee was on October 6th, 2007 when he was jumping over a fence to apprehend a suspect, that's on page 80, he eventually returned to full duty patrol. The third injury to his left knee was on January 25th, 2011, when he was running down an embankment and he jumped 15 feet and landed on his feet and twisted his left knee. That's on page 83 of your materials. And MRI was done in February of 2011 showing a torn meniscus and possible anterior cruciate ligament tear. His first left knee surgery was on September 1st of 2011 an anterior cruciate ligament repair using an Achilles tendon Allograph, that's on page 50 to 53. The second knee surgery was on January 12th of 2012. An arthroscopic excision of a medial synovial plica and a patellar chondroplasty. He tried to return to full duty but could not. He returned to modified work for 120 days ending on August 1st, 2012. Then he went on disability for the remainder of his 4850 time and now he is out of time. Dr. Das's report on pages 5 through 11 says that he should avoid extended weight bearing on his left leg, and he should avoid crouching and kneeling. Lieutenant Rose of the police department personnel on page 13 indicate that officer Albin can't be accommodate in the exempt officers program and there is no position available for him. We would then respectfully request that you grant his application for service connected disability retirement and officer Albin would like to say a few words.

>> Sean Kaldor: Please officer.

>> Thank you, good morning. In August of 1993, part of my childhood dream came true when I was hired by the Redwood City police department as a police officer. It was fully realized in July of 2000 when my lifelong dream of working for the San José police department became a reality. The following 12 years were some of the best times

of my life serving the public and the citizens of San José on a daily basis alongside my brothers and sisters of the San José police department. On January 25th, 2011, I was working patrol, and responded to a call in the East foothills of San José involving a burglary in progress, where the suspect was reportedly seen with a knife. The investigation led us to a creek ravine area, where the suspect had fled. Sergeant Munson had made his way to the ravine along with a sheriff's deputy in an attempt to arrest the suspect. Without warning the suspect charged sergeant Munson at close proximity attempting to stab him with two large butcher-type knives. In an attempt to save sergeant Munson's life I ran, then jumped approximately 15 feet into the ravine. While jumping into the ravine, the suspect was shot and killed by an undercover officer. When I landed I heard and felt a loud pop and snap from my left knee. My knee immediately swelled and I was unable to put pressure on the left side of my body. I was transmitted to the emergency room for medical treatment. I underwent ACL reconstruction surgery, physical therapy, there was no improvement, so I underwent a second knee surgery. And to this date, I am still unable to put weight bearing pressure on my left knee. I cannot walk far without the assistance of my cane or knee brace because of the pain. My knee continues to collapse on me one to three times per today and a good night's sleep is four to five hours. Over the past approximate one and a half years I have not been able to even ride a bicycle or participate in any sporting activity, with my two young children. The amount of stress this has caused is indescribable. I have attempted everything possible to try and return to the job I love as a police officer serving the people. Based on my physical limitations, the inability to perform the necessary duties of a police officer and the lack of a modified position, I am here to respectfully request a medical retirement. Thank you.

>> Sean Kaldor: Thank you. Are there questions from the board?

>> Richard Santos: Mr. Chair, I'm make a motion that we grant this officer a service connected disability based on the medical evidence. And also, I want to say when I was reading through this report but I'll wait for a second.

>> Second.

>> Sean Kaldor: We have a motion from trustee Santos and a second from trustee Bacigalupi.

>> Richard Santos: I see your treating physician is Dr. Charles Borgia. He has been a friend of the police and fire for many, many years. He is 82 years old and I just got the chance, at visiting him the other day, just talking about old times and so on. I can tell you he was the most cantankerous, hard-nosed doctors, didn't have any bedside manner. Loved the guy, and he repaired many of us. And so I know he was never what you call lenient. I read this report very carefully and there's no question, if he was sitting right here, he would be saying these same words. I know what the bottom line was, which I totally understand, it also said you didn't respond to treatment. But -- and it goes on and on and on. Based on that that's why I voted the way I did based on the physical evidence that's right here.

>> Mayor Reed:

>> Sean Kaldor: We have a motion and second. Question Bettina.

>> Bettina Rounds: Dr. Das you say this is work related and therefore --

>> Dr. Das: Yes, I feel -- I try to make sure everything is consistent, mechanism of injury ask consistent with the pathology and the treatment has been somewhat exhaustive and I agree you know, the pathology is not clear cut but the treatment to address the pathology has been extensive and based on the overall flow of the case, the type of injury, and the mechanism of injury, I feel it's consistent so I -- and I feel it's work-related. I think everything's consistent in this case.

>> Bettina Rounds: Thank you.

>> Sean Kaldor: Any other further questions or discussion? Seeing none we have a motion. All those in favor? Aye, any opposed, seeing none opposed the motion is passed unanimously. Your request for a service connected disability is granted.

>> Thank you.

>> Sean Kaldor: Move to item 4.2 B. Erik Colandone. Police officer, with police department, effective September 6th, 2012, with 12.94 years of service. Tony.

>> Mr. Colandone has applied for a service-connected disability based on his neck. He has 12.94 years of service, and is currently on disability. At the time of his application he was also on disability. His work restriction is that he should avoid physical altercation. There is no modified duty available for him.

>> Sean Kaldor: Thank you. Dr. Das do you have anything to add to the record?

>> Dr. Das: No, I don't.

>> Sean Kaldor: Thank you, Mr. Boyle.

>> Thank you, Mr. Chairman. Officer Colandone put in almost 13 years of service for the City of San José as a police officer and seven plus years for the city of Palo Alto. So he's been a police officer for over 20 years. His date of injury on 11/29/07 involved his neck, right and left shoulder and biceps tendon tear when he slipped on the stairs and fell in the stairwell awkwardly in an awkward position. That's on page 99 through 101 in your materials. There's some question here in Dr. Das's analysis of the neck being involved so I'm going to point out as I present this case where the neck is involved. So on page 13 of the material, Dr. Sontag did an EMG on January 8th of 2008. And said that in his notes, within a few days, neck pain was being experienced by officer Colandone. He had a right shoulder surgery on February 11th of 2008. Dr. Sontag repeats the again that the November 29th, 2007 injury had within a few days neck pain being experienced by officer Colandone. Dr. Bruce McCormack, the first surgeon on the neck on page 21 and 22 of your material, says on January 23rd, 2009, that the officer had shoulder surgery but he is still having symptoms lingering including neck pain, right shoulder pain, numbness and tingling in the right hand. His impression examine is a right shoulder injury and he also says there's concurrent cervical radiculitis not confirmed on electrical studies. Dr. McCormack performed cervical surgery on March 6th, 2009. That's on page 27 and 28 of your materials. Officer Colandone had continued neck

and right arm pain. As recommended by a consultation by Dr. Sun on page 32 and 34 on July 24th, 2009, officer Colandone had carpal tunnel release and cubital tunnel by Dr. Crondishoff on June 10th of 2010. The operative report is on page 55 and 56. He did this to try and relieve these continuing symptoms. However, the symptoms persisted. After further study and consultation an approval of surgery by the City of San José, on February 24th, 2011 Dr. Crondishoff at page 72 and 77 performed a cervical total disk arthroscopy. And anterior interbody fusion with diskectomy at C-6-7 and instrumentation from C-5 through C-7. Officer Colandone then worked in the exempt officers' program when he could. Officer Colandone followed the doctor's advice and had the surgeries approved by the city all in an effort to get better and return to full duty as an officer. The restrictions outlined by Dr. Das apply to the neck and also to the right shoulder, as well. Dr. Das provides that he should avoid physical altercations. As far as work-relatedness, the neck symptoms developed within a few days of the specific injury of November 29th, 2007, fall down the stairs. All reporting physicians relate the neck to the November 29th, 2007 injury, there is no contrary medical evidence in the record. Even Dr. Das says that the right shoulder injury, which was significant, and the resulting surgery, show a plausible relationship between the referred symptoms in his hand and his shoulder injury, and the restrictions that Dr. Das gives. Based on the extent of the injury and multiple surgeries and disabilities, his restrictions are significant. And all follow the November 29th, 2007, injury. What I'm trying to say, then, is that even if there's some doubt about the relationship of the neck to the injury, the restrictions given by Dr. Das for the shoulder are the same, and they prevent him from doing his job. We would request that you -- I'm sorry, lieutenant John rose of the PD department, page 12 indicates there is no position available for officer Colandone. We would request that you grant officer Colandone's application for a disability retirement. Officer Colandone also would like to speak.

>> Good morning. I spent half my life being a police officer and I've been in hundreds of fights. I've always been an aggressive officer and I've sustained serious injuries that needed serious medical treatment and surgeries. I've also been in fights that I get scratches and bruises. There's also been fights that I haven't even written up so I can go back to work. No matter what I always come back to work. Sometimes in a cast, sling or limp but I always come back. No matter what I try to go to the best units, try to help out as much as I can. One of my first injuries that I noticed my back and neck hurt the most was, when I was assigned to the metro unit and we were certaining a high risk search warrant for a suspect that tried to kill a police officer that was working undercover trying to buy

narcotics. It was my partner and I's job to at that time take on a suspect. Unfortunately he had a bodyguard and he was armed. Once I convinced him to drop his weapon, I went in alone, and a fight ensued. He was large, he was about 250 pounds. He threw some slings at me, I was able to duck them pick them up and we both crashed into his workbench, my back and neck hitting his work bench. Then he grabbed my sidearm, my secondary weapon, on my thigh, he pulled it out of my holster, I grabbed the slide fully prepared to get shot in the leg, I was preparing myself for that. I won that fight, he didn't. After that, shortly after that I was able to -- excuse me -- -- I was picked to go to one of the prestigious units in our department, the robbery unit. And I went and I worked there. In pain for a long time. And I did a good job. And that's when I in 2007 when I slipped. And I fell down about four stairs and my arm went through the banister. And I reinjured myself, my neck and my back. Dislocated my shoulder and biceps tendon. Looked like I had a golf ball in my arm. Broke hairline fracture of my forearm, I was bleeding, and then next thing I know I have to have surgery. Instantly I had migraines and after that, I had a surgery on my neck. As you described by Dr. Bruce McCormack who actually did the wrong surgery. No one would touch me for a year because they thought I was going to sue. I had five second opinions. I wasn't going to sue anybody. I just wanted to go back to work. A year and two days later, I met Dr. Krondershoft who gave me an alternative to take owl my ulnar nerve thinking that would help but it didn't. And then he finally went through my neck and put plates in my neck a quarter-inch from my spine. I go home two days later I'm in a coma for four days. (inaudible) my children -- sorry. My children saw me. I lost everything. My wife and I are separated. I don't blame her. I was (inaudible) I've been a patient for two years. I'm doing everything I can. I've done everything on my own to get better. I used to do triathlons, cycle, I can't do that. I had to buy a new car because I can't even have an air bag. I never intended my career to end this way. This is all I ever wanted to do. I come from a long line of public servants. All in New York. I've devastated. It doesn't define me as a person. Being a cop. But helping people has always defined me me as a person, even as a kid. And not being able to perform my duties as I once did, I'll have to come to terms with that. And this process, and everything else, has changed me. I'm just trying to be a better person. I'm sorry. Thank you.

>> Sean Kaldor: Thank you.

>> Richard Santos: Mr. Chair.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Trustee Bacigalupi.

>> David Bacigalupi: Based on the evidence presented in the medical package, the evidence, the lack of the department's ability to accommodate the restrictions as listed I move to approve the application.

>> Richard Santos: Second.

>> Sean Kaldor: We have a motion from trustee Bacigalupi, a second from trustee Santos.

>> Richard Santos: May I make a comment?

>> Sean Kaldor: Trustee Santos.

>> Richard Santos: I do want to commend you for, getting through all the evidence here and information, about returning to modified duty and trying. Those are things that I really appreciate as a professional firefighter. Professional police officer, you keep on trying. That means a lot and I appreciate all the things you've done and the best to all your family. Go ahead Dave.

>> Sean Kaldor: Trustee Santos. Sorry, trustee Sunzeri.

>> Vincent Sunzeri: I have some questions for Dr. Das on page 8 and the final two paragraphs, you make reference to the fact that additional injections and treatment may improve his pain. And therefore, improve his work tolerance. And same thing, you state in the last paragraph, regarding additional treatment for the shoulder condition. And allowing him to work to full duty. Can you expand on that? There appears to be a real conflict between these statements and what we're hearing.

>> Dr. Das: Well, the issue comes down to in terms of what he has received treatment for and what the relationship between those -- what he's received treatment for and the mechanism of injury. And so with respect to treatment for his shoulder injury or for his neck injury and as Mr. Boyle brought up, based on the mechanism of injury, and the treatment directed at the neck and the ulnar nerve transposition and the carpal tunnel release and even the surgery not relieving his symptoms, there is probably -- the relationship between his symptoms and the pathology that's been treated is not necessary -- is not well established in the medical record. One of the surgeons indicated that the shoulder instability in the shoulder may have the arm being -- you know basically supported 50 brachial plexus responsible for some of the symptoms he had. That's why I thought possibly an evaluation by a shoulder surgeon and possibly surgery may correct those symptoms and help him return to more functional state. The other issues in terms of the types of procedures, type of procedure after if the spine is stable there's no nerve root compression the spine is not pressed on, there's no real weakness and there's no instability in the spine. The remaining issue is pain. And pain is a subjective -- is a subjective sensation. And there may be treatment available in terms of medications which he's not responded to well. There are other types of injections that may, depending on the type of treatment that's provided to him, may help him. He hasn't been offered that kind of care. It's not Mr. Colandone's responsibility, it's the physician's responsibility to provide that kind of care and as he has stated he has done everything that has been recommended to him by physicians. However, there may be other treatment option that can address it. Because pain, there's no obvious pathology that's responsible for his continued symptoms.

>> Vincent Sunzeri: If this were expanded beyond the neck to go back to the shoulder or other body parts that he's experiencing pain beyond just the neck, would that change how you would evaluate this?

>> Dr. Das: I -- yes. I mean that -- I think that there's a plausible relationship. He had significant shoulder trauma, he had surgery postpreyful and he had symptoms in his arm that did not respond to the obvious interventions. In my opinion the ulnar neuropathy at the elbow based on electrodiagnostic studies it was a soft indication for surgery. Same with the carpal tunnel release. And so when you continue with symptoms and electrodiagnostic studies are not obvious it is between the surgeon and the patient to neck problem however, the objective finds

were not strong. Strongly supportive of those kinds of problems. So I -- I personally rely on the report by Dr. Sun where he discusses the brachial plexus as being a source of the possible symptoms in his arm and his elbow and he explains why the procedures didn't work.

>> Vincent Sunzeri: To legal counsel I don't understand why we don't have more comprehensive requests versus just the neck. It appears that some of these other body parts might make it more compelling case than what conflict we're hearing with specifically just the neck.

>> Dr. Das: In their defense, that's what the doctors that all of the treating doctors have said, it's the neck and it's not the spine. I've reviewed the medical records. And I look at the mechanism of injury and what they've treated, they're treating degenerative spurring in the neck, dejean rave disk decease. Relating that to a slip and fall as cause and effect is a little bit more problem take. However, symptoms did occur after the event and the incident and he did suffer major trauma to the shoulder. So that sits more clearly with me, the mechanism of injury with the right shoulder fits a lot better than having a neck problem. And I think that is also explains why he hasn't necessarily responded to all the interventions in the neck. That's my opinion, though.

>> Sean Kaldor: Trustee --

>> Richard Santos: You finish?

>> You were going to respond to that?

>> I was just going to say that -- when someone has an injury, and someone has medical treatment for that injury, and someone has sequences from the medical treatment, it's all part of the injury. And Dr. Das -- I can't argue with him medically. If he wants me to get some other medical reports from some other doctor, trying to say something different, I will. I'm not a doctor. But the long and the short of this is, is that the restrictions Dr. Das has given are for the shoulder, which Dr. Das says was injured severely and is indeed not in question. And that's the restriction that keeps him out, if we just want to ignore the neck completely, and whether further treatment would

improve the neck, it doesn't matter. The shoulder takes him out and Dr. Das has given him those restrictions for his shoulder. So I don't think there's -- I think this is an area that we do not have to continue to discuss.

>> Vincent Sunzeri: Well, I disagree, counsel. Your request for a disability is specific to the neck. And at the request for disability were a little bit broader it might be easier to accept.

>> Okay, I'll amend the request if that is what needs to be done at this point. He did injure all those parts. It did say the neck, you're right. It should include the right shoulder, absolutely.

>> Sean Kaldor: Trustee rounds.

>> Bettina Rounds: I agree with trustee Sunzeri because I had exactly the same issue and was double checking my own thoughts that it was the neck that was -- and our responsibility is to respond to the papers and to the facts presented to us. And I was troubled by a sentence that Dr. Das wrote, which said that he was having problems. Said the relationship between these imaging findings and his work activities is not clearly explained in the medical record. Our responsibility is to make that connection. And it's a difficult one because of the sympathy that we feel and the compassion. But I think it -- you know I think that you're asking for more information, Dr. Das, I think that if that's your recommendation to us, as a board, that you need more information, then we should be asking for it. Is that your recommendation to us?

>> Dr. Das: If it's going to be between the neck and the -- if it's between the neck, yes, for his shoulder based on the mechanism of injury, I mean I don't have all the medical records for his shoulder. But based on the evaluation by Dr. Sunday and based on my own personal knowledge I'm comfortable with the shoulder as being responsibility for the body part.

>> Bettina Rounds: Dr. Das and that it is work related?

>> Dr. Das: Yes, and that it is work related because there's a specific incident with trauma. I don't think there's any much question, there's no epidemiology needed.

>> I -- then I apologize, I misunderstood your comments and can we amend to include the right shoulder at this time, or do we need to come back?

>> Sean Kaldor: We would certainly have people pull things off in the middle of meetings.

>> Donna Busse: I would go to Harvey, I don't know why there wouldn't be a reason why they couldn't amend at the hearing.

>> Harvey Leiderman: Well, the board has to make a decision based on the medical evidence and recommendation presented. So I don't -- if Dr. Das is prepared to make a recommendation and has seen -- I thought Dr. Das just said quote, I don't have all the records. So if that's the case and you need that before you can make a statement based upon medical evidence then you'd need to get all the records. Dr. Das as far as the right shoulder, based on my knowledge of what's contained in the medical records about his injury I feel comfortable saying that that's a possible source of his problem.

>> Harvey Leiderman: A possible source or this source?

>> Dr. Das: Well, you're trying to pin me down. Yes.

>> Harvey Leiderman: Yes, I am.

>> Dr. Das: It's the likely source, the likely source, that's my own opinion. It is not something that is presented in the medical record. That's why I'm suggesting that additional -- additional -- this is coming from one doctor's opinion in the medical record. With whom I agree. There's a Dr. Sun, who is Dr. Sunday who is a neurosurgeon evaluated Mr. Colandone, I believe it is a likely injury to the brachial plexus based on shoulder insubstantial and

that's where the focus of care should be. That's not where the focus of care for Mr. Colandone's situation has been. The focus has been the neck. I -- and so I -- and so I -- there is a -- I do have problems with the work relatedness for the neck problem based on my understanding of the epidemiology it doesn't fit as clearly. However if the right shoulder is responsible for his -- is responsible for his symptoms there is a likely relationship between his work activities and his symptoms. And there is a plausible relationship between the shoulder instability and his symptoms. Am I making it less clear or more clear?

>> Harvey Leiderman: Mr. Chairman, if I may -- if, if Dr. Das based on your review of the record, the doctor on whose judgment you are relying says that he has not been treated for the shoulder, can you opine as to whether he's reached maximum medical improvement in the shoulder at this time?

>> Dr. Das: Well, the issue would be, what he would need as surgery. And there is no guarantee that surgery would work. So in my opinion he has reached maximum medical improvement for the right shoulder unless of course he chose to have surgery to address a possible brachial plexus tension. But he would need an evaluation by a shoulder specialist to see if they could concur in the diagnosis.

>> Harvey Leiderman: Is that available in the medical records as presented to the board today?

>> Dr. Das: No, it isn't.

>> Harvey Leiderman: It is a judgment call based on the board, plrnl whether you have sufficient data. I don't have a problem legally if they amend the application to include the shoulder, since the shoulder is also discussed in the documentation. But then the board has to decide whether it has enough based upon the medical evidence to proceed at this time or whether or not an examination needs to be done on the shoulder since that's now the focus of the application.

>> Sean Kaldor: Understood. So we can amend it but we still have a question of would it qualify?

>> Harvey Leiderman: Correct.

>> Sean Kaldor: Trustee Santos.

>> Richard Santos: Being a civilian I understand my colleagues concerns. What I see here neck only, that is unfortunately misleading. I understand what the board is saying. But it would be a real shame to make this applicant come back. In other words in my opinion, enough clinical information. To candidate for neck fusion. He describes undergoing a shoulder reconstruction, they talk about the pain, 70% of the pain but he had increased rating of pain from the neck down into the arm, into the dorsum of his hand. Also says he is not a candidate has not improved with prior procedures for additional surgeries. Talk about this neck pain, he's also obviously right-handed, not going to be able to shoot his been weapon. So I don't believe I would too if I would just zero what you put down. If you put down this other information. Many of us here who have had multiple surgeries know, especially in showrltsdz how that affects that neck, everything, you are restricted what you can do and what you can't. I wish there were magic pill, for example, backs, I wouldn't be under extreme pain the rest of my life but it's not going to go away. Once you have surgery that's the way life goes. You want to be able to get out and do something with your family and live the rest of your life but you never can be a police officer and firefighters that's the realty shame. This officer has been around for 20-something years and there's enough medical evidence to grant this service connected disability. I hope my colleagues would respond and hopefully not make them.

>> Donna Busse: To provide the other trustees for context, in the past for someone to be MMI, it does not require them to have surgery is that correct Dr. Das?

>> Dr. Das: Especially not with definitive care.

>> Donna Busse: I don't think having surgery is required for M MI, especially if he's done the not so invasive steps just for context for past practice.

>> Sean Kaldor: I'll take my turn in here. For the shoulder it says he can't do the job he has a disability. You're you clear on that.

>> Dr. Das: Yes.

>> Sean Kaldor: Was it caused by work I feel comfortable with that, you've made that statement I feel comfortable with that. The last question is, is there any treatment that could return his ability back to the level of being able to do the job? And that's you know, maximum medical improvement or at least enough even if he couldn't improve, he improves enough to come back to the job.

>> Dr. Das: There is no simple intervention. If that's the problem it would take surgery and it would take an experienced shoulder surgeon to do the procedure. And there's no guarantee.

>> Sean Kaldor: Okay.

>> Bettina Rounds: I'm comfortable with an amendment to the shoulder.

>> Sean Kaldor: Okay.

>> I would like to amend the application to include the right shoulder as well.

>> Sean Kaldor: Is there any concerns from this board about allowing him to amend the application to include the shoulder? I see no concerns so we'll consider the application so amended.

>> Thank you.

>> Richard Santos: Call then the question.

>> Sean Kaldor: All right, no further questions or discussion for the application to include the shoulder. We've had a call for the question. All those in favor say aye. [ayes]

>> Sean Kaldor: Seeing none opposed, the application is granted. Officer, thank you for your service.

>> Sean Kaldor: Okay.

>> Donna Busse: The motion was to grant based on his shoulder. I don't know if it's exactly clear.

>> Sean Kaldor: So we're all clear I think we're all of the same understanding but maybe the verbiage is not quite right. The motion is to approve for the shoulder --

>> David Bacigalupi: As maker of the motion I amend it to include the shoulder as amended in the application.

>> Sean Kaldor: And the second agrees. Okay. We'll hear one more and then we'll take a ten minute break. This is item 4.2C. Devlin Creighton. Police officer, police department, effective September 6, 2012, 4.95 years of service. Continued from our August board meeting. Tony.

>> Officer Creighton neck right wrist and left wrist. He has 4.95 years of service. He is currently on disability and at the time of application was also on disability. He should avoid maintaining a firearm in public areas. The police department does not have modified duty available.

>> Sean Kaldor: Thank you. Dr. Das do you have anything to add to the record?

>> Dr. Das: No I don't.

>> Sean Kaldor: Mr. Swift.

>> Thank you. I think most of you heard the circumstances, but somebody wasn't here last meeting and I'm not sure who it was. But just quickly --

>> Sean Kaldor: He is not here this meeting as well. It was trustee Krytzer.

>> Sean Kaldor: Everyone else was here?

>> Sean Kaldor: Please.

>> Again, it was a motor scam accident in March of twin. Someone pulled in front of him. He catapulted over the handlebars of the motorcycle emergency neck fuse by Dr. Njikubi. And that was -- and he also had some compression fracture of his upper thoracic spine which is just below the cervical spine. Due to the continuing pain that he's had he's on various medications. Dr. Das has provided restrictions that are based on the use of those medications precluding him from high-speed pursuits and maintaining a firearm in a public place which is due to the effect on cognitive processing, reaction time and judgment. The board had questions about additional medical evidence. There's a report on page 69 of your packet from Dr. Njikubi dated 2012 dr. Addresses the compression fracture of the thoracic spine, which creates pain in the motion to either side and extension which is looking up. He says that he's permanent and stationary. pushing and pulling lifting over 20 pounds. Combined with the cervical fusion his restrictive neck motion is 20∞. Normal would be 80, so he's lost about a quarter of his neck motion. Side to side and up. This makes it impossible for him to safely perform the job of a police officer. So we have the restrictions from Dr. Das regarding driving and the use of a firearm. We have the loss of neck motion per Dr. Njikoubi which makes it unsafe for him to be a motorcycle officer and the defendant has no modified duty. In that case we ask that the application be granted but Mr. Creighton would like to say a few words first.

>> Sean Kaldor: Please.

>> First of all, I would ABC very important role I know it's a very hard job and I appreciate what you guys do for us. In the 2007 I started my dream job here at San José police department. Really was the perfect job for me. I

loved it, I loved every moment of it. I thrived on knowing that I was helping the community and putting you know bad people criminals in jail. I enjoyed coming to work so much that up until the accident I had 911 taken a single sick day. I had worked all the holidays I always volunteered for performance evaluations from my supervisors. As soon as I became eligible I applied for a specialized unit and went through the special training for that, became a motorcycle officer. In the five months that I was on the motorcycle I issued over 500 citations with over 825 separate violations. I think that's -- that is a lot and that shows that I was a hard worker. I share this with you because nobody here has worked next to me or knows who I am. But I was a hardworking officer that was doing the right thing and making a difference. But all of this changed on March 28th, 2011. I went to work like any other day.

>> Sean Kaldor: You're not required to recount all of this if you don't feel comfortable doing so.

>> He does want to speak to the board.

>> Sean Kaldor: Thank you.

>> I went to work, like any other day. And I was working traffic enforcement on Monterey highway. On Monterey highway at Alma. I just finished writing a ticket for another vehicle. I returned to the parking lot motel parking lot where my sergeant was waiting. I spotted a two door black car that was in violation of the California vehicle code, I told sarkt Bain, I was going to issue I was hungry he said that was a good idea and we would go get lunch together. I pulled into traffic and I was catching up to the car that I was going to stop and that's the last thing I remember. I woke up on the ground. I was unable -- I was unable to move. I couldn't talk. I was -- I was staring into the pavement where a pool of blood was forming from my mouth and nose. I realized I was in the middle of the road and I was pretty sure I was going to get run over. Even bracing for the impact of getting run over, I noticed somebody who was holding my hand. It was a crust yeah big dirty hand but I was so grateful for some homeless person probably I never even saw them but they were holding my hand. I got transported to the hospital. The paramedic called my wife, and said that I would be okay. But you might want to come to the hospital. Anyway, I broke my neck, I broke my back. Fractured my wrist. I had random nose bleeds in a deviated

septum in my nose. My breathing is at half-strength, every single day I've felt pain in my upper back my lower back, if I go over a speed bump wrong my neck hurts and it jolts pain throughout my body. I've done everything my doctor has asked me to do, I've done a lot of things for functionality evaluation, city denied it. I've done that. I've tried different pain medications, I've trite Trinadoh.i've had antiinflammatories muscle relax ants, the only thing that's working for me is the hydrocodone. I'm on it now. on patrol. I love the job. And but I just don't think I would be safe for myself, my teammates or the citizens, if I was out there trying to perform arrests and struggling with suspects. I can't turn to see my blind spots when I'm driving in a quick fashion. It would be dangerous to drive code 3 as Dr. Das has pointed out. Dr. de Moore has said my wrist is about half strength my grip which makes it dangerous to carry a gun which Dr. Das has also agreed with. This has been hard for me. That day was probably the worst day of my life. And I've tried to recover the best I could. This is where I'm left. That's all.

>> Sean Kaldor: Thank you. Are there questions regarding the application?

>> David Bacigalupi: I make a motion to approve the application.

>> Richard Santos: Second.

>> Sean Kaldor: We have a motion from trustee Bacigalupi and a second from trustee Santos. Questions on the motion. Trustee Sunzeri.

>> Vincent Sunzeri: So you had said they haven't approved other treatments, why is that?

>> I haven't been approved of anything for probably six months. No chiropractic care, no I had 12 sessions of chiropractic and 24 of physical therapy and they said that's all I get.

>> There's a limit in the workers comp session for 24 visits for the life of any one claim. There is a limit of any one claim regardless of the severity of the injury. There's also yuftion review process the city farms it out to a company called Mitchell corporation and they use doctors who are out of state who don't examine the patient who look at

the treatment guidelines and say we don't think you need X whatever X may be he's given some examples and it doesn't get done.

>> Vincent Sunzeri: Is there a possibility that if he were to receive this treatment that he could get better?

>> Dr. Das: I'm fairly confident that if 24 sessions of fm therapy and chiropractic have not allowed him to return to full duty that 150 sessions will not return him back to full duty. Once again, this is when we get back to work tolerance and the effectiveness of care. Now perhaps if there was a different therapist provided the care at a different approach there may be an ability the effectiveness of the approach but just saying blanket physical therapy or blanket chiropractic if it's not worked once or six times or 24 times, repeating the same type, the same care again will not make a difference but perhaps a different intervention with a different chiropractor or a different physical therapist may relieve his symptoms. Because as Dr. Njikoubi for the board to review and decide.

>> Vincent Sunzeri: And the other question has to do with the medications. You're giving a restriction based on the medications and yet it sounds like he's tried a lot of other medications and this is the only one that works. Is that consistent?

>> Dr. Das: Well, the medications can play a role, obviously they're not completely effective because he doesn't feel -- the -- his pain is not well controlled enough to do a lot of things. He can't turn his neck. And it's -- I reportedly due to pain because there's no obvious physiologic or anatomic restrictions the most likely cause is pain but the effective of the medications is not well demonstrated because he's not able to do those things but if he is taking those medications for the pain and they help him tolerate them a bit I do see where there's issues with active duty patrol officers characterizing driving vehicles and carrying guns, using those medications.

>> Ash Kalra: , that's the reason I provided those restrictions because if that's what the doctor feels he needs, there is an issue there.

>> Sean Kaldor: Trustee Santos.

>> Richard Santos: Dr. Das after this gentleman's sucialg rise and so on was there a time when they measured did he improve in any kind of way?

>> Dr. Das: There's not really any objective measure nor pain. Unfortunately I mean in terms of the bone healing after a fusion they can look at X rays and they can see that the bone is -- that the fusion is solid. And I believe there was some issue about how solid the fusion was but his neurosurgeon felt that the fusion was solid. As far as you know pain is a subjective sensation and that's what makes its very difficult, you know, to look at it objectively, especially when you're looking at disability and incapacitating. It is very individualized, there is a lot of factors that.

>> Richard Santos: In the past so much medication for pain it changes your judgment and everything else and it's been related. Other question I have officer, did you ever try to have modified duty?

>> Yes, I went to 120 days and ended right before our last meeting. So since our last meeting I've not been able to go to work because they won't let me.

>> That's the police department's limit, not his.

>> Richard Santos: Yes, in other words your restrictions no longer can apply anything for you?

>> Right. I was able to go to a desktop for my 120 days which I did.

>> Richard Santos: Call for the question.

>> Sean Kaldor: Any other questions or comments? Seeing none we have -- we do have a motion and second. We have a motion and second. All those in favor? Aye. Any opposed? Seeing none the motion passes unanimously. We will take a --

>> Thank you.

>> Sean Kaldor: Thank you very much officer for your service and coming back twice.

>> Thank you.

>> Sean Kaldor: We will take a ten minute break and reconvene call it at noon with item E. [Recess]

>> Sean Kaldor: Court with item 4.2 F. Shane Granberg, police officer, police department, effective September 6, 2012, 11.11 years of service.

>> Officer Granberg has 11.11 years of service. At the time of -- he is currently on disability and at the time of his application he was also on disability. His work restriction is that he should avoid shoulder level and above shoulder level activities with his left arm and the police department has indicated that there is not modified duty.

>> Sean Kaldor: Dr. Das do you have anything to add?

>> Dr. Das: No, I don't.

>> Sean Kaldor: Counsel any comments?

>> Yes I would like to, thank you. Mr. Granburg has been a police officer with the City of San José since 1999. For the first six years of his employment he worked patrol. After that he became part of the homicide crime unit and worked there for five years. Unfortunately May 15th, 2007 when unloading a van full of equipment he was lifting a heavy box when he heard a pop in his shoulder pain had his upper back and pain in his neck. He heard the pop immediately after lifghting this box. He started his medical care with a well respected orthopedist Dr. Ting in Fremont. shoulder. Prior to May affect of 2007 Mr. Granburg has never had any problems with his left shoulder

or any problems with his neck or upper back. After ordering an MRI Dr. Ting recommended surgery to Mr. Granberg. Mr. Granberg was experiencing pain in his left hand, despite this, Mr. Granberg decided that he wanted to try more conservative measures with Dr. Ting and wanted to continue to work. Attempt, Mr. Granberg was also being worked up for injury to his neck, which was part of the injury in part of the lifting mechanism. Mr. Granberg eventually had and M rimplet which diagnosed a three millimeter disk bulge. Stums. He eventually tried epidural steroid injections in May of 2008. Again in 2009 he was recommended for physical therapy which he performed. He was given a home traction unit which he used. He trite acupuncture to relieve his symptoms. All the while he continued to work full duty. In 2011 as he remained symptomatic still having the weakness the grip strength loss the numbness and tingling in the neck he came under treatment of Dr. Ting in 2009. Tear in the tendon he indicated there was instability still Dr. Ting recommended surgery once again. In October 2011 Mr. Granberg decided to undergo his the surgery, to police officer. After physical therapy, and conservative care following the surgery, unfortunately Mr. Granberg's symptoms did not improv. He is still has range of motion problems pain he still has weakness and grip strength problems in his left upper extremity. Eventually Dr. Ting made him permanent and station stationary. Dr. ting indicated co-not go back to work referred Mr. Granberg out for further care for the deck, Mr. Granl belg was then sent to an FCE through his workers compensation claim he participated in June in a functional capacity evaluation, the determination of the evaluator was that functional limitations because of his left shoulder. This was begin to his treating orthopedist Dr. ting. Dr. Alfredo Fernandez an orthopedist up in Daly City. Reviewed the file the functional capacity all the films and extd Dr. Granberg and he came to the same conclusion as Dr. Ting and in his report has discussed limitations regarding above the shoulder and at shoulder work for the left shoulder that was submitted to the police department and they indicated they did not have any permanent duty for Mr. Granberg. He was never order of modified duty or any kind of temporary duty following his being made maximal medical improvement. Mr. Granberg loves his job, he would love knowing berchlt medical record Dr. Ting Dr. Novoni Dr. Fernandez the functional capacity evaluation all support that he's not able to continue his work as a police officer.

>> Sean Kaldor: Thank you. Officer do you have any comments you'd like to provide?

>> Yes, I do. Being a police officer has always been a lifelong dream. In high school I was a police cadet at the Moraga police department I also did an internship at the local particularity there. Upon graduating college I applied to San José PD in 1999 but it wasn't until the following year I was finally selected to my dream job. I'm happy to say I've enjoyed a very fulfilling career while difficult at times it has been one that has been well worth it. My career has included patrol for six years and I was very forfeit to also be in the homicide crime unit for 2007 right after I was accepted into crime scene I was volunteering with the crisis intervention family which deal with mentally ill people in the field and while I was unloading a van full of equipment I bent inside the vehicle to pick up a heavy box. As I attempted to pick up the box I heard a loud popping sound coming left upper side of my back. Like other injuries I thought this one would eventually go away. Unfortunately I didn't realize that this assistant would be life changing for me. However I did seek medical attention because I was in significant pain. I received a steroid shot into my left shoulder and pain medications as well. Even though I was in pain I did not want to miss work in crime scene because I felt so forfeit to be there and wanted to continue in this very fulfilling job. Over the next four years I continue to have neck spasks, tingling in my left hand and intolerable upper back pain especially when performing overback work. I work MRI pes special multiple fill therapy sessions, trigger point injections into my back, neck traction, two cervical epidural injections and acupuncture, still continue to work full time. Over time, the pain and lack of functionality in my shoulder has become worse and has inhibited my life. or lift heavy objects without suffering shooting pains and throbbing. I've been unable to sleep on my left side since the incident and continue to wake up several times after the accident due to my pain popping in my shoulder and my functionality is not improved and I still have weakness. Have exhausted all medical treatment offered to me to date. In hindsight while there is nothing I could have done differently I'd rather not be standing up here today talking to you guys. I would much rather have a permanent light duty job if this option was available which apparently it isn't. I have many career dreams but I realize my body won't see my me through. Even some of my past impossible now. I only know the life of being a cop and it has taken a lot from me to accept I cannot continue as one. I'm proud to have served San José in the capacity of a police officer for all the years I've been here. And I thank you for consideration on this matter.

>> Sean Kaldor: Thank you. Are there questions from the members of the board? Trustee rounds.

>> Bettina Rounds: Dr. Das in your writeup you feel the doctors' reports conflicted one from the other, and you needed more information is way gathered from your report.

>> Dr. Das: Yes, how and why. How did the injury occur in terms of resulting in the pathology and why, in the absence of the pathology or what is the pathology that's causing the littles. Is helpful. And once again, when we're talking about pain it's a subjective sensation and it's a valid sensation but in my capacity as reviewing the medical information I feel that that information helps connect the dots.

>> Bettina Rounds: So you don't feel that you have enough information to make a recommendation to the board, is that correct?

>> Dr. Das: Well, I've provided work restrictions. But in terms of -- so I believe that he does have symptoms and a problem. But an explanation as to why would be very helpful in terms of making it very firm.

>> Sean Kaldor: Trustee Santos.

>> Richard Santos: Yes, I think Bettina's obviously asked a very, very good question. And some of that same type of information was on my mind, when I was listening to Dr. Das's answers. And the reason I say this because as I go through the report there's a couple of things. It says like this from a doctor. This is paraphrased a now things here. He indicates there is no evidence of instability in the shoulder and so on. And then enjoy to another area it says, doctor denies finding any other, abnormal abilities, those are just little things that I go through, and I that is why in this instance Mr. Granberg can continue working duties as homicide and so on. Then one major thing it goes to page 11 talks about, doctor talking about I cannot identify any specific pathology of the left wrist hand that may account for his symptoms. Then it goes on further to say, traveling down his neck has not fully explained by the medical reports. So what I hear Bettina asking would be the same thing I'm asking. I think there would be some specific information that might be just a little more helpful so can I get a better picture. Because I'm not making fun of lifting some box. I'm just trying to understand the, as it goes, it just doesn't seem to all fit in,

it tells me you know, this gentleman cannot do anything, it tells me that you might be able to. So I don't get all the information I need to make a better decision.

>> Sean Kaldor: Other questions or comments?

>> Can I ask aquestion?

>> Sean Kaldor: Please.

>> If that's the way the board is going, I'd like a clearer sense what type of information you feel you would need further. I mean the doctors have described work limitations, Dr. Ting has described them, you've described them Dr. Das, Dr. Fernandez has described some in detail in terms of limitations related to the shoulder and neck. We first got your report last week, about six days ago actually Dr. Das and I saw that you had questioned some work relatedness but you know the injury was reported timely it was accepted by the city and the doctors throughout the time they have treated for the last phi years from Dr. Ting back in 2007 when he ordered the MRI have all operated that this was the appropriate mechanism of injury that have caused the left shoulder and the neck symptomatology. Even the most recent MRI from the surgery diagnosed a torn tendon from Dr. Ting which is part of the reason he operated on so would seem to be specific with a certain lifting type event. I'm not sure what you're looking for by Dr. Ting or other doctor to clarify. If I have to go back and ask him I would like to specify what you are looking for.

>> Dr. Das: There is a evaluation by Dr. Tinge. Dr. rawnls felt there diagnosed him with something called snapping scapula syndrome. And so the issue is now moving forward, in terms of with the disability that's presently current, the diagnosis that he's had a rotator cuff repair He's had an AC joint resection, is there shoulder syndrome encapsule or is there some pathology or is there some type of physical abnormality that's responsible for the work limitation because pain is a very subjective sensation and it's a very individual sensation and people have individual responses to that sensation. And so when work restrictions are provided based exclusively on pain it's very hard to carry it across. When a person has a broken arm or broken leg it's very easy to carry outed

over from an individual you know one person to the next is very objective or very similar. When you don't have those kinds of findings present and you're relying completely on a subjective sensation reported by that individual, assessing incapacitating rely almost exclusively on what the individual says that he can or can't do as opposed to being able to say well, if this is broken you cannot bare weight on it or if this cartilage is completely gone then it's going to cause an extreme amount of pain to put weight on it. But we don't have that kind of information in the record and that doesn't mean that the reports of pain are inconsequential, it's just connecting the dots.

>> Lifl lifting an object where there was immediate onset of pain, it's more of he has had the shoulder surgery and Dr. Ting can you explain further why he has these symptoms based on the findings?

>> Dr. Das: Yes, that it hurts, it would be nice to kind of explain that there is this kind of pathology present or the surgery was unsuccessful because of X, Y and Z, so with the successful procedure, if the surgeon sat outside of the procedure you would like to know why and that's kind of my concern.

>> Would you prefer to see more of that information from Dr. King the treating orthopedist or like a forensic evaluator who would you like to see that from or from anybody? I just want to be able to go to the right person to provide that information.

>> Dr. Das: You know if Dr. Ting doesn't have the information or you feel there's someone out there that can review the information well, you know connecting the dots. It's not as much who as it is providing us that information or providing that information that I can say yes, here is what happens, this makes sense, it's clear. If you have this kind of a limitation it's based on this kind of pathology. Now of course it doesn't mean that pain is not a reasonable basis. It's just it doesn't carry over from individual to individual. Whereas certain pathology you expect it to carry over. It doesn't rely as much on an opinion as a lot of these restrictions do that relies more on objective information.

>> Okay, thank you.

>> Sean Kaldor: So a little more to that. If you are going to be able to obtain that information and come back with that, one of the other questions I would want to understand, on April 27th there's a series of evaluations by Dr. Novani saying that your applicant is not permanent stationary hasn't met maximum medical improvement, there are things that will possibly or hopefully improve medical. That's April 27th. On May 18th everything is maximum medical improvement no options available. I would like some understanding what test or study what happened in that month that so changed that opinion.

>> Okay.

>> Sean Kaldor: Would it be your desire then to obtain the additional medical information that would address these concerns?

>> Yes, we would desire to do this.

>> Sean Kaldor: So we will consider this continued. Thank you.

>> Would this be continued to the next hearing or is it as soon as I get this information and present it to you?

>> Sean Kaldor: It would be continued to the next meeting. At that meeting though if you don't have it available to then, please give us plenty of advance notice and we can defer it to the following meeting. Okay. So our next item 4.2 G. The milks by Eric S. Kurz, police officer, police department, effective September 6, 2012. Ten years of service. and we've received notification of a request for a closed session by the applicant due to government code section 54957. what we will do is we will adjourn from here as a board and hear the reasons for the requested closed session. And if it meets the requirement then we'll continue in that closed session to hear the case.

>> Donna Busse: And this is a situation where the staff recommends a closed session.

>> Sean Kaldor: Okay.

>> I have one minute just to talk here.

>> Sean Kaldor: We'll reconvene there in two minutes. [Closed session]

>> Sean Kaldor: We'll resume in one minute here. All right, resuming back in open session. The board met in closed session to hear the milks.eric Kurz, police department, effective September 6th, 2012, with ten years of service. The board agreed to here the application in closed session including the recommendation to do so by staff and Dr. Das. We heard officers Kurz's application, and trustee Bacigalupi made the motion to accept the application or approve it. Trustee Santos seconded that. The motion passed unanimously so he's been granted a service connected disability retirement. 4.2 H. Steve Maraldo, firefighter, fire department, effective September 6, 2012, 6.12 years of service. Tony.

>> Firefighter Maraldo, applied for a service ccted disability based on his back. Mr. Maraldo has m repooted bending and heavy lifting. Permanent modified duty is not available.

>> Sean Kaldor: Thank you, Dr. Das do you have anything to add to the record?

>> Dr. Das: 90 don't.

>> Sean Kaldor: Counselor.

>> Good afternoon, I'm John McBryde representing Mr. Maraldo, I'm not going to go into details regarding what he's been through. He will give you details and it is waned in his packet. He sustained injuries on October 6th, low back. And I followed up with treatment, his treatment consisted of numerous different things including surgery. He has restrictions which I don't think are in dispute in terms of wether or not he could serve as a firefighter. He would be a danger to himself, he would be a danger to his co-workers. He would be a danger to the people he's trying to help. I will have some questions later if Dr. Das, of Dr. Das but at that point I'll turn it ore to Mr. Maraldo.

>> Sean Kaldor: Firefighter Maraldo one correction. I read incorrectly into the record, I corrected into the minutes at the start, the effective date is April 12, 2012.

>> Thank you for acknowledging that. emergent care. The patient was lying in a small bathtub too weak to exit. The patient needed Medicare there was only room for one rescuer. I climbed into the bathtub and lifted the man wrong after the lift. And my back began to spasm shortly after the call had concluded. I was seen by an orthopedic surgeon given steroidal antiinflammatories and prescribed physical therapy. I requested to stay working and did so for about a month. During this time, the symptoms became progressively worse. I remember lying down on ice packs each night unable to sleep. On December 3rd, 2010, I underwent an M RI and was diagnosed with a torn and herniated disk at L-5 and require surgery and referred me to a spinal surgeon. I was reluctant to undergo surgery despite his recommendation. I wanted to recover naturally and return to work. As my condition and symptoms worsened medications, physical therapy and time were not showing adequate improvement. I ultimately underwent surgery on L-5 S-1 in April of 2011. The decision to operate only on L-5, S-1 was made to improve my chances to return to work. I was told that although both disks were damaged and needed to repair firefighter I chose the less invasive option because I hoped to continue my career with San José. The surgery improved some of the symptoms in my right leg, however pain and muscle spassments in my lower back, radiating pain in my right buttock physical therapy and injections have failed to keep me well again. I still have to lay down and rest most days with the pain becomes unbearable. I have significantly altered my lifestyle to accommodate these restrictions. I can say with certainty that the fast two years have become a painful and arduous firefighter and thank you for your consideration.

>> Sean Kaldor: Thank you. There are questions or comments from the board regarding this application? Trustee Sunzeri. Then trustee Santos.

>> Vincent Sunzeri: This is on page 8 of our packet. The topic of work relatedness. Dr. Das notes that the work-relatedness of this injury is not absolutely clear. Prior to that, there is also comments with respect to additional treatment options that may improve his condition. Could you expand on those two things?

>> Dr. Das: As far as the work relatedness, there is a typographical error in my report as well it says days after, a few days prior when he did the lifting injury. The doctors for supportive few hours after the injury so that should have been hours and I thought we caught that. But I get we caught it earlier. So in terms of the science, a lifting injury will not cause a herniated disk, okay? However, in this case what we have is, we have someone doing an acute lifting incident complaining about pain a few hours later. And being diagnosed with an acute disk rupture. So you know proximate to the lifting accident i don't believe there is a relationship but pragmatically there -- it's very hard to say that there is not -- there is not. One of the theories would be that he already has a bulging disk that's about to burst and then you do an awkward lift and that causes the disk to extrude it is not a chronic old one so from a work relatedness standpoint, I'm offering the science saying that it's unlikely that it's related. But when you're looking at causation, there's a -- the proximate cause, is that disk herniation so if I was treating this on workers compensation I would say this is work related. I -- is there an easier way for -- it's very hard to show that -- the dogma is an acute lifting incident does not cause a disk herniation. However, here we have someone describing a lifting incident and then being diagnosed with an acute disk herniation and there's no lapse in time. It's within a few hours he reports pain and then the appropriate imaging stories are done showing that disk herniation. So I think there's reasonable basis for work relatedness even though if you rely on the science it should not be related.

>> Vincent Sunzeri: So let me ask it a little bit differently. If you are vulnerable you have a bulging disk that hasn't quite inflamed from a particular incident and then a work related incident happens, how much would you apportion from that work related incident versus the disk was already damaged?

>> Dr. Das: I understand -- yes, it's I have difficult. That's why I'm saying in the workers compensation system I would accept that. You know I'm fairly conservative, I would say that's work related from the disk herniation. Even if it's supposed to burst anyway, can the proximate cause is from the lifting injury anyway.

>> Vincent Sunzeri: Could you respond to the therapies following,.

>> If we're looking at the definition as incapacity, what is the structural instability in the spine? Is there a nerve root compression? Is there spinal cord compression? None of those findings are present. So then the issue comes down to in terms of his reports of pain. And once again it's a subjective sensation. It doesn't mean that it's you know not valid. However it's not an across-the-board type of finding where you would say if this person has this finding he will obviously have X, Y and Z symptoms. It is very individual and there's no consistency. If you look at the literature niece findings are very consistent in the individual. That is why I would ask why. So this is difficult because there are there are no-there is no smoking gun saying this is why he cannot do X Y and Z. We are relying on his statements that it hurts when I try do this, it hurts when I lift, I cannot do this.

>> Vincent Sunzeri: Is it your sense that additional treatment will.

>> Dr. Das: Reports of whether it's effective treatment or not. It's not a very -- it's not a very solid approach. But I believe that there are you know trigger point injections different kinds of therapy may help. But there's no -- once again, there's no guarantee especially when we're talking about an individual's sensation of pain.

>> Sean Kaldor: Trustee Santos and then trustee Rounds.

>> Richard Santos: I'll let Bettina go.

>> Sean Kaldor: Trustee Rounds.

>> Bettina Rounds: It really goes to the beginning of the entry and I guess I have a question it's sort of difficult but I noted in your report Dr. Das you said in November 8th, 2010 that Dr. Coleman stated that Mr. Maraldo had completed two out of eight physical therapy sessions. Is it your opinion that Mr. Maraldo has done everything that was you know was available to him in treatment?

>> Dr. Das: Yes, I mean, he's done everything that's been offered to him, yes.

>> Can I respond to that? Dr. Coleman's report that was 2 out of 8 at that time. I had completed not only the maximum allowed by workers comp physical therapy prior to the surgery but I was identified by my primary treating physician to hold another round of physical therapy several months following surgery until the point where all the physical therapy that workers comp was willing to pay for was exhausted.

>> Bettina Rounds: Thank you.

>> And he had not had significant improvement. I think the proof's kind of in the pudding in that sense. I'd also like to point out, I think there's a little discrepancies, Dr. Das indicates he didn't have pain for a couple of hours. Actually, if you look at at page I believe it is 19, 13 and 19 both indicate that he had immediate pain, reported by two doctors. One indicating that he had immediate pain, the other one saying he had pain and that it progressed to -- shortly thereafter.

>> Dr. Das: Can I respond? If you look at page 12, on the doctor's first report of injury by the initial evaluator on November 30th, 2010, and it's recording the initial, the initial doctor's first report of injury it states that there was no immediate pain but it began to tighten and spasm in one to two hours.

>> And the report of Dr. Coleman which was page 13 was dated 11-1-2010.

>> Sean Kaldor: Sorry, where does it say on page 13?

>> Dr. Das: In the subjective, explain how the accident or exposure happened.

>> Sean Kaldor: Two different doctor reports just for clarification, firefighter Maraldo, when did it start to hurt?

>> Right when I did the lift, progressed from there.

>> Sean Kaldor: Trustee Santos.

>> Richard Santos: It says here on major 8 also, his treating physician is considering him maximally medically improved. So when you start seeing things like that then I see below Dr. Das clarified, questioned your work related injury. I was curious after the surgery did anybody measure how long it took or did he improve? So when you had the surgery, and until what time, what's the reports? Does it say he's -- didn't get any better, he did get better? There's a chance of more operations or there's not? And the pain seems to be the main issue. Also question I don't understand, lack of modified duty in terms of whit comes to fire. We've got stores down there. You can be an acting fire prevention. I was just curious. I understand it's very difficult today but I was wondering why, when someone only has a few years on, most of the time people want to stay so bad, they take some type of job down there and I was just curious, I don't know if there's no fire administrator here, in should be I was questioning why.

>> He has been offered no alternative position.

>> Richard Santos: I understand there's no alternate employment but modified duty, I wrote just be surprised, is there somebody from the fire out there? Come on up please.

>> We could not --

>> Richard Santos: Please get a microphone.

>> Sean Kaldor: Has to be into the microphone everybody thank you.

>> We could not meet the restriction of repeated bending and heavy lifting for modified duty position.

>> Richard Santos: What I was getting at was let's just say there was you had something you can't do these restrictions. Did you sit him down and find if this person had improvement. Did you all of a sudden say you can't

work no more or do you wait for a period of time to see if there's improvement so the person may get back to work?

>> We in the department don't have access to medical reports. We only get a work status note. So we're very limited on information due to hipAA laws. So what we get is only saying they can work light duty with the restrictions. That is the only information.

>> Richard Santos: My question was modified duty to you, my question to Dr. Das, what's the measuring tool after the operation, where are we at?

>> Dr. Das: The measuring tool is the patient's report of I'm doing better, is the pain better? Am I able to do more things? And so Mr. Maraldo did not appear to improve postoperatively. Dr. Coe states he continues to have low back pain gluttial and hamstring pain. I think that you know, if he was going to get significantly better he would have probably felt a lot better because if you have something pressing on something or pinching on something and you remove that pressure peep typically feel better afterwards. Of course the incision has to heal and all those other things but in general people notice a significant improvement if that's what's causing the problem.

>> Richard Santos: I any the city should also answer to this board some why isn't there consistency, if the PD has a certain amount of modified positions, whatever, the fire department doesn't? I'm assuming young people who want to stay in the job, what are they doing to help us at the same time help this plan? I believe they have some responsibilities and I believe this board should be asking the city to give us some type of report. Even if the answer is no I appreciate your answer but it's not answer. When I was there we did have positions. I understand the cutbacks today but sometimes let's just try this. Let's just say they said well Mr. Maraldo might get improved in the next six months. Maybe an opportunity of checking again with the doctor then the doctor says well, no, no matter what the job is this person can't do the job. Those things I understand, but I just don't see how they want to come back how they have opportunity.

>> Sean Kaldor: Did you want to address that from the fire department? Did you want to address that? Maybe not? Sorry for the record you must identify yourself and your department.

>> Yes, I can't speak to the time, I was not there when this was first. Currently I know, this issue of modified duty is being worked on. There's been an audit. The director, Ron Dacioli who was here previously and had another engagement is part of that. That audit is not public at this time so I don't have access to that. But that is an issue that the fire department is going to be coming out with very shortly. On lots of recommendations that have been proposed. But I cannot speak to the past. We can only what we're going to do in the future.

>> Richard Santos: Another thing. It may not be long term I understand, it may be short term but the city needs to respond to this board. These are questions I'm sure we have asked and we haven't pursued it enough and as the numbers grow we need to have those questions answered.

>> I can assure you my client would take any modified position in the fire department that was offered to him that he could physically handle. It has been approximately 18 months since the surgery so I don't think it's, from a layman's standpoint anyway I don't think it's likely that there's going to be any significant glovment his symptoms.

>> Richard Santos: You could have answered the question 18 months now I got an answer, I appreciate it.

>> Sean Kaldor: Dr. Das.

>> Dr. Das: I just want to make sure there's a clarification versus permanent modified duty versus temporary modified duty, whether the fire department represents -- if Mr. Santos question had been addressed because I believe that there is temporary modified duty available if that was your concern and there is temporary modified duty as I understand.

>> Correct.

>> Richard Santos: Well if there's temporary then we should be looking into this. The way his attorney just discussed, he would be interested in going into it is there a temporary achings?

>> My understanding is the temporary modified duty are offered to those persons on 4850 leave and once they are off that leave they are no longer candidates for that modified duty. That is my understanding, I don't know that to be a fact.

>> Richard Santos: What I hate to see is this negative press that comes out that supposedly this board is a revolving door for disabilities, that is not the case. We did everything partnership here, sound like a young man here or firefighter whatever may be wants to work we should take not us it's not our job but it's our job to protect this plan. And we need to take a look at these issues and then when we have the answers we can make better and faster decisions. I don't like the negative press that comes out that this is a are revolving door. Keep the plan protected and at the same time keep care of the people who need us .

>> Sean Kaldor: Any other -- Harvey Leiderman.

>> Harvey Leiderman: Thank you, player. If I may through the chair ask Dr. Das the question, did they start with the bathtub incident or did you see anything that might give you an indication that there might have been a preexisting condition relating to the disk?

>> Dr. Das: I don't see anything that looks like -- it was a fresh disk. There was an L-4 -- it was a new disk herniation at least from the interpretation. It looks like a disk ex truce over an existing one. But those are normal findings as far as the disk protrusions, but when you have one that's a fresh disk like the radiologist describes, that to me is a new situation and a new injury.

>> Harvey Leiderman: Coughed by the lifting incident?

>> Dr. Das: It would be very difficult for me to say that it wasn't. Scientifically you just don't know whether that specific incident led to the disk herniation. It's not supposed to happen that way. The theory is if it is about to burst you can do it that way you can if that is sufficient for causation.

>> Harvey Leiderman: You don't know or hadn't asked the applicant whether or not he had been to a doctor for a herch 88thed disk prior to this incident?

>> Dr. Das: I typically have a question there that asks for past medical problems. It wasn't alluded to but I didn't ask him if he received treatment for that disk herniation or that problem prior to the incident he described.

>> Harvey Leiderman: Mr. Chairman, for the record could we put that question to the applicant so we have a statement on the record?

>> Sean Kaldor: Officer Maraldo previously was there any injury to that particular spine area?

>> No.

>> I think the medical records you have to your packet, the workers comp reports by the doctors address possible knell history in gem. And I don't think there's any indication of any problem with his back prior to that.

>> Sean Kaldor: I recall --

>> One twisting incident I believe.

>> Sean Kaldor: I can't remember --

>> I think about five years before.

>> Sean Kaldor: So to that point maybe we can address this, this is page 20. The patient passed spine history, negative for cervical spine problems, negative for thoracic spine problems, and positive for history of a previous workers comp case he had a back spasm which I assume to be muscular five years before which he recovered from rapidly missing only one day from work. Is that the previous --

>> That workers comp injury happened on the job here in San José. That's listed in the back you have the DWC workers comp form in the back of your packet what he's referring to.

>> Sean Kaldor: Any other questions or discussion, seeing -- okay --

>> Not on this point.

>> Sean Kaldor: Seeing no further questions or discussion, done anyone wish to make a application? I'll make the application for a service connected disability for firefighter Maraldo. Do we have a second?

>> David Bacigalupi: Second.

>> Sean Kaldor: Any discussion on the motion? Seeing no discussion, all those in favor? Aye. All those opposed?

>> Vincent Sunzeri: Nay.

>> Sean Kaldor: I need to hear from everybody. All those opposed? You have to be opposed or in favor. We have two ayes. All those opposed? Sunzeri Lanza. How do you vote?

>> I'm sorry there was something I wanted to say and I thought it was inappropriate.

>> Sean Kaldor: Please before we vote nothing is in. A.

>> We did not have an opportunity to place him in modified duty. He was on total disability from all reports in that file. For this injury. So I just needed to point that out.

>> Richard Santos: Thank you.

>> Sean Kaldor: Thank you. So we'll reask the question, all those in favor, aye from Kaldor aye from Bacigalupi. All those opposed? Nay from Sunzeri trustee Lanza?

>> Drew Lanza: I'll vote no.

>> Sean Kaldor: Trustee Santos?

>> Richard Santos: No.

>> Sean Kaldor: Trustee rounds?

>> Bettina Rounds: No.

>> Sean Kaldor: The service connected disability for firefighter Maraldo is denied.

>> Sean Kaldor: It has not been approved and not been denied. The motion to approve has not passed.

>> Vincent Sunzeri: I'm not sure I understand the difference.

>> Harvey Leiderman: If someone wants to make a motion to deny that motion can be made and voted on today.

>> David Bacigalupi: If I can interject, I've done this a couple of times. The application wasn't approved, it wasn't denied. It didn't get enough votes to approve it. If they come back next month and there's enough board members it could either be approved or again stirl not get approved and at that point it would be appropriate for someone to deny the application. That's when the resolution comes out that the board or if someone makes a motion now it was voted. .

>> Sean Kaldor: So did someone want to make a motion?

>> Vincent Sunzeri: I will make a motion to deny the application.

>> Drew Lanza: I'll second that motion.

>> Sean Kaldor: So we have a motion by trustee suns and a second by trustee Lanza. Questions on the motion? I'll ask I 19 I'm open to insight. What I look for was a cause that is it a disability can they not do the job and is there any treatment that's expected to move them beyond that. I'm open to where I'm missing it. And -- or what concerns other people have who are not in support of this? I am not trying to put anyone on the spot, I'm open to exploring my thoughts I'm assuming I'm missing something.

>> Drew Lanza: Well, as a bad back sufferer it's that sort of maximally medically improved or permanently stationary, the intersection from muscles and disks. Dick's got a bad back too. Is you can find stability. And it's not obvious how to find it. I found it in a swimming pool and swimming almost every day to do that. So I think that's my question is sort of around, is he maximally medically improved and maybe you can change my opinion Dr. Das on that.

>> Dr. Das: Well once again, if we're -- if the definition of disability is incapacity, and it reflects some type of structural deformity that is responsible for the problem that's a separate issue from it hurts too much and I cannot tolerate doing that. And so with respect to the anatomy and the physiology, that would be helpful, additional information would be helpful to delineate from the physician because I believe, which was the physician's

description of the basis for the disability, I have that correctly, was it the -- where is the so that's what I'm looking at as far as work restriction form on page 58, the doctor Dr. Lowe, doesn't provide any work limitations based on an anatomic or physiologic abnormality. Doesn't check the box or provide information which would be an imaging finding or structural defect which supports the results he finds. He basically says it hurts when he tries to do these things and I don't want him to experience the pain when he does these things and you know I have also given him these restrictions because I don't want his situation to get worse or if medical condition to progress. He hasn't said that he's incapacitated from performing these activities. That is his own treating doctor. So I guess if the treating physician has additional information to present maybe that's another issue. But his own doctor hasn't provided an incapacitating restriction.

>> Sean Kaldor: Trustee Bacigalupi or trustee Santos.

>> David Bacigalupi: I'm just wondering to go back to those doctors and get more medical evidence as to what's causing the pain. You know, something that shows that you know there's pain there but there's a reason. And it can't be treated or it can't sufficiently be treated in a reasonable amount of time to be able to return him to work. And you know, that might be something the applicant and his attorney might want to consider.

>> Sean Kaldor: Trustee Santos. Dts I think trustee Bacigalupi has made some reasonable recommendations what is your opinion about can this person do whatever is available yes or no. And we kind of need a clear you know because what I heard from the applicant in we had a job we'd be working. Then he or she might try other solutions of getting well or trying to and then if everything fails I can understand that a little clearer. But a couple of things trustee suns brought out and others about certain wording about the work related wasn't absolutely clear. There's certain improvements. Those are the recommendations that Mr. Bacigalupi has given that could be clarified in writing by a doctor that may hold some light on this thing and be a limb more clear. And be I think another month it ain't going to -- well that might be the best for y'all.

>> We would be more than happy to ask the treating doctor to answer those questions to the extent he can. I think one of the problems we have, at least from my experience, is, advanced as medical science is, spinal

problems are a real problem. Spinal problems are real problems in identifying specifically why one person can have the same injury and have full recovery, the other person will be incapacitated for life. Having said that, I'd be happy to contact the doctor, Dr. notingham. And what to treat that pain.

>> Sean Kaldor: So you're requesting to continue this to following meeting?

>> We request to defer this matter until we obtain that information.

>> Sean Kaldor: Do the maker of the motion and the second withdraw their motion? Vd yes, I will withdraw.

>> Sean Kaldor: Trustee Bacigalupi.

>> David Bacigalupi: I didn't see in here, was there a functional capacity test done?

>> No, there's nothing in the packet that would indicate that.

>> Sean Kaldor: Okay. This item is deferred to the following meeting, and I would ask for expediency if it's possible to clearly identify the concerns we've raised and include a memo specifically addressing what new information's been obtained to address those concerns. Just because we get the whole new packets two or three months later and it's a fresh start it's helpful to have that focus. Thank you. Moving to item 4.2 I. Application for service connected disability for Matthew Vavasour, firefighter, fire department, effective January 22, 2012, 5.83 years of service. Tony.

>> Firefighter Vavasour applied for service connected disability based on his back. He has 5.83 years of service was on disability at the time of his application. His work restrictions are one he should avoid frequent bending and stooping and 2, he should avoid frequent heavy lifting. The fire department has indicated that modified duty is not available.

>> Sean Kaldor: Dr. Das do you have anything to add to the record?

>> Dr. Das: No I don't.

>> Sean Kaldor: Counselor.

>> John McBryde appearing for Mr. Vavasour. Again your packet contains most of the information concerning the injury and the treatment. He had an injury that occurred on July 30th of 2010. While carrying he will indicate in more detail, carrying over 100 pounds and a twisting stepped in a hole and twisted and had immediate pain. His problem was diagnosed as a significant back injury, he ultimately underwent back surgery, had a subsequent surgery for removal of some of the hardware that was put in there. Continues to have significant pain to the point where not just as a firefighter but for a lot of positions they probably wouldn't qualify because of the need for him to lie down to relieve pain. Again we're going to be talking about the same thing that we talked about with Mr. Maraldo in terms of of some of the identification of what causes his continuing pain. There is an indication in his records, though, that there are some tests that were done, one was a nerve or actually a reaction, Achilles lessened reaction in the Achilles tendon and some nerve or numbness in his right leg. And anyway he'll address specifically what happened.

>> I would like to say, I'm on medication right now so if I slur my words at all and you can't understand what I'm saying please let me know, I'll back up and say again.

>> Sean Kaldor: Understood.

>> My name is Matthew Vavasour and I've been a City of San José firefighter since 2005. I'd like sit before you now on 7-30-2010 I was assigned to engine 6 of possible scenarios that we might be called upon to face while on duty. An apartment buildings set far back from the street are one of our primary concerns. We consistently drill to maintain our readiness should doing so is an important responsibility of an engine or truck company on a injured my back. I would like to walk you through the events of that specific day now to give you a better understanding of

what occurred. My company engine 6 was doing company drill. It was a simulated fire attack. I put oon all of my required PPE turnouts helmet hood SCBE ax belt and ax and shoulded a shoulder-load a large amount of two and a half inch attack line onto my other shoulder. I had well over 100 pounds of gear on my shoulders at this point. I then deployed the line down a long uneven and disrepaired driveway while the rest of my crew proceeded into their tasks. I stepped into a particularly deep hole on the violently. I good not fall, however I was driven to my knees by the waive a sudden feign I felt. The captain sauce what happened and we immediately went back to the station. He wrote up the injury and in great pain I finished my shift out. I was flat on my back the rest of the shift in the station and on the way to and from calls lying on the floor of the rig. I saw an orthopedic doctor who told me I had a back injury and referred me to a spine specialist. That doctor in turn diagnosed me with bilateral spine broad based disk pro trurgs at L-4 L-5 with an annular tear with bilateral. I had worked with this particular physical therapist before, she works with a lot of the local sports attempts, 49ers professional athletes and is good at getting people back to physical occupations. I had seen her when I tore my rotator cuff and Labrum earlier in my career. She was able to high expectations for this treatment plan. Unfortunately my back only got worse as we attempted to treat my injury. I was going backwards not forward. My doctor then informed me that a spine surgery fusing L-5, S-1 and L-5-S-1 amount had discussed with Dr. Das my injury and his thoughts. He told me that surgery on my back could be career-ending and it should be a last line of treatment option which I agreed with. When we did reflection and extension, L-5 S-1 was five millimeters Dr. Das told me that surgery was warranted in his opinion and I wept forward with the surgery as scheduled with a better feeling about it. The surgery was completed without incident on January 4th, 2011. I had annal interior lateral spine virnlg which means a palmer cage was planted. They took the disk out between L-5 and S-1 they put in a palmer cage which they and then you're turned over and surgical screws and rods are placed into either side along the back of the affected pabt of the spine. I then went home to heal and to allow the bones to begin fusing and the nervous irritated by the surgery to calm down. As soon as the incisions were hamed I began doing as much as possible to rebuild myself physically which is at that time. I then started aqua therapy which is basically physical therapy in a pool. It was one step forward one step back. Every time I would try and push my body I would have back spasm and intense pain to my gleut and hamstring improving I good afternoon seeing a different back doctor that hopefully a different perspective and or treatment plan may yield better results. This doctor agreed with the treatment up this point but wanted to gave me a borne stimulator. I continued to follow my physical therapy and

core strength and routine. I had a CT scan which shoddy had bony symptoms as well as possible problems from the surgical hardware itself. He recommended a second back surgery to remove the surgical hardware on the right side of my spine to remove the bony overgrowth which would decompress the right neural Foramen oop I treating physician that surgery was warranted based on the imaging and on his physical evaluation. I went forward with the second surgery hoping it would finally get me back to a level where I could resume my life and career as a San José fighterrer. On August 11, 2011 I underwent fusion and the whole area was generally cleaned up. I began physical therapy as soon as possible and I was beyond frustrating as I was beyond frustrated with being injured and was burdening my family and friends with my career. Physical snairp gave me no relief, my doctor was concerned it might actually be making things worse and he ordered me to discontinue it. He believes further surgeries may be necessary in the future to address L-4 or L-5, continue to deteriorate he fells the health risks present state. I spoke constantly with fire administration, about possible ways for me to stay in the department, some other role or duty. They did everything they could and went above and beyond to see what could be done. Of the there are no permanent modified duty spots available. Before my injury I was higher-classing as captain whip acting captain on truck 9, first in truck multiple alarm apartment fire. I was many love my life in the 2350EU6R7B8G9SDZ and couldn't believe that it could be finished. This has been a birth pile to swallow. I take muscle relaxers and pain members just to to ask for help with physical tasked that once were easy and I have to lie down throughout the day when the pain becomes too much. Sitting or standing for long periods of time is not possible as is bending or lifting heavy objects. My right foot still goes numb occasionally. My family and friends have been incredible and I would like to thank them again. I'm extremely proud of my time in service as San José firefighter. I still feel privileged to have served hear. I will's consider myself a services firefighter. That is what will guide me no matter my physical challenges no matter how they become. Thank you for your time and consideration.

>> Sean Kaldor: Thank you. Are there any questions or discussion on the application? Trustee suns.

>> Vincent Sunzeri: Dr. Das on page 12 you're referring to pars defect, congenital abnormality. Can you expand on that and how much of that may play a role in the current problems and pain he's experiencing versus that particular event that took place?

>> Dr. Das: My own personal opinion once again we're talking about pain and its subjective component. current symptomatology and the preexisting pars dwekd. His prior procedure. And so you know, there's a question about you know whether that -- if the pars defect was responsible for his problems in theory they looked like they did X rays, it showed movement of one vertebral body over the other because of that defect, what they call the parse he defect, it's a lot of activity or whatever you can get movement of the bone and urge get a little bit of spurring or some type of evidence that there is movement of one piece of bone over the other. And so the idea is if you make that -- if you fix that pars defect, movement will stop and therefore pain will stop. So what you do is take reflection and extension views you have the person bend forward and straighten up. If there is movement of one vertebral body over the other then what you would want to do is a fusion. This is one of the absolute indications for a fusion. Away we saw get fusions that wrote I would think are, he clinical evidence supporting those injuries to support lower back pain but for this particular issue they prefer to have a little bit more movement to do the fusion. But if someone continues to be symptomatic and there's someone there, it is not unusual' Vavasour. Because there's not a whole lot of therapist or other things you can do to stop that movement besides putting a screw through there. So what he had' and then after that he had bony spurring and yoart growth due to the and so that bone was pinching on a nerve root apparently and there may have been some movement of those -- of the hardware, screw inside of the bone where it was placed. So unfortunately, a lot of times what happens is we put hardware in to fix something and the person gets worse and we take the hardware out. I size that happen one still symptomatic going through this retire process. To answer your question, I don't think those post operative from the initial procedure.

>> Sean Kaldor: Trustee rounds and trustee Sunzeri.

>> Bettina Rounds: I got half of your answer. There was a congenital abnormality, it may have been that its exacerbated the with weakness of the congenital abnormal and the operation was because of the work related injury ?

>> Dr. Das: Yes.

>> Bettina Rounds: And therefore because there's continued pain, that's from the operation?

>> Dr. Das: In my belief, yes.

>> Bettina Rounds: Does that help Vince?

>> Vincent Sunzeri: It goes now the next question in my mind is the management of that pain. There are further things that can be done to help with that process which would allow him to be able to function on the job?

>> Dr. Das: Yes, I mean once again there is nothing definitive. It can be injections acupuncture, different types of therapy. There is no smoking gun direct treatment that would be definitive. And once again we're relying on the individual saying yes, this is the effective tool and I can come back and transition back. So I think that there are procedures out there that can be attempted. That may help. But you know, these aren't easy when you are dealing with someone with a chronic pain issue, undergone two spine procedures. There's a certain confidence issue that comes back into doing heavy manual type of labors and doing rescues and those type of things. There's a huge confident that you can do these kinds of activities without reinjuring yourself. It's called fear avoidance behavior. It also needs to be addressed. Pain is not only physical, it's a psychological phenomenon as well. Everything needs to be addressed in order to have someone resume big physical risk activity, after undergoing two spine procedures when they hoped they would get relief from the symptoms they were experiencing.

>> Vincent Sunzeri: If I'm not mistaken you pointed out injections might help.

>> Dr. Das: Yes.

>> Sean Kaldor: Trustee Santos.

>> Richard Santos: A few statements here that seem to me contradict things. Examples not taking any medication, talking about pain --

>> I am taking pain. Rtle you are taking some?

>> I've trite many, many medications.

>> Richard Santos: Is that the right word, spond low thesis correct? Ddz spondylolisthesis. Correct.

>> Richard Santos: That contributes to the injury. Where are we liable? Can you expand on that a little bit. Because we've had this years ago and I tried years ago trying to get X rays as we used to have when I came on. So you got a clean bill of health. 15 later you knew this was an injury. Is this something -- go ahead.

>> Dr. Das: The problem with these types of problem is they are clinically silent. We could have seen the exact same abnormality, if he is able to do everything he's supposed to do there's nothing for us to say that he can't do the job. Even though those extra abnormal advertise or those X ray findings are present. We can't predict he will have XYZ problems because he's functioning at a very high Level now. That becomes a conundrum the in terms of trike to figure out if these findings are responsible for the individual's current pain. I think you see with a lot of these disabilities coming through with people complaining of lower back pain and neck pain and you look at the mechanism of injury which doesn't fit with this disorder yet the disk gets treated and the people don't get better it's not that confusing to see why people don't get better. So in this particular instance, you can -- he could have had some -- he would -- he had the pars defect before he came on board, no question about that. The issue is did he do something at work that caused that pars defect to et cetera like you do as a firefighter and you're bending forward extending, it's certainly reasonable to movement that occurs. I mean, once again, it's conjecture on my part but I think it's reasonable.

>> Richard Santos: Appreciate that, also talks about he can walk and exercise. Goes back to the same question about this modified duty. Is he cleared to work in modified duty if it is available? I don't know, I see it as a young

firefighter here he may choose to work. So I'd like to know more about that. I'm sure not just me, the board would. That's just part of us being fiduciaries, how we maim recommendations, whatever it may be. And then it says, whole bunch of other stuff, to try to take it out and understand it, concrete explanation for the character and nature of his pain i'm reading through. One minute it said he was totally disabled and then it go on talk about pain and so on. So that's another thing that I don't understand. There is no concrete explanation for the nature of his pain. Did the operations work or they didn't work? The other thing that triggers my mind, however it is not clear that his pain is due to the pars as you talked about defect result instability, and since his lower back pain did not meaningfully improve. There is a lot of things just like the last case, I don't have enough information to say hey this points everything out. This modified duty thing, that's my pet peeve, that's a surreal thing. There are plenty that want to work and when this board needs to filed out what goes on and who is being offered in and that and why not? Where's the consistency? I also understand seniority, people who just got into this work and got injured and may need some help. So.

>> Sean Kaldor: Myself and trustee suns. Two clarifications on the printed records and then a question. Page 21, the same as our last applicant, it gives the patient past history, negative for cervical spine problems, negative for lome bar spine problems, lumbar so I wanted to check what the history was of lumbar spine problems?

>> Are you referring to when I was injured a year or so I think before?

>> Sean Kaldor: It just says prior history.

>> I was oologist moving heavy weight equipment for cleaning. I felt a twinge, I didn't leave the station, wrote it up, didn't miss any work and got injections on my own time, I didn't miss an hour of work for that stuff, kept doing my jock. Continued working and I mean anybody who's been a police officer or firefighter knows whenever you go to work you're always sore in some way or hurt.

>> Sean Kaldor: Okay.

>> So it didn't stop me.

>> Sean Kaldor: My same question on page 17 this is maybe what you're referring to, just trying the to figure out the record here. It says approximately one year ago he had the same pain subsequent to the, and then it's blanked out.

>> It wasn't in the orbs in terms of how the level of pain pps and like I said, I saw an orthopedic surgeon who gave me injections and I did physical therapy and on my days off between shifts and just continued working.

>> Sean Kaldor: And that was also not the same pain but back pain?

>> His diagnosis was strain, yes.

>> Sean Kaldor: Dr. Das do you know why that's blanked out or page 17?

>> Dr. Das: No I don't. I can try to find the original record to see if that's -- I don't do that.

>> Sean Kaldor: Understood. And then the clarification, Dr. Das brought up the thought of injections. Were there rounds of injections or was that offered as therapy or recommended as therapy?

>> It was discussed before my first surgery, my treating physician at that time, my surgeon felt that it would not significantly improve any of the symptoms. He felt they were orthopedic in nature and he also referenced the medical record that when I gotten the injections in the previous time hi had some kind of adverse reactions to them. So he didn't -- he just chose to give me pills that would basically accomplish the same thing.

>> Sean Kaldor: Does that Dr. Das.

>> Dr. Das: The injections is a broad generic term. It depends where he put the needle and so it depends. If he believes the Spanish mediated by facet epidural steroid injections. If you believe it's muscle pain or ligamentous pain you can do infiltrations in those areas Lydocaine are you feeling better now, if that's the area then let's see what we can do to remove that pain and one example would be if we briefed that the pain is mediated by the facets, what we can do is do an infiltration of Lydo Kane. nerve that inner elevates the facet is infill trailed with Lido Caine. Introduce some cortisone to see if there is an inflammatory component, then they can do a riseotomy people can taste to.

>> Mayor Reed: Counsel person glpt.

>> Stationary and what that means I'm sure everybody here knows is that there's nothing more that can be done to improve a situation essentially. So talking about shots or talking about some other treatment, at least as far as this particular doctor is concerned, I think is irreel, because he's going to determine there's knock more he can do for him orient continuing medical to reaive pain and nrn. So I think that's the problem W50*EU6R7B8G9SDZ run into. We have a workers comp doctor saying we've done everything we can to get this guy back to as good as we can get him and then later after the fact we say well, is there something else we can do?

>> Sean Kaldor: Trustee Santos. Somebody. Trustee Sunzeri. So sorry. I'll start keeping count.

>> Vincent Sunzeri: My question was regarding the one, I don't know, medical physician that you had seen regarding your rotator cuff, what contributed to that particular injury?

>> Lifting something heavy. I store my labrum. I don't have the date in front of me I don't think .

>> It may be in the --

>> Sean Kaldor: Any other questions or discussion?

>> Richard Santos: What other medications are you on now.

>> I have prescribed Neurontin nerve pain gets too bad I will take the side effect over the nerve pain. Hydrocodone, Flexeril, Valium and I think there's another one that I'm forgetting but --

>> Richard Santos: How many epidurals did you have?

>> I didn't have any epidurals. None of the doctors that I was treating with felt that would be effective.

>> Richard Santos: Dr. Das?

>> Dr. Das: Based on the pars defect, I wouldn't support an epidural injection for that.

>> Sean Kaldor: Any further discussion or questions? I'll entertain a motion. I'll make a motion. Make a motion to approve the service connected disability application of fifther Vavasour.

>> David Bacigalupi: Second for discussion.

>> Sean Kaldor: We have a motion on the floor. Discussion on the motion. Seeing no discussion. All those in favor of the motion say aye. Aye. So we have ayes from Lanza, Bacigalupi, Kaldor and rounds. All those opposed say nay?

>> Vincent Sunzeri: Nay.

>> Sean Kaldor: Nay from Sunzeri.

>> Richard Santos: Where I come from if you don't hear a no, it's a yes.

>> Sean Kaldor: For the record trustee Santos is voting --

>> Richard Santos: I don't know how hard that is. Working in government 44 years never been a problem.

>> Sean Kaldor: All right when I asked all who was in favor I didn't hear a vote from.you.

>> Richard Santos: That's correct but you didn't hear a vote so that's a question.

>> Sean Kaldor: Trustee Santos I'm not clear. Are you going to approve the disability application or not?

>> Richard Santos: I am if you are going to nitpick.

>> Sean Kaldor: The motion for service connected disability passes.

>> I'd like to say thank you everyone here for their time and consideration. Regardless how you voted, thank you for hearing my case.

>> Thank you.

>> Sean Kaldor: Thank you.

>> Sean Kaldor: If the audiovisual tenants are listening, it appears that we have a dying battery -- there we go. Okay. We'll do this one and then we'll take another five-minute break after this one, and we'll -- oh, okay. All right. You guys are going to beat me up, that's the problem. Okay, continuing with item 4.2 J, service connected disability application for I'm sorry this was changed, nonservice connected disability application for Joséph H. Ysselstein, fire captain, fire department, effective September 6, 2012, 11.23 years of service. Tony.

>> Yiestles city council disable sick leave and was on sick leave at the time of his application. His work restrictions are, he can only work at his own pace and schedule as determined on a daily base at number 2 he cannot participate in safety-sensitive activities and finally number 3 he cannot drive a city vehicle. The department has indicated that modified duty is not available.

>> Sean Kaldor: Dr. Das would you like to make a comment on the record?

>> Dr. Das: Yes would I, Mr. Ysselstein provided restrictions that he needs to have the ability to determine his own work activities because on some days he may feel very good. On other days he may not be able to get out of bed. And therefore, this is a very -- it's -- it's a disorder that waxes and wanes and hopefully with some treatment things can improve. However from a safety sensitive standpoint and particularly working in heat which can trigger these symptoms as a firefighter, there is no good way that he can work as a firefighter. However, he can contribute quite a bit in other activities at his own pace and at his own schedule. If that helps.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Mr. Chair, based on medical information I make a motion to approve the application for a nonservice connected disability for fire captain Ysselstein.

>> Sean Kaldor: I'll second the motion. You have a motion from Bacigalupi a second from Kaldor. Any discussion on the motion? I never do this. But now the people I know are coming into the process. And Joe is a medic on engine 2. Someone who men toward me quite a bit Busiest engine in the department. Always a hard worker always an eager go-getter. Promoted to captain early and aggressively and won a lot of respect in the department for his hard work. He to my knowledge when he found out about his diagnosis he didn't tell anyone, tried to figure out what he did, tried figure out sick time he didn't want to be a bother to anybody else. The whole department was floored when they found out and respect the heck out of him. And I can't thank him enough for everything he's done and the model he's been to me personally. So based on the medical evidence, it's

conclusive to me that I'd support the motion. Any other discussion? Or questions? Seeing none all those in favor of the motion supporting the service connected disability say aye? [ayes]

>> Sean Kaldor: Seeing none opposed, the motion passes unanimously. Thank you gentlemen.

>> David Bacigalupi: Thank you captain.

>> Sean Kaldor: Okay. Item 4.3, change in status to a service connected disability. Item A. Paul A. Schuller. Battalion chief, fire department. Request for a change change of status from a service retirement to a service connected disability retirement effective June 11, 2011, 22.89 years of service. With reciprocity. tony.

>> Paul sheurl is applying for a service connected disability based on neck and mid back left shoulder lower back, right knee, left ankle, he's 51 years of age, and has 22.89 years of service. At the time of his application he was on disability. And at the time of the separation from -- retirement of his retirement he was also on disability. His work restrictions are he should avoid continuous sitting, he should avoid sustained shoulder level or left surfaces. The fire department has indicated that modified duty is not available.

>> Sean Kaldor: Thank you, Dr. Das do you have anything to add?

>> Dr. Das: No, I don't. Except there may be some typographical errors that Sam will point out for us.

>> Sean Kaldor: Thank you, swift.

>> I should note that Chief Schuler has 29 years because he has anybody years in a prior department. He did service retire in June of 2011 early because he could no longer do the job. He had multiple injuries throughout the career. We start in 1975 1990 lifting a patient. A an injury in 1990, when he slipped and jammed his right knee. 1974. In 1999 he harness caught on the department door. That's on page 170. In 2006 he injured his neck and mid back wearing his Scva for two and a half hours at a haz-mat incident, page 164. In January of 2008 he

injured his left ankle, there was a four alarm fire scene and he was walking along the light rail track and slipped and injured his ankle page 161. In October of '08 page 159, he was at a fire scene and he injured his right knee his right ankle and his left shoulder. He was wearing his full protective equipment with his SCVA and he slipped while descending slip isary stairs at a fire scene, and fell into the wall. That he was next to injuring all three body parts. Then on page 157 on 11-'03 of 90 he injured his low back cps response to smoke in the building he got to the 8th floor at which point he tripped on the stairs and injured his back. And then the last injury on page 177 was on August 22nd, 2010, when he injured his neck and his back at a fire scene wearing his SCBA experiencing pain radiating down both arms. As a result of those various injuries he had left ankle surgery in October of 2008, he had shoulder surgery in February of 2011. The M RI of February 5th 2008 shows disk disease at multiple levels with marked disease at C 3-4 with a 3.5 millimeter central disk protrusion consistent with an annular tear and according to his treating doctor, doctor Kaiser Mesa with regard to his left showered he had surgery on February 16th, 2011 by Dr. della Magieor no overhead work push pull or repetitive use of his left shoulder. That was due to weakness and loss of range of motion. With respect to his low back, there was an MRI in December of 2009. Which revealed that had he anterolysthesis. He also has retrolist thesis and annular tears at L-3, L-four-5 L-5-S-1. march of 2011 per Dr. Mesa, his treating physician, because of the low back he set no lifting or carrying ownership 25 pounds no repetitive bending or lifting. The panel QME independent dork Dr. Chin on page 113 on May 23rd.2012 said no lifting over 25 pounds just to the low back. As to his left ankle he had surgery on October 21, 202008 by Dr. Beatty, he was not doing well, Obedi in objection of 2010 who recommended injections and orthotics . That did not solve his problem. Dr. Mesa in August of 2011 at page 155 of your packet said no sustained standing walking or pivoting as to the left ankle. Dr. Das has provided work restriction which are contained on page 17 in the fire department memo and the department has no permanent modified work and out that basis I would ask that his application be granted. And did you want to say anything directly? All right. He'll answer questions feet board has any.

>> Sean Kaldor: Okay, there are any questions or comments from the board?

>> Richard Santos: Yes.

>> Sean Kaldor: Freest Santos.

>> Richard Santos: Based on the melt evidence, I had the privilege and honor of working with Paul Schuler, in the early years, I have service connected disability.

>> Second.

>> Sean Kaldor: We have a motion and second. Any discussion on the motion? Trustee suns?

>> Vincent Sunzeri: I guess I'm just looking for a little bit more insight on the lower back injury. Begin the comments from Dr. Das that seems to be the one area specifically where he may be provided a restriction. Yet it looks like there was surgery that took place back in 1974 prior to being a firefighter. Can you elaborate on that prior history versus your injuries while you served on the force?

>> Mr. Chair, members of the board, in 1974 I had surgery for a congenital issue of spondylolisthesis as we herd it earlier today. Untreated you can be an effective fifther. If it doesn't interfere with your conditions. Treated it makes you even stronger. And for me, it allowed me to serve in the fire service, and go through the medical hiring and so forth. But that I can't speak medically to what contribution that had to any other injury that I sustained. But what I can say is, the surgery was successful pack in 1974. And subsequent injuries related or unrelated, but I can't speak to how they are connected. If they are.

>> At least in the workers comp arena the panel QME who evaluated him did not attribute anything to the prior condition. And he did pass physicals for each department, and that predated the current department as well.

>> Sean Kaldor: Trustee Santos.

>> Richard Santos: Battalion chief the issue is if he can stay employed he would have been there and obviously he can't because I knew him and worked at station 8 and there's 350 calls a month there and this guy was there

doing the job. When I read the report of course there's no doubt bit, those give you headaches and heart aches but it's fouling fuel filling but again if he could work I'm sure he would be there.

>> Sean Kaldor: Any other questions or comments? Does anyone have a motion?

>> Richard Santos: I already gave a motion. Seconded by Dave.

>> Sean Kaldor: Sorry. Thank you. Seeing no other questions or comments all those in favor of the motion? Aye. [ayes]

>> Sean Kaldor: All those opposed? Seeing none opposed motion passes unanimously.

>> Richard Santos: Chief sheuller, I wish you the best and appreciate the job you did.

>> Thank you for all you do for the folks in the departments.

>> Sean Kaldor: Thank you chief. Okay, we will take a five-minute break and we'll resume. [Recess]

>> Sean Kaldor: Okay so Harvey's asked us to wait a moment.

>> Drew Lanza: Is the next one 2.3? We could postpone that one because we're missing three board members.

>> Sean Kaldor: 2.3. Discussion and action on Police and Fire retirement board committee structure including consolidation and transition from ad hoc to formal where appropriate. We're in such a state of flux I'm going to defer that for a month. So that is deferred. Item 2.4. Discussion and action on plan expenses for June 2012 and July 2012. So we received one of those this morning that we waived sunshine on. For --

>> Bettina Rounds: June.

>> Sean Kaldor: June is the big one. Did anyone have any questions?

>> Bettina Rounds: Yes.

>> Sean Kaldor: Please, trustee rounds, sorry.

>> Bettina Rounds: I have a question. These are just the portion of the expenses that Police and Fire are responsible for.

>> That's correct.

>> Bettina Rounds: Correct? What would help me tremendously is if, because I think it's part of our fiduciary responsibility to go through budgets and expenses. And I think it helps to see the total for both the boards. So it could be two, three columns total fire and police, Federated. Because seeing expenses and budgets sometimes it's 50% and sometimes it's 70% and you don't GED get a feeling for -- and I don't think it will cause you additional work because you have to have a total to separate it out actually.

>> Veronica Niebla: I actually put together a very similar document for Federated. They have shall documents that they've asked for that have budgeted numbers. Perhaps I could share with you the Federated and see if we can go from there as far as modifying. Or I could supplement it.

>> Sean Kaldor: This looks like a pivot table. Is this a pivot table?

>> Veronica Niebla: The only expenses that won'tover lap will be investment services and also some of your investors won't overlap.

>> Sean Kaldor: I think that's a good report. I have some questions about the Ice Miller item but that's coming up. Any other questions or concerns? I'll entertain a motion.

>> Richard Santos: So moved.

>> Sean Kaldor: A motion from trustee Santos to approve the budget documents from June and July 2012.

>> David Bacigalupi: Second.

>> Bettina Rounds: I have a question, there were doctors other than Dr. Das who were getting paid for --

>> Sean Kaldor: We have a fee schedule right?

>> Donna Busse: Yes we do. It is a form that Dr. Das requires them to fill out. It is a form in our packet that's the maximally medically improved and gives the work restrictions. That's the form that Dr. Das asks the treating physicians to fill out and we do pay for that.

>> Sean Kaldor: We pay them half-price when it's illogical?

>> Bettina Rounds: Or pay them not at all.

>> Donna Busse: The.

>> Dr. Das: I review all of them and I make the determination that that's they're useful.

>> Sean Kaldor: Sorry. Any other discussion on the motion? All those in favor? Any opposed seeing none the motion passes unanimously. Item 2.5, Discussion and action on review of tax counsel activities charged to the pension trust for 2010, 2011 and 2012. and this was brought to the chair's attention. Just in all the billings coming

from Ice Miller and the projects that we know are underway for us. We don't have good visibility into what it is we're being charged for but we are paying the bills. So I wanted to make the request. And I guess I'll do that. I'll make the motion for the audit committee to review those charges from Ice Miller to the Police and Fire pension plan for 2010, 11 and 12, and Singh those up with whatever specific projects and report back to us if there are any concerns of the audit committee.

>> David Bacigalupi: Second.

>> Sean Kaldor: Motion by Kaldor, second by Bacigalupi. I'm tired I'm sorry. Working all last night. Harvey.

>> Harvey Leiderman: Thank you. Speak are for trustee Krytzer -- no, forgive me. If it will be of assistance to the audit committee, there was a document generated by Ice Miller that itemizes for each year activity and determine who paid for it.

>> Sean Kaldor: That's --

>> Harvey Leiderman: And I believe staff has a councilmember. Veronica has a copy of that.

>> Sean Kaldor: Any other discussion on the motion? Seeing none all those in favor? Any opposed? Seeing none opposed motion passes unanimously. Congratulations audit committee. Item 2.7. Discussion and action on a strategic plan meeting. I didn't want to propose or go into any big details. I will ask any member of this board if you have any issues you would like discussed at a strategic offsite please get that to me within the next two weeks so I can go through those try to put them in different categories or pockets and then I'll come up with a proposed agenda to be distributed before our next meeting. Item 3.1. Update on payroll audit FLSA and overtime payment issues.

>> Veronica Niebla: So at the last board meeting I had read an update to the board that the plan had received corrected FLSA files from the City's finance department. However they had not been validated. I had received a

subsequent e-mail that the information couldn't be used so as of today the newest update is there is a new revised file that should be delivered either today or tomorrow.

>> Awesome.

>> Sean Kaldor: Thank you.

>> Richard Santos: Sure.

>> Sean Kaldor: I think this gives us a good feeling for why these projects take two and three years. There is the constant back and forth and checking and waiting and there's another month and it's frustrating but I can see staff is working hard on it so I appreciate it. So we'll receive and file that wrupt. Next item 3.2 update on electronic board packets.

>> Donna Busse: To add on to the more bad news. We received last week quite out of the blue information that aspire the company we contracted with that they were acquired by another company and they are not signing any new agreements until their new company had an opportunity to review all the contracts. Our main contact and every person we've been dealing with was there one day and gone the next day. We have no new contact as of a week later. They said they were going to givous a new one. We don't have one. Needless to say staff is reviewing the viability of sire as an ongoing entity. We're not sure what this new company's plan is with the product.

>> David Bacigalupi: Was there a second company?

>> Donna Busse: We're going back and looking at terms.

>> David Bacigalupi: Hard to start the RFP process all over again.

>> Donna Busse: Sire really had the best product and we're kind of hoping it's going to work out but we just have do see.

>> Sean Kaldor: Okay, receive and file awesome. 3.4. Discussion and action regarding. how members receive refunds of 401 (h) contribution amounts. When a member terminates before retirement. For this we have a staff memo from Veronica.

>> Veronica Niebla: If you have any questions, I can answer any questions. Otherwise I can summarize the contributions to the 401 (h) plan. Contributions are still being made into the 401 (h) they do receive a return of contributions and the interest on those contributions however they are funded through the pension account. This was an item that was brought to the attention of Ice Miller when we did the review for tax qualification. As of two weeks ago Federated had received their favorable opinion. They had received the police and Fire so if there is a legal issue, with this process, it hasn't been brought to staff's attention.

>> Sean Kaldor: So what I hear you saying is, people put money into the health care account. Employees, make contributions into the health care account and into the pension fund and if they terminate before they're eligible to receive a benefit they receive a refund and the refund is received only from the pension fund and they get an extra amount from the health care amount -- isn't that right?

>> Veronica Niebla: An extra amount? Request they will get $11 out of the pension furnished and Ice Miller says that's acceptable by IRS rules?

>> Veronica Niebla: There was no comment that it wasn't acceptable.

>> Sean Kaldor: Harvey. [Laughter]

>> Harvey Leiderman: Ice Miller has advised that the IRS has approved that substitute payment out of the pension fund as a supplemental pension benefit, not a -- not technically a refund of the contribution into the 401

(h) medical account. So they have advised us that that has been approved by the IRS. It begs the question, as to employee contributions into the 115 trust. Because I think the reason why this came up was because we were asking whether those contributions would be treated the same way as the 401 (h) contributions and I don't know if the city has received advice on their plan design for the 115 trust as to whether that will also be true for employee contributions if ever they're made to the 115 trust. But I have a sense someone is approaching the microphone. Timing is excellent.

>> Good afternoon, Alex Gurza deputy City Manager. What we have been advised is that you cannot make a return of contributions out of the 115 trust. We did not contemplate that then, the pension fund would return those contributions. Again because when we first were contemplating the 115, at that point a decision hadn't even been made who would dmer it. Subsequent the two boards are dmerg it. Ice Miller had been very clear that you cannot make a return of contributions out of the 115 trust and again we did not contemplate that then pension fund which is completely separate would then send a check to that individual.

>> Veronica Niebla: I don't believe that the 115 trust has the same language as the 401 (h) account for contribution.

>> Alex Gurza: Exactly Veronica it does not.

>> Harvey Leiderman: Very important for the membership to be clear on that.

>> Sean Kaldor: Is that understood with the agreement with the membership?

>> Alex Gurza: That kind of detail was not in the agreement because the agreement would be that the city would establish a trust vehicle. When we brought forward an ordinance to establish the trust I have to go back and look but it was very known to us at that time. Again when we negotiated the agreement to ramp up to prefunding again thoom once we looked into it and established it it was very clear from tax council that you could not make a return of contributions.

>> Sean Kaldor: Trustee Sunzeri.

>> Vincent Sunzeri: If we stick with the original topic on the 401 (h) plan I guess my first question is, do the participants realize that this supplemental payment that they're receiving is really coming from the pension plan? Or do they think it's coming from the 401 (h) plan? And then secondly as you look at this, pre-measure B, we are creating an even greater unfunded liability in the pension fund by taking additional contributions from that plan, it seems -- I can't believe it's legal. I'm shocked.

>> Alex Gurza: I actually don't know the history of this particular provision but I believe that it was drafted to -- as an attempt to comply with the fact that you cannot make the return of contributions. But in answer to your question, I don't believe most people know that the return is coming out of the pension fund, versus the 401 (h) plan.

>> Vincent Sunzeri: I think we need some transparency around that. That would be the first thing I would suggest we do. And the second thing is to explore whether or not what we're doing is in fact legal. Scares the heck out of me as a trustee.

>> Sean Kaldor: Bacigalupi, rounds then leered monal.

>> David Bacigalupi: I think what we're hearing is that it's legal as far as the IRS. The 401 (h) documents does it require that we refund the contributions? I don't want to sound cold and callus, and we keep his money but the plan documents say, the trust fund I will return your funds, plus, yada yada. Does the medical fund say the same?

>> Veronica Niebla: It doesn't have that same language.

>> David Bacigalupi: So do we have the authority to refund from medical contributions.

>> Veronica Niebla: Since the employee plan 115 we haven't had that contribution.

>> I don't know how it's coming but it plans how you interpret it . If the plan documents don't allow for it, we do not have ability to return 115 contributions out of the pension fund the way we do in the 401 (h).

>> Alex Gurza: If I could, I concur with Veronica. To us there is 115 trust. The really issue now is sort of the legacy 401 (h) right now the code is written that the money comes out of the pension fund. There is no intent to do that and I don't think there's continue to do the practice that's done now that because let me back up. I understand it can't also come out of the 401 (h) so this is why the code is written this way, that it is coming out of the pension side. But it's not on a go-forward basis once we transition to the 115 trust I don't believe this issue will exist there is cheer we can't returned the funds because we can't.

>> Vincent Sunzeri: What policy was created that allowed us to take the money out of the pension side?

>> Veronica Niebla: I don't know necessarily the policy, it was the municipal code interpretation that was given to staff at that time and this is the Municipal Code sense I'm referring to here --

>> Vincent Sunzeri: We had to have a policy to don't that process?

>> Alex Gurza: Not necessarily, it allowed it.

>> Sean Kaldor: The municipal code get written, we had an opportunity to comment on it. And if we don't --

>> Bettina Rounds: How do you even know it was commented on? You're making an assumption.

>> Donna Busse: The medical went in, in the mid uses, about.

>> Bettina Rounds: Who actually knows --

>> Alex Gurza: Sorry to interrupt but does anyone know when that particular language was revised? I'm not quite sure the language existed in the code for all that period of time.

>> I don't, sorry.

>> Bettina Rounds: There's a problem clearly, I mean I think that's the point, right? And so we need to do something -- transparency is one thing but how do we do the transparency? Is that you Alex, or --

>> I would think that it's really, I think that it really is an issue for the board I believe to determine as somebody has indicated is it legal and you have your counselor here to look at whether you can continue to do that and tax counsel as well.

>> Bettina Rounds: But letting the members know and then what happens --

>> Sean Kaldor: There can be an agreement or understanding or impression of an understanding between the fund and the city expectation that if we get fired in two years we get it back.

>> Bettina Rounds: Right but to.

>> Donna Busse: I don't think the people who are leaving the plan care. Because we're really talking about the people who are leaving the plan. And I think we will have more of an issue and we probably will need a lot more transparency if that's going to change. Now we're contributorring more on the medical side than the pension side at least on the Federated side and to tell them you're not going to get any of it back will be an issue that we'll have to continue to communicate.

>> Sean Kaldor: What percentage is that?

>> Veronica Niebla: Fire spacing under 10% I believe as of right now.

>> Sean Kaldor: And for Federated evenly though it's not our concern --

>> Donna Busse: 2013 is scheduled to go down.

>> Sean Kaldor: How much?

>> Donna Busse: Like 15 --

>> Sean Kaldor: Just for medical but we're saying you can't get that back if you terminate or decide to leave. It's a big question.

>> Alex Gurza: Mr. Chair, there's no question, every board meeting I come to, to see how stunning contributions are over 30% of total pay It's astounding. When we get into a situation that the employee doesn't work the entire 30 years and don't gt return of contribution. It is a tax legal issue and that's part of the challenge is that we've been advised very clearly especially in the 115 trust you can't do it and so I think employees need absolutely need to understand that especially as the cost of retiree health care continues to escalate dramatically.

>> Bettina Rounds: We still need to understand if it's leal to be paying people the 401 (h) money out of the yes?

>> Vincent Sunzeri: I guess yes, my question is are you okay with this current policy of taking the money from that side of the ledger?

>> It's an excellent question and I say it causes concern that money is coming out of the pension plan that's not well funded at this point, or retiree health care. I would say it's an area of concern and would appreciate any

further work that can be done by either tax counsel or Mr. Leiderman, does cause concern for the opinion money to come out of the pension plan when the money was actually contributed to the 401H.

>> Bettina Rounds: There are key stay in the fund.

>> Alex Gurza: The city never gets a return of contributions.

>> Sean Kaldor: Mr. Leiderman and then Baci.

>> David Bacigalupi: I'm going to make a motion that we refer this to our counsel and then tax counsel to find out if this is even legal. It might be okay with the IRS but I just can't picture that we could pull money out of one trust account to return contributions from another trust account which aren't loud to return contributions.

>> Harvey Leiderman: If I Mr. Chairman. , we have already received the opinion of Ice Miller as tax counsel on the subject that the IRS has approved this under the exclusive benefit rule somehow as a supplemental benefit and they gave us and the board has access to five or six pages, single-spaced from Ice Miller describing the legality of it under federal tax law. So it seems to me that this really comes down to a policy issue for the board and interpretation of the municipal code which we ought to take a look at is to whether the Municipal Code says we must do it or may do it. We'll Fay a look and see what the code says and then we can decide whether we have any choice in the matter and can do it as a matter of policy. We talked earlier this morning about risk-shifting. This is a shift in the risk from the individual who if they leave before retirement would ordinarily take the risk of leaving those moneys on deposit, for which they're not going to get a return on their medical contributions. But if we refund it out of the pension trust it shifts the risk entirely to the city because it creates an unfunded liability to that extent of those contributions. So that that I 98 be a policy matter but we're going to have to look at the Muni code and see whether we need to follow the law as it was created by the city.

>> Sean Kaldor: New plan enrollees based on tier 2 it shifts it from that employee to everyone else how it gets implemented.

>> Harvey Leiderman: Yes, that's correct.

>> Sean Kaldor: Your motion is to determine the legality and the IRS compliance --

>> David Bacigalupi: And whether or not we needed review, like hearch said, if it's required or if it's an optional and see what we want to do as a policy.

>> Sean Kaldor: I second the motion.

>> Donna Busse: Is there labor component, can you take mandatory contribution of somebody and not give it back? That's what I would question as well.

>> Sean Kaldor: We none opposed if something happens oh you're not going to get the money back that may reopen a discussion.

--BREAK IN CAPTIONS TO ALLOW FOR CAPTIONER CHANGE--

--CAPTIONS RESUME--

>>> Our understanding is, you cannot. Even if we wanted to as a policy issue. The question here then is, can you then take the contribution of 401-H and pay it out of the pension fund? The reason I asked if anybody knew that the Genesis of 1620 and the revisions, which is in Veronica's memo. I don't know this for certain, because I didn't get a chance to look it up. When the board was preparing to do the submission to the IRS, there were many changes to the municipal code that iceMiller recommended. I don't know whether this specific language was always there or not. The board could, if somebody could research that issue, maybe as he is looking at it, to see was it always in the planned document.

>> Just out of curiosity, Alex or Harvey or anybody else, do you know why they made it so the medical trusts could never get money taken out, refunds? Do you know why?

>> I certainly don't.

>> I highly suspect there was a similar type vehicle that was pilfered somewhere at some time. They said, if we are going to allow these things, money can never come out.

>> I was suspecting the same thing. It would be interesting to find out.

>> I believe one of the differences between the 401-H and the 115 is the 401-H is a subaccount of the pension fund. It is a separate trust. You have the pension trust which has a sub 401-H account and then the 115 trust. So there is no co-mingling of assets. The other vehicle, there is a co-mingling of the assets and there is one trust. All the benefits are available to meet the needs of that trust.

>> Thanks.

>> All right. A little easy topic.

>> So we will now go into closed session.

>> Are we going to vote on that one?

>> Sorry. We have a motion and a second. Any further discussion on the motion? All those in favor?

>> Aye.

>> The motion passes unanimously. We are going to go into closed session for a while.

>> Dinner will be served. How many lawsuits do we have now?

>> Then, we are going to come back and do all the committee reports under which there are several action items and important pieces to be discussed. And then the consent calendar and education training. So we will move into closed session on items, 3.5. Closed session conference, litigation council pursuant to government code section 54956.9 A Paul Monholland and others versus San José. Item 306, closed session conference with legal counsel, litigation pursuant to government code section 54956.9 A, three cases, measure B litigation, which are-- do I need to read each of these?

>> No. Item 3.7, closed section, pursuant to government code section 54956.9, Charlie. Deciding whether to initiate litigation, one case. We will be back. ^^ ^^ ^^

>>> we are returning from closed session. We have nothing to report from closed session. We will continue the agenda. 6.1, the investment committee. Last meeting, August 23rd. Next meeting, September 12. Item A, report from the chair of the investment committee. Item B, minutes of the investment committee.

>> Okay. Just giving you a report, update. We spoke quite a bit about the work plan that we have and the fact that since we have adopted a new asset mix, we need to really shift the priorities. As a result, the priority will be focusing on the transition towards our new asset mix. At the meeting we have coming up on the 12th, they will present us with a plan and ways to handle the transition. This is a high priority. We want to move as quickly as possible. As we look at the transition, the fact that certain asset classes, we can not get directly in line with where we need to be simply because maybe there is not a synthetic asset class that we can use to duplicate absolute return, private equity or real estate. We will likely have some interim benchmark that we use. That shifted the priority. The last meeting, we talked about also the private or the overall debt structure of the portfolio. There was some discussion about how much of the assets would be placed in ill liquid fixed income. With the absolute return piece being at 10%, we want to be careful about how we proceed with respect to that. Shifting to the absolute return piece, there was at the prior investment committee meeting in the joint session of federated, there was some discussion around how we are going to collectively work together with alborn, our consultant on the absolute return piece. Just a reminder, the federated plan has a 25% allocation to absolute return. We have a 10% allocation that we are going to return in absolute return. Alborn will be consulting with both plans on in a consistent manner. We will be doing joint meetings and looking at the recommendations and hopefully adopting the same managers so there is consistency. That was very positive. Any manager that was hired on the absolute return side, alborn will have responsibility over. If it falls outside of the absolute return piece and it is a hedge fund manager, that might be in the equity portfolio or the fixed income portfolio, our consultant will be responsible for that. So we have clear lines of authority there and accountability. Unfortunately, we ran out of time to dig into the real estate portfolio and the performance on the private equity portfolio. That has been deferred. For the month of September, we are actually going to have two meetings to get as much as we can accomplished. In addition to that, kind of an FYI, with the vacancy of the CIO spot and now the vacancy in the director position, I started approximately a month ago having weekly meetings with staff and consistent meetings with our consultant, NEPC. The intent there is not to micro manage what's happening in that department but to give them someone from the board as a point of contact that they can talk through issues, understand that there is going to be accountability, even though we don't have a CIO, help them prioritize the work they are working on. The few staff members we have are terrific. I hope we can keep them on board through this transition. That is all I have to report.

>> Okay. Any questions on the report? That is note and file as is, item "B," the minutes from the police and fire investment committee. Do we have a date fort second meeting in September?

>> The 24th or the 25th. I'm not certain if they have locked in the date on that. Ron?

>> 24th.

>> One on the 12th and one on the 24th.

>> 6.2, the ad hoc governs committee, cortex face 2. Last meeting was August 31st. Here, item "A," report from the chair of the ad hoc governor Nance committee, cortex face 2. You will see in your packet a draft outline. Our objective is to work on the long-range improvements. The mayor, city council and city manager's office have supported the concept of a 2014 charter change to address the governance and charter issues for the two boards of the pension plans. This is the outline of the research project that would commence with that and is ready to begin immediately and really deliver the research of one of the best practices out there and what is everyone doing with the hope that with all the information, we could come up with ideas about plans that might work for us and how the relationship should work between the boards and city to deliver the right responsibility, the right authority with the responsibility that goes with it. I encourage everyone to take a look at that. If you have any concerns or questions or feedback, you can let me know and we will discuss it in the next governance committee. Cortex is going to start going down this route and do the initial research. They are already-- is there a research plan at the back? Yeah, there is a research plan at the back. It shows they already started working on July and August, already pre-approved money, also supported by the Federated board. Any questions about that? That's also to receive and file.

>> Item 6.3, the ad hoc personnel committee last met July 19th. The next meeting to be scheduled. So the items here are "A," report from the chair, "B," discussion and action on a board process to review, evaluate, interview and recommend candidates. We will hear all these concurrently. "C," discussion and action on city council

proposed ordinance to amend chapter 3.28 of title 3 of the San José municipal code and 3.36 of title 3:the police and fire retirement. To add sections regarding the role of boards and administration and finally, "D," discussion and action on revised board communication plan on measure "B" and implementation.

>> Thanks a lot, Sean. Let me bring everybody up to speed on where we are with the recruiting of the director and CIO candidate. We engaged a recruiter at the beginning of August and they kicked off the search in the middle of August. I am pleased to report they have already gotten about 25 responses, ten of which they think are quite credible as candidates for the director position. We expect to start interviewing people in a week and a half, the week of September 17th. That's gone very well. If you remember, we actually started the CIO search before the director search thinking that would happen quickly and the director search would take a long time. We became convinced that the director search could be accomplished quite quickly, especially in conjunction with the CIO search. Because the CIO search has been going on for a few weeks longer. We have had over 120 people express interest in the position and over 80 of those people would make credible CIO candidates. We have also been looking to add to the retired investment officer ranks but we think that will take more time but we are seeing a lot of credible resumes too. That search is also going on in the background. We have the background question we always ask, is compensation a big problem, is compensation a big problem. So far the report from alliance is, no it is not. San José us a well-regarded system. People are interested in this job. We are seeing highly qualified candidates. We will know more about the compensation when we start getting down to making offers to people. That hasn't proven to be a problem yet. Moving on to the next thing, you know, in conjunction with that, as part of this recruiting process, we have to have some capability to meet in closed session, because most of the candidates have day jobs. They are working somewhere else. When we go to interview them and talk about them, we have to have some need to have some level of confidentiality too do this. We have been working with the city manager's office and they have put forward a city ordinance which will be decided on next Tuesday, about a week ahead of when we need to start interviewing potential director candidates. We have prepared a response to the ordinance. We will be sending out a letter today to the city council. I want to make sure you guys get a copy of this. We are specifically asking for three changes to that ordinance. I will read the three changes we are asking for. Some of these are very specific things. If you don't have a copy. You should have a copy. The first change is, the second sentence in each of the proposed sections

328, 115 and 336, 325, beginning, quote, end quote, notwithstanding the for going, should be stricken. That sentence completely negates the first sentence and renders it meaningless. Second, the word chapter in each of the proposed sections 328, 115, 336 and 325, should be changed to section. Only these sections are being adopted. No other changes are being made elsewhere in the chapters of the municipal code being related to retirement systems. That's a tie pope. Simultaneously, with the adoption of the ordinance, the city attorney shall issue an opinion that the ordinance authorizes the respective boards to go into closed section under the brown act and the city sunshine ordinance to consider the positions and individuals that may serve as director, assistant director as chief investment officer under the department of services. The opinion must be unconditional and not require the presence of the city manager or designee. The working relationship between the city manager and the boards can be handled through informal protocols between the parties. That third one is kind of key. It says in order to interview these people or perform with the city manager on performance reviews or anything else in the future, we need to meet in closed session. We would also like the city to say they won't sue us for doing so, having told us it was okay to do it. That would be nice to get a guarantee it is really, really okay, and we are not going to sue you for doing it. We will get that out today. The City Council should hear next week. I think we could be interviewing director candidates as soon as a week and a half from today, which is really exciting. Once we get that director in place, we have this long list of very credible CIO candidates. I think we could be seeing a CIO hired by a new director very possibly concomitantly with the director showing up. The final item, Sean, was discussion on revised communication plan regarding measure "B." I spent most of my time working on the recruiting and not this. I will get to that next month.

>> Item "A" was received in file. Eye dem "B" I want to address momentarily. Item "C," we will put out a letter addressing the points you just raised and item "D" is being deferred to next month.

>> If you don't mind. I didn't have time to get to it.

>> I do have a question on item "B." If we are going to start interviewing September 17th or thereabouts, we won't have another board meeting between now and then so this would be the time we would decide as a board who

is it that we want to choose to go and review all the applications and come up with short lists and maybe do a first round of interviews and make recommendations to the full board for these two positions?

>> If I can, I think I had always assumed that it would probably be the ad hoc personnel committee that would probably do the work on the director. It would probably be mostly the investment committee that would do the work on the CIO. All the more reason why we need some language in here because I would hope pretty much every board member would be involved in this process, meeting with candidates along with the city manager and the federating board.

>> I think that's logical.

>> Let me turn that into a motion under item "B." A motion for the ad hoc personnel committee to review the applications for the director of retirement services or CIO position, to go through a process as they deem necessary to come up with a short list and recommend a candidate to the entire board, one candidate?

>> No, I think it is right for that committee to generate a short list and the whole board has to engage.

>> A short list of five?

>> A short list.

>> Qualified candidates for the entire board to interview and for secondly for the investment committee to go through all the applicants for the CIO or assistant director retirement services position.

>> Can I just say? Not all the applicants. They have already vetted out the ones that don't meet the requirements.

>> Go through the qualified candidates. Credible candidates. And recommend a short list also for the entire board to interview?

>> You have got to remember, the city manager and the federated and us. We haven't figured out how we will dovetail together.

>> I want to pick out some work between now and the next meeting.

>> A motion and second by Santos.

>> Any discussion on the motion?

>> Hi. Deputy city manager. It has been a long day. That was very fast, drew. I really many not quite sure I followed all of that. I would like to make a couple of comments, I think. We have, as you've been indicating, been working with the ad hoc committee for many months. There were definite areas of consensus. One was to try to find a way for both to-- it would be substantively engaged in the hiring and evaluation process of the director and the CIO part of the challenges under the current structure, how do we do that and remain in compliance with the city charter and any other regulations the attorneys come up with? The ordinance was the city attorneys. A way to allow that. I wanted to talk about a couple of things about the ordinance process. I think you are aware of it. We try to do this very fast. Understanding once we were able to figure out a way to do it, that was in compliance with all that, and realizing that the city attorney was advising a change to the municipal code, we know those things take time. We moved very quickly to get it to the council for the first reading. The second is coming up. There is a letter coming. I wasn't sure where it was coming from.

>> It will come from the chairs of the two boards right after this meeting.

>> Okay. I know you read those and I will see them when you get them. This is something where we are going to have to discuss it with the city attorney. If the changes you are recommending to the ordinance are substantive, are considered substantive changes, then it has to go back through a first reading again. Again, that's the city attorney determination as to whether the changes are minor or significant changes. So that will be something the

city attorney has to do. Either way, even if they were minor changes and the council adopted it, it takes-- the ordinance is not effective for 30 days. It takes 30 days after the second reading for an ordinance to be effective. So what I have communicated to the ad hoc committee is, during that period of time, it should not slow us down in terms of having to work together. I understand there are other issues there. We are going to have to figure out exactly what these changes are that you are recommending to the ordinance and how we are going to continue and not slow the hiring process down. You mentioned we are already hiring candidates. I wasn't aware we were already interviewing candidates. I think you said next week.

>> Yes. That schedule they gave us on Friday has first interviews with director candidates for September 17th. That's been on the calendar for the past month.

>> The question, though, that I think we haven't resolved is who all is involved in the interviews. Again, that was an issue that we are interested in talking to the ad hoc committee about who is engaged in the interviews. Ultimately, what comes out of that is recommendations to the city manager, for example, on let's say the director candidate. I think you all know that directors must be confirmed by the city council. That's how the process works. It is recommendations to the city manager. The city manager makes a recommendation to the council and that's how the process works. I think in my view there are a couple of key steps. One is to determine, to review these thanks that are being recommended to the ordinance. Does that then cause it to go back to council. Besides all that, I think we ought to have a meeting with the ad hoc committee to talk through how we are going to proceed.

>> I think we can do that, Alex. I just want to make sure I clear something up. I think we have worked very well together. As I said, we've worked very quickly with you to get these recruiting processes in place. I want to make sure it is very clear that as early as may 17, in a meeting with you, we made it very clear more than four months ago that this day would come. We knew in order to work with you, there would come a time we would have to have the board involved. This is not a surprise to any of the parties. We have gone around and around to get there. Now, we are at that day and ready to go. I think we can find a way to do it. The cornerstone of this has always been that these candidates have day jobs and for us to discuss them in any meaningful fashion, we have

to have some way to have personnel discussions in closed session which is an integral part of the brown act. We have gone round and roundabout how to do that. You would have to agree we have known all along in order to make this happen, there has to be some rational way for this board to talk about people things without talking about them in front of cameras and with 100 people in the audience.

>> No question. As you know, there are thousands of employees that are through the city manager's appointing authority. We don't do hiring processes in public. So we have a lot of experience with reviewing resumes, the city manager hires directors, has recruitments going for other directors. She seeks input from many people. None of that is done in public for the very reasons you say. The city manager is very open to getting input from anyone, every single board member and others about this very important appointment. The issue really is how do you all as a body collectively going into closed session with compliance of the brown act to not only just on the hiring side. If in the future, you wanted to provide the city manager with feedback on the performance of the director that's hired, how is that done? That's what we have been trying to figure out. How do we do that? That's part of what the ordinance does but it doesn't at all need to slow down the ad hoc committee or anyone else from engaging with us on the hiring process.

>> I would agree with that, thank you.

>> I have a question. I just want to get clarification on this. You said the city manager doesn't appoint the director for city council. It is the city manager's appointment. I don't have the charter in front of me, forgive me. It's the council that has to give advice and consent, I think is the words, on director appointments. So the city manager brings in one candidate to the city council in their closed session for that advice and consent.

>> All right. Any other questions or discussion on the motion, which is about who is going to be meeting with these people and when we can do that? Seeing none, all those in favor?

>> Aye.

>> Any opposed? None opposed. It passes unanimously. Good. That's "B," "C," "D" is deferred. 6.4 audit committee A, report from the chair of the audit committee. Veronica, can you give us a quick report?

>> I met with the chair of the federated and police and fire audit committee last Friday. We went over preliminary agenda for the first audit committee that should be going out to committee members in the next week or so. On the work plan is the current financial audit, a list of all of the assignments that have been assigned out to each of the audit committees and therefore is going to be some sort of prioritization to the projects assigned to the audit committee.

>> Thank you. Any questions? Make sure the iceMiller thing is added. You can file that. Item 6.5, the last big item. The ad hoc disability committee last met August 10th. Item "A," report from the chair of the ad hoc disability committee.

>> Everybody was there. It was a very good meeting. Tina was on the telephone. You have the report by Antonio. You did an excellent job of capturing what we went over. The other issues that would be included was that we talked about staffing. By the way, I want to hit the time to acknowledge Dr.Dawson. He was very helpful there. Every time we have a chance to call him on the phone or get clarification, he is available. I appreciate that. I think today's meeting is an indication that we are making progress in this area, moving along. Drew volunteered, as always, to help out with the workload that he had there. I think a couple things, though, you have to make sure when you say something, we understand it, because Tina brought it up that you said a couple of disabilities. We have to make sure we all know what is being said so we understand and we are prepared for that. I thought the meeting was very good. I will wait for board members here to say anything. James is not here today. He brought a lot of good issues up that he had experience with and shared it with Dr.Dawson. He replied. The Workers' Comp attorneys were out there, able to chip in and say things they want to see done. The question I have here and I just talked to Sean a little bit about this proposed $900 per case is that just one or is it ten a day or how does that work? I say it is high but, you know, probably because Dr. Dawson said anywhere from $500 to $1200 per case to prepare. Russ is going to come here and take a look at one day's work, because drew, PETINA and I are all working for nothing. I am just trying to find out $900 per piece of paper is a whole lot of money.

>> I am looking for about 75 cents an hour. It is not nothing.

>> That's high.

>> I just want to be clear, you received the report and now you have moved on to item "B," discussion and action and recommendation to the board for the disability committee to review disability applications and make recommendations to the board?

>> Uh-huh. $900, explain that.

>> Tony, I think, looked at the original proposal.

>> Yes. Originally, the board had a request for a proposal that came out October 7th. In that request for proposal was a request to have a disability attorney look at your cases and review your cases and provide feedback to you. This was basically to make sure that you have the information that you needed to go forward.

>> I understand. Is it one piece of paper, cases? I am trying to understand that. Those are $900. What do we get for $900.

>> For $900, you are going to get the attorney actually looking over the case, reviewing the case and actually it is one case, on a case by case basis. What he proposed in the RP was $900 per case. What he is proposing now is $1200 per case. He is also going to have to attend the meeting and be part of the meeting. So that does kind of change the scope a little bit of what he proposed. I will also say that they did bid on that part of the RSP. You do have the option of doing a very short RSP and going out to the other proposals who also bid on the RSP and seeing if they can come up with different numbers. That is an option that you have.

>> We had to work with the attorney's office, because the scope changed. They might require us to go back out. We are still discussing that with them.

>> When I saw these numbers, dick, I thought that maybe the committee needs to think a little bit more about who does what in terms of whether it is a nurse practitioner. Other boards in California apparently have some kind of work panels that they have, disability panels on staff. It might nice to see best practices of what some of the other boards do that might be a little more efficient.

>> Can I throw my thoughts out?

>> It seemed awfully ex pen between Russ an the nurse practitioner.

>> I don't disagree with you on the cost. This is a challenge when we want to have employees do it. There is the feeling that there is bias in it and lack of expertise. If we want outside experts to do it, it is a big dollar bill. When we did the RFP process involved, when we chose Harvey as our attorney, same kind of thing going here, looking at the cost of all the other options out there. Many people didn't want to bid on this business. It is too low dollar amounts. Other than this flow that we have had it is three, four per month. So it is $4500 a month to come out, go through all the case work, write up their analysis, compare the law, give a recommendation, an attorney to give a legal recommendation is a little extra work, as a recommendation to the committee. So $900 I think was in the ballpark of the competing offers. If we want to do this, we want to have a doctor come in and the doctor to write up each one of these? This is the cost of having independent experts. We will go right around, drew, Vince and Harvey.

>> You also have that. We could have shaved about an hour off of our hearing time today if we had that committee set up. We have to think about what is all of our time worth and it would have been easier on some people. Have we spent that hour talking about investments and the performance of the fund, we would have more than made up for the cost of nurses and doctors and lawyers helping us out with anything. That's the real bottom

line. I think we could have shaved three or four of the cases that came before us. One or two wouldn't have come before us and one or two would have come in such a fashion--

>> I agree with you. I still think the numbers for the nurse practitioner with all due respect were exorbitant. I am not convinced that's a doctor.

>> I hear you.

>> And that there would be that much value added for that number. That's staff. So you have got the fringe benefits. So that to me was chilling. So maybe we separate out the lawyer and the nurse practitioner but I am not going to say yes to the cost of the nurse practitioner.

>> Vince?

>> When we vote.

>> Vince?

>> Okay. Well, a few things with respect to this topic in general. Having again been on the committee back a year ago and going through a lot of these topics, the first thing I would say is that the reports that we are seeing now are greatly improved both to your change in the structure and doctor Dawson's input. Before, we were just seeing a summary of the reports. Now, we are starting to see some input from Dr. Dawson pointing out the inconsistencies, questionable areas. It is allowing us to have greater conversation on that. I appreciate that. With respect to a hearing committee, the challenge I have isn't the cost. The challenge I have is there is no medical expert. We are talking about things that we don't understand and, two of the three individuals are still in the same situation. So now you are bringing an attorney in. Maybe that helps. I believe there needs to be a medical expert from outside this geographic area to review this information so there is no potential professional impact or by as in

reviewing this information. I would strongly recommend we consider that if we are going to have this process changed, a pre-vetting process before it gets to the boar. It would be extremely valuable for us to have that.

>> If you are going to pay $100,000 for that, I wouldn't be quarrelling with that.

>> The last thing is I'm not sure how much this is part of the hearing committee but we do have these cases coming to us. With he get 11 disability cases we are reading five days before our meeting and then they get pulled. It is a huge waste of our time to not get paid and spend time on this. Then, on top of that, talking to the attorneys to ask them why this is happening. They are getting the information when we get the information. That process needs to change and maybe the committee is not aware of that happening. I'm not sure if there needs to be a lag in time but what's taking place in talking to the attorneys that are bringing these cases forward is they are getting the information. They see a problem with it. They want to pull it. They are pulling it right as we're reading it. We need to have some lag process in there.

>> I think the subcommittee is the lag process.

>> Maybe that will help. I'm not sure that the attorney will be seeing the information at the same time. They can't see it when the board gets it. They need to get it when the hearing committee gets it.

>> I think that's the key goal of the hearing committee.

>> Yeah.

>> The federated disability committee, that's what happens, they get it when the disability hearing committee gets the information.

>> Harvey?

>> Thank you, Mr. Chairman. Just an observation about legal review. I have had the opportunity and the pleasure to be here now for about five months & nine hours today. There are two things. One is the legal standards that have to apply to the disabilities. The other are the factual and medical evidence that meet those standards. There is not much dispute over the standards. I tried to provide and I have prepared a one-page crib sheet, if you will, that sets forth very simple, the four or five questions that the board needs to ask and this can be circulated and used by the board members in terms of what are the legal standards, permanent incapacity. What does it mean? What is job connectedness? What is substantial contribution to the injury? So it is, from my perspective, if I can offer this, it is not so much I think from sitting through this process that we need a legal review early on because the standards are very clear. It is more the medical evidence and whether it meets those standards. I saw the struggle today. Are you really permanently incapacitated? Have you really met your medically maximum MMI, whatever the MMI is? Those are not legal questions. I don't think you need a legal review. I think what the board is struggling with is to have a combination of staff and a small committee and possibly as Mr. SINCERI says, another outside medical review to say whether the facts of the claim immediate the standard. I would suggest you don't need any more legal review but you ought to be focusing on the factual review of the medical standards. That can be done at a committee and make a recommendation and work them up and only work up that which is going to be presented to the board at the board meeting so you don't have to spin your wheels over these things. I would encourage that. The other thing I want to add is, we may be in an interim period here. As you know, measure "B" has created a new paradigm in terms of handling this thing. We might-- we don't know how long that interim period may be. It could be two years. It could be six months but I would hesitate to create a whole new structure to get us involved in a whole new structure to only abandon it once we get it ramped up. I think there is some interim things that we can do to process, as a matter of due process, the applications that are pending and focus on the medical evidence which is really what I hear the struggle the board has every time we meet. Are they meeting the standards?

>> Okay. That's the crux of what I was going to say. Harvey said it numerous times. We may have six months. Going outside and doing all kinds of stuff, I have asked you guys to be patient. We have come a long way and that committee may be two board members and Dr. Dos. I don't know what medical person he may want to recommend. We have worked hard to get where we are at. Again, it may be six more months and we will find

out which way we want to go as a board or what the city is going to do. Some of you think that farming this stuff out. I have seen these things before. You spend more money and a year later, they are doing the same thing y'all did. I have been there. All the stuff y'all are going through, I have been through it over 20 years. The workload is going to be reduced. I have seen this. You are going to spend a lot of time and resources when we should tackle those things that we are doing now. It is not hard. It was time-consuming today. The committee can reduce that down to the fundamentals and you will have less time. You take just as much time with investments and you don't see us whining. We are hear listening and trying to do the best we can. I get kind of tired of it. It is a learning process. I have to look for you guys for expertise. You signed on. Let's get the job done. Let's keep what we have got going until we find out in January when Harvey gives us some advice or direction where we are going to be going.

>> I hear what you say about into the necessarily needing a lawyer, Harvey. I thought your comments today about how they were more about organization and how you think through things and what the rules are were very helpful. In the first couple of meetings, I do think somebody like Russ RACADA who is very good at that. You chimed in a couple of times. It was helpful to sort out the thinking. For the first couple of meetings, I could see the value of having that kind of thinking in the subcommittee.

>> I will take my round in here. I agree about not building something really big. This is going to be a six, 12 month type thing. I like the idea of using the resources. I don't mind having a doctor if it is going to be $900 a case. Having an attorney on there. Even if he doesn't come, going through and write up an opinion that he can evaluate. We don't need to go that route if the committee could make that decision. I agree with medical representation. The short-term. Dr. Dos has members and can prescreen these. The obvious ones can be handled to the point we get a clear, obvious recommendation from the committee. We can feel confident in that. The ones that are gray or knows, we get those recommendations and it tells us where to focus on the application. If we get a recommendation from a committee saying, we think this application fails because they couldn't prove work causation, when the applicant comes in, they can focus on addressing that issue as the key issue. Here is why it is work causation. If they can't prove, it they can't prove it. I like the idea of a committee. I would support a four-person group with a medical expert and an attorney involved. If everyone doesn't feel like an

attorney is needed, that's fine. I would like to do something. I see these other ones coming and we have big things to be focused on. I think these people can get their due attention in a smaller group.

>> The last thing I would say is if we sense we are going to have the kind of surge we had today, I would highly attend we do a separate meeting for this. We are not attending to board issues. If you take the investments that are probably the most important part and you add up the amount of time we spent on that today relative to the eight or nine hours, it is ridiculous. We don't have a director or a CIO. We are supposed to be administering this plan. We are a disability board. I would prefer to have a separate meeting where we work through all those and have a board meeting that dealt with board-related issues.

>> Here-here.

>> One question I have is, I think there is a big spike by the change in the police department anyway. We had a few fire guys as well. The big change is they have dropped 30 guys working modified duty down to ten. I don't know. We got a few of them out of the way today and resolved. I don't know how many more we have got pending. The big issue is guys not getting paid. Are we getting a handle on it or are we still under water?

>> As far as the individuals who are not getting paid, it happen it's more real time. If you notice the dates on those with the police, it was within the last few months. So you don't necessarily hear about it unless we coordinate it with police personnel and Workers' Comp to find out who is running out of time and who is running out of total disability and who is going to come back on modified and the three months. Right now, as of today, it is not really an issue as far as the police issues. There is maybe-- I haven't heard anything from the police officer's association about anybody that is a high priority. Now, just trying to play catch up with all the service, all the individuals who are service retired and I'm wanting to change their retirement status. So that's it.

>> Let me ask the question. The answer, I would greatly appreciate, would come in the form of one word.

>> How many applicants do you think we will have ready to be heard by next month's meeting, five, ten, 20, two?

>> At least five, probably eight or nine.

>> If it is anything more than five, we will begin the process of scheduling a separate meeting.

>> Not to mention we deferred a couple from this ink.

>> I would suggest planning on a separate meeting then.

>> We will schedule a separate meeting for next month. Each month, I am going to ask the same question. If it looks like more than that, two or three, maybe five. If it is any chance of being over five, we will do a special meeting until we are through this period.

>> If I hear anything about that, I will update you real time.

>> Good.

>> Dick introduced the topic today that I think was very important. You didn't get a clear answer from the fire representative in terms of jobs and I know to your point, Dave. I don't know how we as a board present this issue but I think it is a board issue to say, when we approve all these disabilities, we were looking at it a bit with the whole issue with Kyron today, which was not as expensive at all as the disabilities are. How do we show whomever it is that makes these decisions about what a modified job is, how much it costs? The pension fund, every time we approve one of these disabilities to somebody who is 30 years old. How does one bring together the absolute expense of these disabilities to the pension plan.

>> Did we ask the disability committee to make a recommendation to the board to have Kyron give us that analysis? Did that happen earlier?

>> There is some cut-off-line between 20-25 years of service. Younger than that, it is an impasse to the plan.

>> We saw young people coming in.

>> We should ask for an agenda item to have the fire department come here and make a presentation of what they have or what they don't have.

>> To see somebody that's 35 go off and then get a job in some other fire department that's modified or police department or whatever.

>> During my time, the fire department would go out of their way to accommodate anybody who had five or six years. They would create a job with the doctor's report that maybe an operation with this person might be available in six months. That didn't put any pressure over here because they didn't come here. They took care of it over there. I am saying we need to put an agenda item and ask the fire Chief and his administrator and tell us what they have available. We understand it was court ordered. I remember in the fire department, we used to have 26 positions. They were all gone for whatever reason. It is not about my past but about what's going on and how are they accommodating. Do they work with Dr. Dawson's office? We need to hear that.

>> There is a difference between permanent and temporary.

>> I think one of the problems and Donna just mentioned, the requirement is there is no permanent modified duty. The fire department can say we can temporarily accommodate them. The requirement is, I have to be given permanent modified duty. If the fire department can't do that, the applicant can say, you have to give me my department.

>> We don't need to have a wishing game. Maybe it is called light duty. There are all kinds of terms when you want to do something. I have seen them do the opposite. When you want to do something, you get it done.

>> How do we like to proceed on this?

>> Recognize it.

>> Is this something you can help us with?

>> If you would indulge, I would like to speak on this. I am Alex, deputy city manager. First of all, on behalf of the city administration, I would like to thank the board for the amount of time that you spend on all these issues. I think today is a great example of that. You started at 8:30 and it is almost 4:30 and not done with board business. I know you have extremely difficult issues to deal with, not only on the investment side in managing a very complex portfolio but on making these very difficult decisions on disabilities. One thing that I think that we can all agree on is that the city wants to lessen the number of our employees that leave city employment permanently disabled without being able to work. I think it is hard to find anybody that can disagree with the fact we would like to lessen that. Hopefully, that means that you will not have the volume of disability applications that are before you. That's what our overall goal is. We are in the midst of change. It was mentioned that measure "B" makes changes to it. I would like to give you a set of context. That change was based on a recommendation by the city auditor on a audit of disability retirements. It was not to have, with all due respect to attorneys, not to have attorneys making medical determinations. That is why measure "B" says determinations of disability shall be made by an independent panel of medical experts. Yes, it is unclear as to exactly when that will go into effect but what we recommend and it was in a memo the city manager issued on August 1st is that you either "A" continue the process you have been doing whether that means a separate meeting that was suggested by Mr. SINCERI. If you are going to do a separate panel, we ask you to model it after where we are headed as opposed to making a big change to something that will not last for a period of time and look at having an independent panel of medical experts. There isn't anything we are aware of that would preclude you from starting to head where we are already going to be headed. If there is, however, interest in paying an attorney to make the medical determination, we do think there is an issue with the RST that needs to be explored further with the city attorney's office as to whether or not you can hire Mr. RECADA under the RFP and the slight change of skills that existed here. I think that's an issue. Beyond that, even if you could, we strongly recommend that you don't and potentially start, as miss round

said, start looking at best practices of how these difficult determinations should be made but we strongly recommend looking further at the independent panel of medical experts.

>> So, to respond to that, we have in front of us, I believe it is a recommendation. I personally don't support the recommendation because it doesn't address the medical experts. I would say two things we should consider doing is, one, have the disability committee go back and consider where the is city is heading and see if we can get out in front of that with medical experts and, number two, we have already decided that during this surge, prior to that change that's going to take place that we 6 separate meetings when we have more than five cases to hear the disability cases as a full board.

>> I completely support if we have to do separate meetings. For us to go out and pay three doctors to go through all this and the stuff we are going to run into about who are these three doctors and everyone's input into picking that, it is going to be a nonstarter.

>> I support having a doctor like Dr. Dos and a couple folks. I support having the attorney as well.

>> You know they want this doctor and everyone is going to plead their case to the full board and we are going to accomplish.

>> What about what federated is doing? You are involved in hearing the case beforehand. There are no board members. How does that process go? Why haven't we adopted that?

>> We don't know what it is.

>> That was before, a while back, the committee, the Federated process has the director and the deputy review the cases before it goes to the board and then we make a recommendation.

>> No medical training, no legal training.

>> The director.

>> And a bias of being a city employee.

>> The director of retirement services and the-- who was it?

>> And me, the deputy.

>> It was everything everyone was concerned about getting away from. There is no medical and legal training and there is going to be bias and approve everything.

>> Can I make a recommendation that is based on census and thank you, Donna? That we do the first path. We have to have two board meetings because we can't eat up time like this. That we do the panel thing. Prescreen some of these things. They are already going to be doing some work on best practices on governance. Certainly, there are boards all over the country that are struggling with the same thing and perhaps cortex in their work could just add that piece to it so that Alex, that the best practices gets taken in to account.

>> Can we do that for the last committee where we gathered information? Staff did that. I think Donna, you were probably involved in that, in looking at other systems in what process they were going through. We have that information for you.

>> Perfect then. I think our committee would want it, dick, don't you? We have that.

>> I spoke before. I think they are on the right thing. We have to try first. Number two is I remember Harvey a while back saying, you know, when something has been successful. We have 75 years of doing this type of process with our own board has heard disabilities. This has been successful. Legally, you don't know if this is going to be the issue without people taking it to court. I know for one, I'm not going to take money out of this

system until I know more about it to fund medical people. They ain't going to hear no different than what I have been doing for the last 14 years. Let's don't just say because it passed that that's embedded. There is people under us that don't agree. That may not be the issue at all. We should be trying to do what we have started here and give it a go and lessen the workload and see how it goes. I know it would go smoother. I hope we will continue what we are doing.

>> So we have a recommendation, an alternate recommendation? We don't have a motion other than we will do separate meetings. I think we are all-- I am just going to do separate meetings.

>>. The motion was as a board, let's do the additional meeting and see how that works before we do anything else. I think that's a good idea. We have talked about that. That is nothing newel.

>> We will ask for that to consider the input here. We have a motion to have an additional meeting to get through the volume? Second it if you will have an amendment any time there is going to be more than five cases a month? We will do a separate meeting? There is a motion and a second.

>> I think Dr. Dos is trying to chime in.

>> A motion and a second? Can I ask as far as the timing, one of the other issues you had addressed was the amount of time there is to review the packet, the attorneys, et cetera. If there is going to be a second meeting, I was wondering if we could focus on having the second or additional meeting for the individuals that are service retired that are coming back. It's a little bit less urgent than the ones that are losing. So if there are going to be two meetings for the hearing, that way it gives us a little bit more time to have the attorneys review it?

>> It is up to the will of the board. I would ask for the disability committee to help you prioritize what cases need to be heard. Trust me, I don't want to get phone calls.

>> Which reminds me, we would like an aging report?

>> An aging report.

>> Didn't we just do that?

>> So this is different. As I understand item 6.5 D has nothing to do with extra meetings. And I'm just reading this. This is saying I want another 96,000 a year to help me process all these applications.

>> I wasn't aware of the total amount, but yes, I do.

>> We asked what we could do to help. That's what he said.

>> That was just--

>> Get back to us and tell us.

>> And here's the part-time person. Here's how to get the work load. It'll be helpful. Okay.

>> We did. We did. And I'm taking it back. Because I think that putting somebody permanently on staff at this point would not be a good idea getting part-time help, perhaps, but we don't know--

>> I think that-- this is somebody you already have, right?

>> It is. It is.

>> It is not permanent. It's what we're suggesting was an overstrain to a part-time person that already has and increasing the hours. The unfortunate part is once you increase the hours--

>> You go into fringe benefits. You're getting a full-time staff when you do that.

>> I can't do the math quickly enough in my head. Police and fire, $145,000, which is 70% of 40% of Dr. Dawson and 75% of a full-time nurse practitioner. How much does--

>> Nurse practitioner--

>> Nurse practitioner cost without all the fringe benefits.

>> Total salary?

>> Total salary, not all divided up?

>> Yes.

>> Total salary for a part-time person?

>> No, for this nurse practitioner.

>> It is about half, I think, from what I remember.

>> So I think what I'm trying to-- what I'm thinking of, would I rather have two part-time people than a full-time and pay all the fringe.

>> Fringe benefits are going to be at least 50% to 55% of your overhead cost.

>> So if somebody cost $145,000, it's 50% of $145,000, so you're getting into fringe benefits will kill you.

>> Yes.

>> I think the more important point here if we ask Dr. Dawson what we can do to help and he come back and said there's somebody I know and work with quite well.

>> Right.

>> And could use more for time. And said the fact that the doctor is putting more energy is very, very helpful to us. And this is a short-term solution. So I know this will cost more money, but it has the advantage of being quick and being guaranteed to work since Dr. DAUS already knows this person and works with her now.

>> Drew, I have the utmost respect for you. But I don't agree.

>> Yeah.

>> I really don't. I think-- I agree with Shawn's idea that we add another person. This is administrative work we're talking about. This is not, you know--

>> I agree it is administrative work, and it's administrative work I'm currently doing as a triple board certified physician.

>> And you should not.

>> And so and the problem is in terms of reviewing the medical records and processing it and you have to have a working knowledge of medicine plus workers' compensation to understand the terminology. It's one of those paradoxes where you need someone with a high skill level or cognitive ability to understand what's going on in the education background to do clerical work, basically, in terms of sorting through paperwork to figure out what's appropriate, what's not appropriate, understanding the terminology. And as confusing as it is here, it's-- it gets

streamlined quite a bit, believe it or not, because there's a lot of stuff that goes through multiple body parts, body parts get removed, get added, and people are permanent and unpermanent, stationary, and it requires somebody that is almost like an N.P. level or someone who has done this for a long period of time that knows how to go through medical records and pull out what's pertinent and germane. And this is a very unique kind of situation in terms of how it's not like the standard QME that you get where they're just kind of processing the medical records. So, I mean, I understand the expense is high. And I'm not a numbers person and I don't even really know what it was going to cost. But if-- if-- you know, they always say if, you know, good, fast, and cheap. You get 2 out of 3. So I'm saying good, fast, or cheap, you pick the two.

>> If I may? I recommend the board not take action on this proposal today. As the staff memo indicates which went out on August 29th, indicates a staff consultant with the human resources department. But I have not had an opportunity to talk to doctor DAWS about the subject. So really the issue is you reimburse the human resources department for staff that reports to the city, although when they do work for you, they're doing work at your direction. And so whether or not this is the most cost-effective way to provide these services, I guess that needs a lot further analysis. I absolutely agree on that issue is that I think it needs more time to look at whether this is the solution. I haven't had an opportunity to really look at these numbers, first of all, and determine whether that's the best way. We clearly, to the extent that we are going to be providing those services and you're reimbursing us, we would want you to do it in the way that is most cost effective. And I don't know that's really clear at this point on the recommendation. I think the other recommendation in the memo is for you to independently contract for additional resources. That's another option that needs to be considered, but we do not recommend you approve the first-- the first one to add additional city employee resources at this time.

>> How many hours does it do to do each case?

>> If it's-- if it's uncomplicated, I can get it done fairly quickly. But, for example, it's been taking about nine, ten hours by the time it's reviewing medical records, sorting out, dictating, transcribing, edits, working with the analyst the week after. It's a considerable amount of time. And, you know, in terms of efficiency or speed, I used to be very fast. I don't know-- this is what I do. When you look at the reports, if you happen to read some of

those evaluations when they're billing if you look at how much time they spend on those reports and if you look-- they're dealing with much, much less complexity and a lot less medical records and they're spending, you know, four, five hours if you read it. And so, it's, you know, I think that it's-- you know, if people are concerned about speed and then in terms of how fast people come through, I think I need additional resources. If people are not going to be concerned about speed and are willing to be satisfied with the fact we're going to try to prioritize individuals that are at risk of losing employment because of this and we can do that and then be satisfied with the fact that the other individuals are going to be less priority, we can go through it. But there is a high volume. I can't do anything about it and the volume changes within a few months and I've tried to prioritize. And if you look at the dates people get the paperwork ready and everything has been a few months. So I don't know what-- I don't know what else to offer and in terms of tracking, I mean, I'm not sure what-- you know, I'm a physician without resources or, you know, I didn't get trained in spread sheets and data bases and some of us have seen what kind of resources we have. I can't get money for a data base. I tried to create an access data base when I first got here in 2003.

>> Talked about-- if I can interrupt for a second. Mr. Chair, this is a topic we clearly would like to engage, this board and the other board in how we provide the services to city employees to you in this area. For example, the memo indicates that the plan-- both plans pay 40% of Dr. DAWS' position. And he spends more than 40% of his time doing this work. So I think that may need sort of really looking at, you know, how much time does it really take of his time. It sounds like it takes more than 40% hearing Dr. DAUS talk. Then that might lead to another discussion of how to best provide those services to you. And again, how you decide to try those services is really up to you.

>> Shawn.

>> The problem I have is we have a meeting and everybody has representation there and we discuss it. And then we don't take action because you've got another point which may be good. But the work load doesn't get reduced. So you have an emergency situation. You ask us to deal with it, then we deal with it and then we're going to go off on another fishing expedition. I hope we don't have a committee and somebody changes

horses in the middle of the stream. We had a meeting, we took action, you were there for representation, you didn't say one word. Not just you, your staff, everybody else. Now we've got to take action to give him help. Probably only going to be six months and his work load is going to go down. Now we're going to talk. No wonder we haven't made stride in 20 years.

>> I'd be curious on how long it would take to get a response back.

>> By your next board meeting I think we would follow up on this memo and provide you with, again, with options. But, again, what I would then need from Dr. DAUS is a much more careful accounting of the total time. In order to really get a sense of it, we would need to really fully understand how many hours in a given month did he spend on disabilities, how much more does he need? Then we can come back and provide you with more meaningful information. If that is going to take longer, then I think you could consider the more immediate way to get additional assistance. And again, we can comment further on whether that would be by making an employee that's working part-time and increasing the status or-- or other options. I think there are other things you can consider.

>> Is there the possibility to at least for one month in the room to increase hours to give him more support while you work together on a longer term, or a more intermediate solution? And come back at the next board meeting and decide this may be-- this is just a temporary one-month surge in help for Dr. DAUS. Because clearly we have a large number of of cases coming.

>> Yeah. I can certainly look into that, but I cannot commit to that without looking at her employment status and the ability to increase her hours. So I have to go back and check-- I think that could be possible, but I can't commit to that without going back and doing further research on her employment status.

>> How quickly?

>> That, I think, should be able to do within a few days to a week. If you could reply to the disability committee.

>> To--

>> Certainly.

>> A week at the longest?

>> Yeah.

>> Would the city be willing to enter into a service-level agreement with the retirement board at $1 per case?

>> I think we are open to talking about that or any other method you would like to talk about. I hadn't thought about that, but we're certainly open to discussing how really best to provide both boards with these services.

>> If you could maybe give that some thought about dollars per case and committed turn around time.

>> I can try. I mean, I still-- it's also an issue of convincing her, as well. And so, I can't promise anything because I don't, you know, it was in terms of getting representation from her. In terms of putting the extra hours in and when and how. So I can't make any promises about that either. So--

>> I think frankly, personally, that's what I'm looking to boil this whole thing down to, when an applicant hands us a pile of paper and they're all checked, meaning I'm ready for a review that someone says within 30 days, I'll have you scheduled, report written, handed to the retirement board. And if you do it in 30 days, it's "X" fee. And that's the way we can plan for, budget on, and we have a commitment, a level of service committed to our applicants.

>> Even if not that, I think that it would be helpful for us, to see services come out of HR to understand your performance expectations. And how they're being met. And I think that will then help us plan. For example, if you had certain expectation of performance and time, we can then assess the resources we have to accomplish

that. And say is that possible under the given resources? We certainly would like to engage you and the other board in more detail in talking about that.

>> Are we agreed that we can do the-- Dr. DAUS, your nurse practitioner does know that she's, you know, being discussed as working longer hours?

>> Yes. In terms of-- I mean. It depends on what's on the table. It's not something where she's agreed to do certain things. If it was an option and I asked her if she was open to it. However, you know, it's also her discretion in terms of, you know, if it becomes down to per dollar per case, I don't know how that translates into her, you know. Is that for her specifically? Does it come to the department--

>> An agreement with the city and the city would decide--

>> I think you're misunderstanding the chair and what he was talking about. He's talking about overall service level agreement with the city. An employee is entitled. Since she's a city employee, she's entitled to be paid under the terms of the selective bargaining agreement. We can talk about that further so I can let you know how that process works rather than taking more of the board's time.

>> Thank you.

>> Thank you.

>> Any further discussion on any items under 6.5? Okay.

>> Do we need to authorize the subcommittee to go ahead and move forward?

>> Retaining her ahead of the next board meeting.

>> Oh, I think that's a phenomenal idea. I'll make the motion. We always forget to do this. We'll make a motion that this board authorize the ad hoc disability committee to engage the additional cost for a nurse-- additional staff time of a nurse practitioner up to an analyzed $96,000 a year over the course of the next month, two months through the end of the year?

>> Month is fine. I'll second that.

>> For a period of one month.

>> I'll second that motion.

>> Any discussion on the motion? All those in favor? None opposed, passed unanimously. You got that?

>> We don't have to have a meeting then, right?

>> If he comes back and says, you can do it, you guys can do it.

>> And then Alex will come back to us and-- in a week at the longest.

>> A week at the latest to say whether increasing the hours for a one-month basis would be possible.

>> Right?

>> Right. Yes, I will go back again because I want to research the collective bargaining agreement and look at our ability to increase hours and what the implications are for doing that. Because, again, I want to ensure we'll be complying with all of those. Absolutely within a week, we can report back.

>> To this.

>> Okay. Absolutely. And anybody else? Okay.

>> And even if they're at 20 and you can't go more than 30 without problems, okay, tell us if 30's a possibility.

>> Absolutely.

>> Thank you.

>> Okay.

>> Item seven, the consent calendar is one big motion. Do I need to read all those?

>> No.

>> No. We have a motion to accept the consent calendar.

>> Second.

>> We have a motion and a second.

>> Motion from trustee Santos, any discussion on the motion?

>> I have one minor change.

>> Please. Which?

>> 7.4G.

>> Okay, let's pull 7.4G--

>> This needs to be updated--

>> We'll vote separately on that. Including 7.4G, everything else under the consent calendar. All those in favor.

>> AYE.

>> All those opposed--

>> The conference was a 2011 conference not 2012.

>> The conference bridge?

>> Yes, the one I attended.

>> Okay.

>> Minor change.

>> Oh, sorry. That's the-- okay. So with that change--

>> With the change, we have a motion to accept it, a second from CALDOR. Any discussion, all those in favor?

>> AYE.

>> Any opposed, motion's passed unanimously. Item A, education training, educational programs and courses, 8.2, conferences and seminars, 8.3, training, they are there, you can read them for yourselves. Any proposed agenda items for next month? Seeing none. No public comments. We are adjourned.

>> Yay.

>> Good job, Mr. Chairman.