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>> Conrad Taylor: Good morning, everyone. What we're waiting for is another board member so we can have a quorum. When we get another board member we'll start.

>> Good morning, we have a quorum now so we could start. I'd like to call to order the Police and Fire retirement board on Thursday, October 7th, under orders of the day, we're going to have -- move some items under new business. Number 9 we're going to defer. And number 11 we're going to move that first, that's going to be the first item under the new business. With that under orders of the day we'll start with retirements. Under number 1 under -- let me step back. Let me indicate who is here. We have board members that are present, we have myself, Conrad Taylor. We have trustee Rose Herrera. We have trustee Scott Johnson. We have trustee Sean Kaldor. And missing is trustee Sam Liccardo. Dave Bacigalupi, we are trying to get him on the phone, but we are unable to get the phone to work and, we still have a vacant seat for a trustee. Number 1, service retirements. John P. Como, police officer, police department, effective November 27, 2010, with 25.63 years of Service. Do I have a motion for approval?

>> Rose Herrera: Motion to approve.

>> Second.

>> Conrad Taylor: All those in favor? Motion passes. Item 1B, Robert L. Davis, Chief of Police, police department, effective October 31, 2010, with 30.07 years of service. Do we have a motion to approve?

>> Rose Herrera: Motion to approve.

>> Second.

>> Conrad Taylor: All those in favor, that passes. Item 1 C, Cheryl Faltersack, fire captain, fire department, effective October 30, 2010, 25.09 years of service. Do I have a motion?

>> Rose Herrera: Motion to approve.

>> Second.

>> Conrad Taylor: All notice favor? That passes. Item 1D, mark E Filson, fire captain. Fire department, effective October 2, 2010, 24.58 years of service, dory have a motion?

>> Rose Herrera: Motion.

>> Second.

>> Conrad Taylor: All in favor? Item 1 E, Floyd D. Stewart, fire captain, fire department, effective September 1, 2010. 48.12 years of service. Do I have a motion?

>> Rose Herrera: Motion.

>> Second. Can I comment?

>> Conrad Taylor: All those in favor, most passes.

>> Sean Kaldor: Can I comment? I appreciate the service of all these people. I just want to call out Captain Floyd Stewart. Captain Stewart, the commander served on Engine 1 downtown for I don't know how many years, became a captain in 1969. Served with the department for 48 years and retired age of 70 only because that is our mandatory retirement age, he would have been happy to serve another ten years. So I appreciate everyone's service but I especially want to call him out for his lengthy service with the department and the city. Thank you.

>> Conrad Taylor: Okay. Under number 2, disabilities. 2A. We have officer William P. Van Key. Police officer, police department, service connected disability. Mr. Van Key is present with his attorney, Tom Boyle. Donna.

>> Mr. Van Key is requesting a service connected disability based on orthopedic injury sustained to his neck and lower back. He's 44 years old with 14.94 year of service. Medical reports are listed in your packet. His work restrictions are he should not maintain a firearm in public places. He should not drive a city vehicle. He cannot pursue and apprehend suspects. He should avoid heavy lifting and/or frequent bending and stooping. He is currently on modified duty and at the time of application was on modified duty. There is no permanent modified duty available.

>> Conrad Taylor: Mr. Boyle. Or Dr. Das, would you like to add anything?

>> Dr. Das: No.

>> Conrad Taylor: Mr. Boyle.

>> In light of Dr. Das's conclusions and restrictions and department's inability to accommodate him, we would move for granting of his disability retirement.

>> Conrad Taylor: Do we have a motion?

>> Motion to approve.

>> Second.

>> Conrad Taylor: Scott.

>> Scott Johnson: Thank you. I have a question, maybe this is -- I'm not sure if this is for Dr. Das or for the attorneys. Dr. Das in your writeup you mention that originally, the lower back injury was -- occurred if 1989. While

the employee actually was employed by the Belgian military. I'm just wondering how that ties into the service connected disability with the City of San José.

>> Dr. Das: Well, the -- the issue is it appears he did have a significant disk herniation at the time he was employed by the Belgian military. But his symptoms did improve, and he was able to get cleared here medically to participate in full duty work. So -- and so there was no -- he was able to participate in the academy. So it appeared that functionally he was doing quite well. And so there would not be a -- you know in terms of whether there's a relationship between his current pathology and the prior pathology, that -- that's -- is that the question you're asking?

>> Scott Johnson: Yes, I just wanted to get clarification. Because we're talking about a service connected disability as employed through the City of San José. And I just wanted to make sure that this disability if it gets approved is related to his employment -- injuries incurred while employed with the city.

>> Dr. Das: Well, I -- I personally believe that he was -- that these injuries occurred while he was employed by the City. I don't -- since he was able to return to full -- since he was able to clear the medical here, and cleared the academy, that reflects a full functional ability. In terms of whether the -- his injuries of progression pathologically from the prior ones, that's another issue. And I -- I don't have an opinion about that.

>> Scott Johnson: Okay. I appreciate the clarification.

>> Dr. Das: Okay, good.

>> Conrad Taylor: Rose.

>> Rose Herrera: Thank you. I'm supporting the disability request, because he was accepted into this department, you know, and cleared and also because in the history there, and I'm -- I'm not able to find it right now. Perhaps attorney can state it. There was an accident, there was some different incidents where injuries

occurred while he was on work. It was duly documented. I think it was getting out of the car he suffered something in 2005. I'm trying to recall the exactly things but there were history of incidents happening on the job. Maybe you want to comment on that.

>> And a 2007 automobile accident. There has been several low back and neck injuries.

>> Rose Herrera: He was treated by physicians, it was reported and all that, so it was pretty clear it was work-related.

>> Conrad Taylor: Okay, I have a motion on the floor, I have a first and a second. Lieutenant Bucias would you like to add anything to this?

>> No.

>> Conrad Taylor: I have a first and a second. All those in favor, aye, motion passes, William, good luck. I know I saw you walk around in the halls in the police department numerous times so good luck with your retirement.

>> Thank you.

>> Conrad Taylor: Item number 3A, change of status. Billy K. Dishman, retired police sergeant, police department, requested for change in status to service connected disability retirement effective September 23rd, 2006. With 25.24 years of service. Present is his attorney Mr. Jeffers and Bill Dishman. Donna.

>> Police sergeant Billy Dishman is requesting a change in status to service connected disability based on back heart blood pressure and left shoulder. He was age 50 at the time of application with 25.24 years of service. Medical reports are listed in your packet. Work restrictions are he should avoid pursuing and apprehending criminals, he should avoid very heavy lifting. He is currently service retired effective 9-23-06. At the

time of separation at the time of application he was on disability, and there is no permanent modified duty available.

>> Conrad Taylor: Dr. Das.

>> Dr. Das: I have nothing to add to my report unless you want me to summarize.

>> Conrad Taylor: If you could for the record.

>> Dr. Das: Okay, sure. Mr. Dishman has three items on the agenda. His left shoulder, his lower back as well as his heart. With respect to his left shoulder I did not feel there are any significant restrictions based on what his treating physician had provided in the way of restrictions. With respect to his heart he does have left ventricular hypertrophy which is a sequela of high blood pressure. Which can interfere with his aerobic capacity, and therefore that is why I have given him a restriction to avoid pursuing and apprehending criminals. With respect to his lower back he does have degenerative changes there. He has not responded to conservative treatment. And he is not a surgical candidate. Therefore I feel there are no other treatments that will make a significant difference therefore he is provided restriction to avoid very heavy lifting.

>> Conrad Taylor: Thank you, Dr. Das. Do I have motion on the floor for approval? Scott.

>> Scott Johnson: I don't have a motion. I have some questions.

>> Conrad Taylor: Okay.

>> Scott Johnson: Dr. Das, in your report on page 5, just trying to understand. Reading through the packet. There was an incident that occurred in 2005 related to an altercation with the suspect. Your report also states that then he later returned to full duty. And now he reports pain triggered by heavy lifting as well as prolonged sitting. But I'm a little confused because the injury occurred in 2005 then he returned to full duty. So in

these additional occurrences of pain, being triggered by heavy lifting and prolonged sitting are those due to the original injury in 2005, in your opinion?

>> Dr. Das: No. I feel that these are probably separate symptoms. He may have had an underlying -- he may have had a chronic lower-back condition related to that, but he was able to tolerate full functional activities after that. I don't see a significant relationship between that particular incident and his current symptoms.

>> Scott Johnson: Okay because I'm trying to find a connection with a work related injury, related to these restrictions. In addition, another question: You mentioned the issues in regards to the heart. But it's my understanding that there are no restrictions related to that. However, in your report it says that -- well it says that he has not been provided any activity restrictions in regards to the heart condition. And the reference to the hypertension, you know, 20 years ago, is that a work-related reference? I'm still, here again I'm trying to make the connection with the work-related disability.

>> Dr. Das: Well, with respect to the hypertension there's a presumption for police officers or peace officers that cardiac injuries are work related. Of course in the retirement system it is a rebuttable -- it's not relevant. However, there is information in the community and in the medical literature associating perceived stress, and cardiovascular disease and, you know, there's different opinions on the matter. But there's credible literature relating cardiovascular disease and perceived stress. And then the issue is whether there -- the only other issue is, is whether that stress working as a police officer in terms of his particular situation, there was enough stress to justify the cause-and-effect relationship and so that's the link.

>> Scott Johnson: Okay. Thank you.

>> Conrad Taylor: Do I have any other questions? With -- rose.

>> Rose Herrera: Yes, I guess I'm just trying to understand the -- what percentage, if that's the right way to look at it, is the disability we're talking about is back, just reading from the application, back partly, blood pressure, left

shoulder, I'm -- I think I understand. It seems like the shoulder was -- is not -- was not indicated in here as being the major cause for this application. So I guess I'm trying to understand back, heart and blood pressure?

>> Conrad Taylor: Was the question for Dr. Das and Mr. Jeffers?

>> Rose Herrera: Probably Mr. Jeffers and Dr. Das. I'm trying to look at the history there and understand how it's connected. It's clear, I mean it's clear to me somewhere in here that hypertension if it's at a particular level I mean it is connected to work. And stress. And all of that sort of thing so --

>> There is a report in your file from Dr. Anderson who was the cardiologist who served as the agreed medical examiner in connection to the heart claim. And Dr. Anderson on page 28 of your package indicates that police work, in fact, contributed to the development of Billy Dishman's heart problems. So independently of the presumption, I think that there's evidence before you that would support the notion that the heart condition is work-related.

>> Rose Herrera: So I --

>> I'm not aware of any --

>> Rose Herrera: Go ahead.

>> -- any data in the packet here that would indicate that the back condition is not work-related.

>> Rose Herrera: Okay, I guess I wasn't seeing current what is the issue with the back now.

>> Perhaps Mr. Dishman can explain that.

>> Rose Herrera: Well, before we go to that, can we go back to the hypertension and the heart issue? So I'd buy that those things are connected. But what -- it seems like at the beginning of the -- or the current situation with hypertension is that it wasn't -- it wasn't debilitating currently. And I may not be using the right terminology. I think Dr. Das referred to that in terms of what is the present situation with the hypertension. Dr. Das.

>> Dr. Das: Can you clarify the question? I'm not sure that I --

>> Rose Herrera: Understand my question. Okay. In this report, it talks about how blood pressure is connected, you know, you can have hypertension, is -- can be caused by the police work itself. So is there a hypertensive issue here that's serious enough to warrant disability? I guess.

>> Dr. Das: Well, the issue is, you know, in terms of on a prophylactic basis, I believe that it would be advisable to avoid uncontrolled, vigorous physical activity such as would be with pursuing a criminal suspect. Of course I would recommend vigorous physical activity within a controlled environment where you can stop. Because he does have cardiovascular disease based on the diagnosis of hypertension. And the hypertension is present, we know that there is hypertension present because according to the echocardiogram, his heart is a little bit bigger and that means that it has to work a little bit harder to pump out the blood. So as a muscle, it gets a little bit larger. And that's where there's evidence of pathology associated with the hypertension. So it really -- you know in terms of can he perform vigorous physical activity? Yes. Is it advisable that he does it in an uncontrolled situation, no. Because there's protective you know exercise is protective. But in that kind of an environment, I would not consider that protective exercise, and that's why I provided that restriction. That's why I provided that restriction, but it really does not reflect a incapacity. It is more of a prophylactic restriction.

>> Conrad Taylor: Thank you, Dr. Das. Just for the file, I see there are three people that want to talk. But he was on disability leave prior to his retirement for these injuries. So he was not working, for the board members. Scott you're next.

>> Scott Johnson: Thank you. Lost my place here. I wanted to go back to -- it's on page 15 and 16, Mr. Jeffers mentioned Dr. Anderson's report. So I'm -- on page 15 it says Mr. Dishman has been retired from work as a police sergeant since September of 2006. So he retired in 2006, and then it goes on to describe some of the -- the medical work that started in -- on the blood pressure starting in 2006. So was -- was the issue in regards to the heart detected after retirement, or prior to retirement? I'm trying to -- I'm trying to understand the chronology here.

>> The claim for heart disability was made while he was still an employee of the City of San José. But it wasn't adjudicated until afterwards.

>> Scott Johnson: Okay. So still trying towns. Could you reference Mr. Anderson's medical reports?

>> He had been treating for hypertension.

>> Scott Johnson: Do we have those medical reports in the packet?

>> I don't believe so but they were reviewed by Dr. Anderson in his report.

>> Scott Johnson: Okay, because the problem I'm having, I see the medical reports related to the heart starting in 2006.

>> Dr. Das: Correction, it's 2004.

>> Scott Johnson: 2004, and where are those at?

>> Dr. Das: That would be at the back of the packet by Dr. O'Brien, February of 2004.

>> Scott Johnson: Different doctor.

>> Dr. Das: Yes. He did the original defense QME for the city, I believe.

>> Scott Johnson: Okay.

>> Conrad Taylor: And if I may note for the file, back in 1990 there was a claim filed with a pain in the chest and neck. So we have a claim that he filed in 1990. That is in the packet, page 78.

>> Scott Johnson: And does that relate to the heart or which does it relate to, related to this, you know, application?

>> Conrad Taylor: I would imagine, I'm going to have to ask Dr.-- I mean Mr. Jeffers, but if you have sharp pains in the chest I would imagine that would be to the heart.

>> Yes, it's been an ongoing problem. He's had episodes of rapid and irregular heartbeats that have been plaguing him for the last 20 years.

>> Conrad Taylor: Sam.

>> Sam Liccardo: Dr. Das, I'm reviewing that 2004 report. As well as the 2010 evaluation. I'm sorry, 2009 rather. From Dr. Anderson. And with a diagnosis of borderline hypertension that is, quote, occasionally elevated with periods of physical or mental stress. Is it fair to say that's a condition that a large number of active duty officers might have, as they're in active duty?

>> Dr. Das: Well, I -- the one -- hypertension is a disease, as opposed to elevated blood pressure. Elevated blood pressure occurs during the covers daily activities. Meaning when we're weight lifting or running your blood pressure will increase. So the issue is whether he has a disease process going on. And I believe he does, mainly because of the fact that he does has an echocardiogram showing enlargement of the muscle or left ventricular hypertrophy. So that shows that he has ongoing hypertensive heart disease. As far as other police officers having

borderline high blood pressure, yes, I agree with you. There are probably a number of them that do. The distinction here is really the level of pathology associated with the diagnosis of hypertension. And he has left ventricular hypertrophy, which suggests that maybe his blood pressure is not occasionally elevated and that his control is not as good as he thinks it is. Because if the heart's getting a little bit bigger that means that it's having to work a little bit harder. And so that's why Dr. Anderson suggested that he have a little bit tighter control of his blood pressure. So I personally believe that having episodic elevated blood pressure is not consistent with having left ventricular hypertrophy. The only argument against that is that he did back in 2004, he was diagnosed with left ventricular hypertrophy as well. So it doesn't look like there's been a huge progression up until 2010 with left ventricular hypertrophy. But he does carry the diagnosis of hypertension.

>> Sam Liccardo: I guess what I'm trying to -- forgive me for parsing words here, it is sort of an affliction I have as a lawyer. But you seem to be make the case more emphatically here than is presented in the written materials. And the written materials, the words you use are I believe early signs of hypertension, in quote, mild left ventricular hypertrophy. I'm going to try it real hard to pronounce that. The records that Dr. Anderson uses, is borderline hypertension. Which is occasionally elevated. I'm not sure where we're supposed to be drawing lines but it seems as though what we are seeing in the text is much more mild in presentation than what I'm hearing you describe verbally.

>> Dr. Das: Apologize for that. But I -- as far as the mild hypertension, I personally disagree with that term, because you cannot have left ventricular hypertrophy if it's mild hypertension. It means that the blood pressure is not controlled.

>> Sam Liccardo: Well I think the language that you use is early signs of hypertensive heart disease. That's on page 9.

>> Dr. Das: Oh, and that would be the mild left ventricular hypertrophy. And that's the hypertensive heart disease. Whereas you would have hypertension that's elevated blood pressure without the signs of hypertensive

heart disease. And that's what I mean when I say early hypertensive heart disease I'm referring to the mild left ventricular hypertrophy. I'm sorry if my terms were confusing in the report.

>> Sam Liccardo: In the report it seems clear. I shouldn't be drawing lines here or splitting hairs. I'm happy to be told, don't split hairs here. It just seems as though when I first read this, it just seems much less serious than what you are describing here now.

>> Dr. Das: I don't necessarily feel this is a very serious condition. I'm just saying that he has hypertensive heart disease and that it's advisable to avoid uncontrolled physical activity based on that. In terms of -- and that's kind of the parsing words issue that -- the distinction that I'm making. So I'm not saying that can he not perform vigorous physical activity. In fact I recommend that he does as part of an exercise regimen. As long as his you know his exercise treadmill is clear and he has no external manifestations of it. If he's forced to exert himself in manners beyond his capacity, when he doesn't have a voluntary ability to stop, that's the distinction I'm making. If you're parsing, that's where I'm parsing the words probably in terms of voluntary versus involuntary.

>> Sam Liccardo: Okay.

>> Dr. Das: So that's the distinction.

>> Sam Liccardo: Thanks, doctor.

>> Sean Kaldor: Thank you. So I do see some of the symptoms related to the cardiac, such as the PVCs, premature ventricular -- just PVCs, we'll leave it at that. Also rapid heart rate, transported to the hospital, diaphoresis, all of that going on. But I would simplify the whole application, as I see it you filed for back, heart, blood pressure and left shoulder. For left shoulder in 2005, I see you had a February 2005 injury, an altercation with multiple people breaking up a large crowd during Mardi Gras celebration, felt a pop in your left anterior shoulder with pain, went in, diagnosed with possible rotator cuff injury, and that ultimately resulted in a preclusionary restriction, saying that you have lost the strength and motion you shouldn't lift anything over 25

pounds. So I understand the issues on the cardiac side trying to figure everything out. But for one of the place that you filed I see a clear work related injury with a preclusionary restriction that continues to this day. And I think unless I'm inaccurately describing things, is that a correct description of what happened with the shoulder?

>> Yes, it is.

>> Sean Kaldor: To me, that simplifies the issue. Thank you.

>> Conrad Taylor: Any more discussion? Nope, Sam.

>> Sam Liccardo: I'm sorry. Sean just raised an issue about the shoulder. And I may have misheard but I thought coming in that that was one of the issues that was not before us based on what Dr. Das was saying. In the report on page 9 you say it appeared to resolve fairly well with the treatment, that is referring to the shoulder injury. I thought we're focusing on the back and the heart.

>> On page 41 we have the restrictions imposed by Dr. Jeter with the shoulder. That is the no lifting over 25 pounds no prolonged overhead work.

>> Sam Liccardo: Right, in 2007.

>> He is his treating physician for his shoulder. He's the only one who's seen him for his shoulder.

>> Sam Liccardo: Right, but since that time we've got, what I saw Dr. Das's summary he did have a significant finding, appeared to resolve fairly well with treatment provided, most recent evaluation by an orthopedist reveals no significant abnormalities. Am I missing something?

>> The restrictions were imposed by his treating doctor. They're the only -- it is the only treating doctor he's had.

>> Sam Liccardo: Dr. Das could you clarify?

>> Dr. Das: Well, I'm referring to the evaluation by Stephen Corcoran on page 30 where he did not find significant findings in the shoulder. And then the other basis for my not providing a restriction to Mr. Dishman was the fact he did return to full duty after the injury and there was no subsequent injury or any indication that there was any change in status from that prior injury. So there were no -- yeah, he retired full -- he was full duty from his shoulder injury. So I didn't see a reason for providing a restriction after his retirement date.

>> Sam Liccardo: Okay, thank you.

>> Conrad Taylor: Rose.

>> Rose Herrera: At the time of separation, he was on disability leave. What was that leave, what was that about?

>> On is the of his back condition and his shoulder.

>> Rose Herrera: That was the back?

>> And shoulder. It was the Mardi Gras incident on February 8, 2005 involved both the shoulder and the back. Dr. Saul treated him for his back. He exhausted his disability leave and he was using his own time thereafter until he could retire.

>> Rose Herrera: Yeah because I am -- the shoulder injury I'm confused about. Because on page 5 it says he eventually returned to full duty and as already been discussed, it didn't seem like his shoulder was a big thing. Where is the back? Where is it indicated that he's on disability leave for his back? If you could help me.

>> It would be with the reports from Dr. Saw. Page 46, I believe.

>> Rose Herrera: Okay, I guess it is -- for some reason there's so many different things in this case. It's a little bit hard to figure out which thing is connected.

>> I understand.

>> Rose Herrera: And I think that's where some of us are struggling with that up here. Because it seems like the shoulder is really clearly we see what happened at Mardi Gras, but I didn't hear much about the back. That's level pointing out the page.

>> Mr. Dishman is here. He would like to say --

>> Rose Herrera: That would be great. I'd like to hear from him.

>> Um well, first let me just thank you for allowing me this time to speak. I'd like to say that I had a great career, worked 25 plus years with the San José police department. I had to do it all over again I wouldn't change a thing. There's just no profession quite like it. If I were able to continue the job as I know it, I would still love to be right out there chasing bad guys and solving problems in the community. I would if I could, but I knew I couldn't do the job any longer in the safe, efficient manner for which I was accustomed to. Something told me to pass the ball before I fumbled. My back hurt most if not all the time due to a herniated disk, L-5 S-1. I found it harder and harder to even get in and out of the police vehicle. My duty belt and all the equipment harness certainly didn't make it any easier. It was a constant irritation to my lower back. After the back injury I started experiencing a burning sensation bilaterally in both my feet. It feels like your feet are on fire. It was a common element that was often suffered by diabetics. I am not a diabetic. It is been diagnosed as a small fibroneuropathy I'm often awakened at night currently with these flareups. Antiinflammatory drugs provide little relief. When at work my irregular heart rhythms were becoming more noticeable and frequent. I have been athletic all my life. I know how the heart reacts after or during strenuous exercise. It just isn't normal to be sitting at the car at a stoplight and have your heart start racing like you're running a marathon. These episodes occurred more frequently and were

quite bothersome. I knew my high blood pressure and the enlarged heart ventricle condition was probably playing a part in this. My medication seems to control this condition for the most part but I do have occasional break through episodes to this day. The injury to my left shoulder occurred during the same altercation where I injured my lower back. After physical therapy and some cortisone injections the condition was tolerable. The shoulder mostly aches and on occasion now with mild flareups of bursitis. My treating doctor is Dr. Jeter. Several other conditions that I suffer play a big part in my overall health and greatly affect my ability to perform at work. I had been diagnosed with IBS irritable bowel syndrome, sleep apnea and PTSD, posttraumatic stress disorder and clinical depression which I'm still be treated. All of this is in my current medical records. I feel I couldn't do the job at that time appropriate level any longer. To think about somebody getting hurt or worse because of my inability to perform at my expected level is not an option. I couldn't take a chance living with that. Retirement was one of the hardest gut wrenching decisions I've ever had to make. But deep inside I knew it was the right thing to do. My memories friendships and love for the department will last the rest of my life. Thank you.

>> Conrad Taylor: Thank you, Bill. Rose, any further?

>> Rose Herrera: I guess it's just the chronology. So just if you could help me one more time with, he retired when? In --

>> September 2006.

>> Rose Herrera: And he was on disability fat?

>> Yes, ma'am.

>> Rose Herrera: And he did not go back to work after that for the police department?

>> He retired in September of 2006.

>> Rose Herrera: Right.

>> He was off work most of 2005. He tried to go back to work for brief period in 2006. But was unsuccessful.

>> Rose Herrera: I don't have any more.

>> Conrad Taylor: Sean.

>> Sean Kaldor: I'm trying to go through that chronology as well. There was the Mardi Gras incident, in March '05, you were receiving treatment and on disability throughout '05 going into '06, you received steroid injections, returned back to full duty, the symptoms continued though later on. Retired in September '06. In -- on December '07 you were rated as having preclusionary restrictions. And that was confirmed later in '09 with nothing changing because it was maximum medical improvement and preclusionary. So I kind of see a chain there going from the injury to attempted recovery and treatments, ultimately being concluded, maximum improvement with the preclusionary restriction and being confirmed later. Is there anything in there that I said that was inaccurate or is that a general description of the shoulder injury?

>> Yes, that's correct.

>> Sean Kaldor: Thank you.

>> Conrad Taylor: Russ.

>> The board may want to focus on the lower back. You notice Dr. Das's report on page 5 sort of in the middle paragraph which talks about the lower back, again stemming from the injury, talking about the symptoms. It does talk about returning to full duty, but there appears to have been a resurgence of symptoms though you may wish to talk to Dr. Das about that. Then if you jump to page 9 under discussion, the second paragraph where Dr. Das focuses on the lower back, that's where he finds the work restrictions. And it's -- so it's work restrictions with

respect to the lower back that appears to be the restrictions that prevent him from returning to work, even on a permanent modified duty basis. So whereas there seems to be more controversy with respect to the hypertension or cardiovascular disease and the left shoulder. But assuming I've accurately summarized Dr. Das's comments it appears Dr. Das with respect to the lower back has stated clearly the situation with respect to the lower back. Unless Dr. Das, unless I've misstated it.

>> Dr. Das: Yes, the most significant finding that I found was with the lower back. You know, I relied also on Dr. Corcoran's report on page 37, where based on his more recent exam he said that the tendonitis and shoulder impingement syndrome were resolved and he provided permanent disability exclusively for the lower back. And based on my evaluation, I felt that there was more information pertaining to the lower back, and to the cardiovascular disease that would support difficulties performing the job rather than the left shoulder.

>> Conrad Taylor: Sam.

>> Sam Liccardo: I make a motion to approve based on the back injuries.

>> Rose Herrera: Second.

>> Conrad Taylor: All those in favor? All those opposed? Motion passes, Bill, thank you for your time that you served on the department. I remember coming on when you were a really hard charger and I remember when you got injured and how it changed you so good luck.

>> Mollie Dent: Excuse me. You got four. Now, you do need four people to pass any motion. I just want to make that clear. Your rules changed this month.

>> Conrad Taylor: We had four, yes. Bill, thank you.

>> Thank you.

>> Thank you all very much.

>> Conrad Taylor: Next item under change of status is 3B, Timothy R. hall, retired firefighter, fire department, request for change in status to service-connected disability retirement effective June 27, 2009, with 29.99 years of service. Mr. Hall is here with his attorney, Mr. Swift. Donna would you like to.

>> Firefighter Timothy hall is requesting a change in status to a service connected disability based on orthopedic injury, sustained to his neck, shoulders, left elbow, left ankle, lower back, and left knee. 55 years old, with 29.99 years of service. Medical reports are in your packet. His work restriction is that he should avoid strenuous overhead work and very heavy lifting with his left shoulder. He is currently service retired effective 6-27-09, at the time of separation at the time of application he was on disability leave and there's no permanent modified duty available.

>> Conrad Taylor: Dr. Das would you like to add anything?

>> Dr. Das: No, I wouldn't, thank you.

>> Conrad Taylor: Mr. Swift.

>> Well, the application included multiple body parts Dr. Das found restrictions only with the left shoulder but nevertheless the limitations with regard to the left shoulder are significant enough so that the department could not accommodate him and on that basis I would ask the application be granted.

>> Conrad Taylor: Do I have a motion on the floor?

>> Motion to approve.

>> Conrad Taylor: Do I have a second? I'll second the motion to approve. Discussion? Open for discussion? All those in favor? Aye. All those opposed? How many --

>> Mollie Dent: I only heard two ayes and one nay. I guess were the silences just not votes at all on the motion?

>> Conrad Taylor: You have --

>> Scott Johnson: I had some questions. Thanks.

>> Conrad Taylor: Sam, do you have a question too? Okay.

>> Scott Johnson: I think it would be helpful just to go over the work -- get a summary of the work related injuries and whether or not they still existed at the time of retirement. Because it appears to me, looking through the material, there were a number of work related incidents that occurred that caused, you know, for causation for this application for disability retirement.

>> Correct. With regard to the left shoulder there was an injury on 4-19-08 and then the final straw was on 3-19-09, at which point he had surgery to the left shoulder in April of '09 and never regained the ability to return to his job, service-retired while he was recuperating, and then ended up with permanent restrictions because the surgery did not go well. So that he ends one permanent restrictions to the left shoulder as a result of the combination of those two injuries in April of '08 and in March of '09.

>> Scott Johnson: Okay. I'm going to ask for some clarification. So the injury in '08, that occurred while lifting an air bag at the airport. So was that -- that was related to work?

>> Yes.

>> Scott Johnson: Okay. And what type of treatment was received, and what is the current status of that injury?

>> The treatment that he received for the left shoulder was surgery --

>> Scott Johnson: Sorry, that was the left knee.

>> The knee was the air bag, the shoulder was the stove.

>> I'm sorry. Dr. Das provided no restrictions for shoulder initially, although the treating doctor did. If you are going to go with Dr. Das's restrictions he provided no restrictions for the knee.

>> Scott Johnson: Okay, well, let's go with Dr. Das. And the next injury was 2009 and it related to the neck, correct?

>> Next after which?

>> Scott Johnson: Well, there's another injury that occurred, it occurred to the neck in 2009.

>> There were two injuries 2009, January to the left elbow and March to the neck, shoulder and back.

>> Scott Johnson: Okay so the one related to the neck from the material that I've read, there was -- there was no significant treatment. Except that there was some physical therapy.

>> For the neck.

>> Scott Johnson: For the neck.

>> Yes.

>> Scott Johnson: Okay, so that's not an issue for this application?

>> It is from the standpoint of the treating physicians. But if we're going to go with Dr. Das's opinions we're only looking at the left shoulder.

>> Scott Johnson: Okay we're only looking at the left shoulder now. And when did that injury occur?

>> Two injuries, one March 19th of '08, I'm sorry, April 19th of '08 and March 19th of '09.

>> Scott Johnson: Okay. Can you refer me to those medical reports on the conclusion of the treating physicians relating to those two injuries?

>> I'm sorry you're asking --

>> Scott Johnson: Dr. Das, I don't see a summary from you in regards to those particular injuries, April 19th '08 and the one -- the one in '09 relates to the left elbow.

>> Dr. Das: Right. If you look at the doctor -- if you look at page 53 there is a doctor's first report of injury by Patrick McReish, refers to him moving a stove at the firehouse and noting shoulder pain. That's the basis for that injury and he received treatment for it and underwent surgical intervention.

>> Also page 28, Dr. Das.

>> Dr. Das: Okay.

>> Scott Johnson: Dr. Das what's your conclusions on those two injuries? Because I didn't see your conclusions in the report.

>> Dr. Das: With respect to the left shoulder is --

>> Scott Johnson: Yes.

>> Dr. Das: Oh, in the discussion with respect to causation, I refer in my initial history of present injury I described Mr. Hall's injury to his shoulder moving the stove. And that's in the -- that is in the body of the report. And so I basically indicate that the left shoulder has undergone extensive treatment and surgical intervention. And based on the pathology that's present there it seems reasonable for him to have some work restrictions for his left shoulder. Because I think he's exhausted treatment.

>> Scott Johnson: Okay let me ask for some clarification. Because in your report you mention related to that injury that he had six sessions of physical therapy, he was referred to an orthopedic surgeon and received some Xrays and MRI. I'm not sure what this is because I'm not a medical specialist. But he underwent subacromial decompression, can you put that in layperson terms?

>> Dr. Das: Yes, I can. What happens is that there is a -- the rotator cuff muscle travels underneath our clavicle, and our shoulder bone is called the scapula. And there's an area called the acromion where the tendon of the rotator cuff travels under, and then attaches to our arm bone or the humerus. And it's involved with external rotation and raising of our arm. And what happens is, if that area has a lot of bony spurring or anything like that, it makes the area that the rotator cuff muscle goes through a lot smaller. So it's subject to pinching, it's subject to tearing, and that's what we refer to as shoulder impingement. Have you ever heard of the term, shoulder impingement?

>> Scott Johnson: Right.

>> Dr. Das: That's one particular area where the rotator cuff muscle gets impinged. There's one approach to stopping that impingement is to make the area a little bit bigger so you get rid of the bone or the acromial process, the acromion, and clear that hole out and make it a little bit bigger so the rotator cuff muscle can travel through it a

little bit easier. So that is what a subacromial decompression is. It's a surgery to -- it's an arthroscopic or an open procedure to open up that area so the rotator cuff muscle has more room, and so that way you don't get pain when you raise your shoulder or you try to externally rotate it.

>> Scott Johnson: With regard to that treatment on page 10, you state that it is unlikely that there are additional treatment options that would significantly improve his residual ability or tolerance for work. So can you give us your conclusion -- well, does that then require work restrictions in his ability to perform as a firefighter?

>> Dr. Das: Yes, I provided those restrictions based on that.

>> Scott Johnson: Based on that, okay. Your conclusion is that he have avoid repeated and strenuous work and overhead lifting with his left shoulder.

>> Dr. Das: Yes.

>> Scott Johnson: Which would prevent him performing duties as a firefighter.

>> Dr. Das: That is my understanding.

>> Scott Johnson: As a result that these injuries have related to -- while he was conducting work for the city.

>> Dr. Das: Yes.

>> Scott Johnson: Okay, thank you.

>> Conrad Taylor: Sam.

>> Sam Liccardo: Dr. Das, on page 33, Dr. Coleman's report, it appears in February of '09 the patient, in the second full paragraph, says the patient continues to perform his regular job duties but remains symptomatic. And I'm trying to understand whether, at the time he retired, which was June 27th of '09, I believe he was on full active duty at that time or not?

>> He had surgery in April of '09.

>> Sam Liccardo: Surgery in April of '09, okay. This is immediately prior to that surgery.

>> Right.

>> Sam Liccardo: I'm sorry. He did, okay, thank you.

>> He was recuperating from the surgery at the time he service-retired.

>> Conrad Taylor: Any further questions?

>> Rose Herrera: Motion to approve.

>> Conrad Taylor: Do I have a second?

>> Second.

>> Conrad Taylor: All those in favor? All those opposed? The motion passes.

>> Thank you.

>> Conrad Taylor: Under change of status, number 3D, John P Quayle, retired police officer, police department request for change in status to service connected --

>> 3C Conrad?

>> Conrad Taylor: 3D.

>> We have 3C.

>> Conrad Taylor: Oh, sorry about that. Change of status, 3C. Robert M. Juelson, retired fire captain. Fire department, request for change in status to service connected disability retirement effective January 24, 2009, 38.31 years of service.

>> Robert Juelson, fire captain Robert Juelson is requesting change in status to service connected disability based on neck, shoulder, low back and knees. 65 years old with 38.31 years of service. Medical reports are listed in your packet. His work restriction is that he should avoid repetitive forceful shoulder level or above activities with his left shoulder. He's currently service retired, effective 1-24-09. At the time of separation and application he was on modified duty and there's no permanent modified duty available.

>> Conrad Taylor: Thank you, Donna. For the record I would like to indicate that Mr. Juelson is present with his attorney, Mr. Swift. Dr. Das, do you have anything to add?

>> Dr. Das: Not at this time, no.

>> Conrad Taylor: Mr. Swift.

>> Work evictions with regard to multiple body parts but Dr. Das concluded that the shoulder was the primary basis of his inability to perform his duties, gave him permanent work restrictions with regard to that shoulder, the

department has no permanent modified duties available and we would ask that the application be granted on that basis.

>> Conrad Taylor: Shown here Scott.

>> Scott Johnson: Thanks. Mr. Swift can you just give us a summary of the -- when the work related injuries occurred related to this application?

>> Well, I'm looking for my list. But I don't find it here. They should be all in your packet at the end of your thing but I don't have my packet here for some reason.

>> Scott Johnson: You know we have the disappear of the medical reports however I think as a board member it's important for me to make the connection of the work related injury because we're talking about a work related disability. So I think the primary one that's referenced in Dr. Das's report is, the injury to the neck. Is that the --

>> No.

>> Scott Johnson: Okay.

>> He's relying on the left shoulder as I recall.

>> Scott Johnson: Yes.

>> And the left shoulder did have surgery.

>> Scott Johnson: And when did the injury occur for the left shoulder?

>> I'm looking for that.

>> Sean Kaldor: Page 113 has an injury report, February 13, '08, stating he was trying to remove a 170-pound unresponsive male from a vehicle, for emergency medical care, felt a sharp pain to his right shoulder. I don't know if that was the one that --

>> What was the date?

>> Sean Kaldor: It would be February 27th, '08.

>> There was also one on the -- no, that's right, February 27th, '08, that's the one.

>> Scott Johnson: What was the treatment received for that injury and what's the current status?

>> I'm sorry?

>> Scott Johnson: What treatment was received for that injury and what's the current status?

>> Surgery and that didn't resolve well.

>> Scott Johnson: Could you refer me to what page?

>> Unfortunately I don't have the packet. I'm sure Dr. Das can help us in that regard.

>> Mollie Dent: I would point out that the page 113 relates to the right shoulder, but I think page 114 relates to the left shoulder.

>> And page 114 has a different date of injury.

>> Mollie Dent: And Dr. Das's work restrictions I believe are related to the left shoulder.

>> Left shoulder, that's correct.

>> Sean Kaldor: This was may 2007, extending a 28 foot ladder from a ground position, lifting it from the ground felt a sharp pain to the left shoulder.

>> That is correct.

>> Scott Johnson: And what treatment was received for that injury?

>> Surgery.

>> Scott Johnson: Thank you.

>> Conrad Taylor: Any further questions? Russ.

>> Conrad, also for the left shoulder is page 120 for a different David injury. Looks like December of '04. Doesn't perhaps -- and also, 123.

>> Conrad Taylor: Rose.

>> Rose Herrera: Yeah, it seems like there's several injuries over time to the left shoulder, I don't know if there are other right shoulder ones too. It's pretty clear there's a lot of work related injuries over time and I see enough evidence here to justify this so I'm going to make a motion to approve.

>> Sean Kaldor: Second.

>> Conrad Taylor: All those in favor of the motion? Aye. All those opposed? Motion passes thank you very much for your time sir with the city, 38 years. Now, under change of status, number 3D, John P. Quayle, retired police officer, police department, request in change of status to service connected disability retirement effective January 31, 2005, 25 years of service. This is continued from the September 2nd, 2010 meeting. And under there, there's a little I, staff memo regarding disability application, filing deadline. And another two I, letter from Stanek and Boyle regarding John P. quail, section 3.36.920. Present is Mr. Quayle with his attorney, Tom Boyle. Donna -- Mollie is this a continuation from September or do we need to --

>> Mollie Dent: Yes, it is a continuation from September. And I was looking to the minutes to make sure that we have -- that all the board members that are here today were at the September meeting. That was something that I was looking for. All the board members will need to agree that they were here and heard the testimony in September or we'll have to hear it again.

>> Conrad Taylor: I was here.

>> Rose Herrera: I was hear but I would like to refresh my memory.

>> Mollie Dent: Trustee Liccardo was not here. You still have four people if you want to go forward. If trustee Liccardo wants to participate, it would probably be a good idea to bring the testimony, have Dr. Das do the presentation that he did before and let the applicant do his presentation as well.

>> Conrad Taylor: Okay and Donna why don't you just read it for the record then.

>> Police officer John P. Quayle is requesting a change in status to a service connected disability based on heart condition. He's 54 years old with 25 years of service. Medical reports are listed in your packet. Work restrictions, he should not engage in strenuous physically demanding activities such as pursuing and apprehending suspects. He's currently service retired effective 1-31-05. At the time at the time of separation at the time of

application he was work full duty and there is permanent modified duty available in an article 39 position, according to a memo from his department.

>> Conrad Taylor: Dr. Das.

>> Dr. Das: Mr. Quayle has significant cardiovascular disease and for that he underwent a four-vessel coronary artery bypass graft and suffered complications after the procedure. He is diagnosed with borderline left ventricular hypertrophy which indicates that he also has a concomitant diagnosis of hypertension. As I had stated earlier with respect to another applicant, the restrictions I provided for him are based on an uncontrolled situation, where he would not be able to control the level of physical exertion or activity when he's feeling apprehending criminal suspects. But as I stated earlier its would recommend he continue an exercise regimen as a healthy -- on a healthful base as a protective mechanism.

>> Conrad Taylor: Mr. Boyle.

>> Scott Johnson: Conrad, I'm sorry.

>> Conrad Taylor: Go ahead.

>> Scott Johnson: If we go back to the minutes, the motion was to continue the hearing pending staff review of the board's decision on prior disability claims. Since the implementation of the one year rule and specifically reviewing if any applicants have been allowed to file their claims without regard to the one year rule. I'm just wondering, isn't that what we should be discussing right now? We've already reviewed the medical records, unless there is any new information but that wasn't part of the motion. It was specifically looking at the one-year rule and the history related to the one-year rule.

>> Conrad Taylor: It was my impression for the record though, since Sam wasn't here we wanted Sam to hear at least a summary.

>> Mollie Dent: I think that's up to the board. I think that's up to the board if you want Sam to be able to participate I think you have to allow the applicant to represent his information. If the board wants to go forward with just the four of you, you can do that, as well.

>> Scott Johnson: I'd say let's continue, then, thank you.

>> Conrad Taylor: Mr. Boyle. Or -- Russ, did you have --

>> Russell Richeda: Another possible option -- I'm not saying it's a desirable option -- is to continue this hearing, and allow Sam to hear the tape of the last month's meeting. That may not be the board's preference under all the circumstances, but it is another available option.

>> Mollie Dent: That would work, as well, but it would require then putting it over another month.

>> Sean Kaldor: Been three months for this guy.

>> Conrad Taylor: Yeah, let's continue. Mr. Boyle.

>> Continue on --

>> Conrad Taylor: Continue currently today.

>> For Mr. Liccardo's benefit, we have Dr. Das giving restrictions that prevent officer Quayle from performing police work. They are based upon Dr. Das's report and the analysis of Dr. Jonathan Ing who indicates that the heart condition is 90% work related without the presumption. So we're not relying on the presumption here, this is truly heart disease related to work. There is a question about the tow hearing officer's job, which is the article 39 job that lieutenant Bacios has testified to that Mr. Quayle can perform. However, the tow hearing officer's job as

we understand it is a job where you deal with the public, people who are complaining about having their car towed. The duty manual requires the police officers keep their gun, badge and I.D. with them at all times. And we are under -- we are urging that that position would not be able to be done by officer Quayle, because of the need to sometimes act as a police officer, and violate his work restrictions that Dr. Das has given him. Then, the next issue becomes whether or not he can apply for his disability retirement beyond one year from his separation from city. We believe that section 3.3690 (a) 4 allows him to do that, and we thank you we have established Officer Quayle's qualifications to apply for a one-year separation from city service while still a member of the retirement system after one year. So it is our position that he is within the time frames to apply. He cannot do his regular duties and can he not do the article 39 job offered by the police department. And so we're urging that his disability retirement application to convert his service retirement to a disability retirement be granted.

>> Conrad Taylor: Sean.

>> Sean Kaldor: So on that question you raised about a one year we had the staff do an investigation. Can we get the summary of that investigation?

>> That is 3DI, regarding the disability retirement application, since the new rule has come into effect, we haven't had anybody apply separated after 2004 and apply after September, in that same situation.

>> Sean Kaldor: Okay so just to summarize from your memo, what you said, and I appreciate it, because I was emphatic about let's go through and make sure we are being consistent. You looked at 160 change in status to service disability cases which were all done since the rules changed. And in none of those, did we have someone who applied after one year? Thank you.

>> Conrad Taylor: Mollie.

>> Mollie Dent: So I wanted to take an opportunity to reply to Mr. Boyle's letter in your packet dated September 20th, regarding code section 3.36920. As Mr. Boyle indicates in his letter, there are two -- there appear to be two

issues with this application. One is whether or not the person was disabled during the course of his employment with the city. That's 3.36.920 (a). Number 2. And then the section issue is, whether or not the application itself was timely filed. That's 3.36.920.4. But I did want to say that there are both of those applications in this issue, whether or not the injury occurred, not the disability but the injury while he was disabled with the city and secondly, whether or not he has demonstrated by a preponderance of the evidence that the disability is due to diseases and/or conditions caused by exposure to workplace factors and/or conditions that at the time of his separation had no previous basis to be considered harmful.

>> Conrad Taylor: Thank you, Mollie. Sean.

>> Sean Kaldor: So that last phrase you read there, could you walk us through that the diseases known to be considered harmful at the time. That seems to be a key point for us here.

>> Mollie Dent: So our -- and I'll let Russ give you his two cents worth too and I'm sure Mr. Boyle can also opine on this. But my reading of that second piece, which is the one-year rule, is that the applicant needs to demonstrate by a preponderance of the evidence that in this case it's the disease or condition. Was caused by exposure to workplace factors that had no previous medical basis to be considered harmful. So at the time of his separation from service, which is in part a medical question, because the question is whether or not the workplace factors of being a police officer could lead to heart disease was known at the time he separated from service, to be a causal factor. That's the way I read that, is whether or not, the medical community, at that point in time, considered that connection to be there. And so that's why I view it as something that you might want to ask Dr. Das about.

>> Sean Kaldor: So to paraphrase, back in January 31st, '05, there would need to be no knowledge or no understanding that this job could lead to this type of cardiac disease in order to come back and say more than a year later even if he was asymptomatic and it wasn't realized until later?

>> Mollie Dent: The issue -- the issue the way it's phrased in the code is a medical basis. It's not -- so I think it's partially -- it's at least in part a medical -- a medical evaluation, whether or not it was known at the time that heart disease was harmful. The purpose the section seems to have been situations where someone would retire for a condition, would retire because they were disabled at the time. I mean, they had cancer, and they couldn't work. And they retire. At the time they retire, it isn't known that that type of cancer is caused by something they were exposed to in the workplace. Three or four years later that connection is made. And so they're able then to go ahead and file their application because now they know that their cancer is caused by work. That's why I said there are two issues in this application. The first issue is whether or not -- whether or not the disability existed while he was still work for the city.

>> Sean Kaldor: Thank you.

>> Conrad Taylor: Looks like the next one would -- Sam, and then --

>> Sam Liccardo: All right. I'm actually hung up on another issue. And forgive me if this was already discussed fully and resolved at the prior board meeting. But it's this article 39 position. I understand that there may be extraordinary circumstances under which an officer may be called into duty. But to do somehow more strenuous activities, than what is essentially a desk job, but look at the physical requirements of the position on page 13, they don't seem to demand that. And if article 39 jobs aren't there for people who have work restrictions and disabilities, then who are they for? And why don't we just get rid of the whole program? I understand we've got a court mandate here or actually a settlement if I'm not mistaken, we have these positions for a reason. I don't see why that should not resolve that issue.

>> Conrad Taylor: I may want to interject on that, maybe Lieutenant Bacias also. But just because you're in an article 39 position doesn't mean that an individual could be in the front lobby, if something is going to occur, or if you are going to be attacked because you are a police officer, you are going to have to take some defensive actions or you may have to get involved in something use because you're sitting there. So if you are a towing officer you may have to meet with individuals who are upset because their vehicle has been towed and now the

confrontation will start. They will look at you as a police officer and you may have to defend yourself. So it may not just be a desk job. You're sitting at a desk or something may occur or can occur. Lieutenant Bacias would you like to add anything to that?

>> No, I think (inaudible) all the it's now calmed the exempt officer program but at the time was called article 39, all the positions are generally as councilperson or Mr. Liccardo said, desk job. But you know at any time, somebody may be called into duty so by their very nature they're not supposed to enforce the law but that doesn't preclude them from having to step into action.

>> Sam Liccardo: So maybe you could help me lieutenant. The job is primarily for people with disability of some kind that precludes them from engaging in more physical -- physically demanding work?

>> That's correct, they're unable to work full duty which would be in uniform, that's correct.

>> Sam Liccardo: Look, I understand there maybe some extraordinary circumstance but I don't think the fact that the mere fact that someone's got a badge on makes them more likely to be attacked physically and I understand that there may be contentious discussions over towing. But there are contentious conversations in lots of contexts with lots of de desk jobs. I'm looking at the physical requirements of the position and I don't see it here. And I'm just not understanding why we have a program in place precisely to ensure that people can continue working when they have physical limitations and then say well even if the position's open it doesn't matter. Because somebody's still entitled to disability. I think this is a totally contradictory scheme and at some point we need a clear sense of what this means. Why it is we have a program if the program doesn't mean anything.

>> Well frankly we have a program because we're under federal consent decree.

>> Sam Liccardo: Right.

>> After that expires I suspect that conversation will be held.

>> Sam Liccardo: Right, thanks.

>> Conrad Taylor: Thank you, lieutenant. Sean.

>> Sean Kaldor: So just a quick question. Your restrictions say that you're restricted to daily living due to your bypass surgery and Guillan Barre syndrome. Maybe for Dr. Das can you describe the symptoms of Guillan Barre syndrome?

>> Dr. Das: Okay, Guillan Barre is a nerve -- nerve injury. It is what we call a polyradiculopathy. So if you can imagine, we see a lot of individuals that come in with disks pinching the nerve. And they called call it a radiculopathy. This is a polyradiculopathy in which a number of the nerves are inflamed. It is an autoimmune response kind of like rheumatoid arthritis or something where the body essentially attacks the myelin, which is the conducting portion of the nerve. It is the sheath that surrounds the nerve, and that becomes inflamed. As a result of that particular problem, the person ends up suffering, can end up suffering significant paralysis of all the muscle groups particularly in the legs and arms to the point where they require ventilation and assistance with breathing. So it's a very significant nerve injury. And so subsequent to that there is a recovery but as the nerve heals, it may be imperfect healing. And so there are people that complain of residual numbness or tingling or what we call neuropathic symptoms after suffering this particular problem, and you can also have residual weakness in different muscles. So, it's a very significant nerve disease. And it's an autoimmune process. So -- but the recovery is variable. Some people can have close to a full recovery and other people can have significant residual problems.

>> Sean Kaldor: Thank you.

>> Dr. Das: Is that clear enough?

>> Sean Kaldor: Yes. So Mr. Quayle, I believe last time I believe you gave us some information about what your daily life is like in terms of exercise tolerance and sleep required through the day and things like that, taking breaks. If you can summarize that again for us that, might be helpful.

>> Sure. Again, as I mentioned before, I never thought I would be here. I retired with a service retirement. I went off flying helicopters for the -- our local news station here. And I lost that employment, because the FAA will not allow me to fly commercially anymore. The issue with my private doctor I didn't even talk about light-duty jobs with the police department because I was retired. The issue was, I was not going to be able to fly. CB -- or the helicopter anymore. So I accepted that and it was only when I was contacted by one of our retired deputy chiefs who informed me about the exception to the one year rule that I applied for this. It would be wonderful to go work a job if I felt I could handle that. My typical day, I do have some -- some aircraft paraphernalia, antique airplane, and I go to the hangar on a daily basis, I work on it, I take my nap right around 1:30, 2:00. I don't think -- I mean, I know for a fact there's no way I would handle a ten-hour shift at the police department sitting in a back room somewhere, much less confronting the public or dealing with the public. And I don't know if Mr. Liccardo was here before. But I did mention one of my most violent physical encounters happened right there in the lobby of the police department. Myself and Joe Falcao fought through different -- the auto theft section into the records section before we got this guy into custody. So I would not be able to perform the function if I was faced with taking a josh like that I would just have to say thank you very much I'll just go ahead and retire on a service retirement. This is - - I wouldn't jeopardize the citizens, my brother officers or myself with that.

>> Sean Kaldor: Thank you.

>> You're welcome. Ask with.

>> Conrad Taylor: Sean, you're up. Any further? Looks like I have Scott.

>> Scott Johnson: Thanks. Dr. Das, wanted to go back to your memo dated August 16th. Item number 2 in regards to the medical records submitted for review, because one of the things that you looked at after the first

meeting when we talked about this was going back and looking at the archives. You mentioned number 2 that -- wait a minute, I'm sorry under the discussion the medical chart from this -- from the employee health services had not been returned from archives as of this memo. So I was wondering if you had an opportunity to review those any further, if you had any further observations.

>> Dr. Das: Actually, his records did come through and he had not been to medical for quite a long time. And so the only information we had regarding the -- was the entry physical and there was no -- nothing really that shot anything from the entry physical. But we did not have any records from --

>> Scott Johnson: Okay and then also as a follow-up from your supplemental report dated August 16th, you also mentioned that the progress report dated January of 2007, by this doctor, he states that Mr. Quayle's blood pressure was at 148, at an FAA physical and their limit was 155. So in 2007, he qualified based on that medical examination in regards to the level of his blood pressure. Would that be a correct conclusion?

>> Dr. Das: I'd have to review but I believe he did qualify for the FAA at that date.

>> Scott Johnson: Okay, thank you.

>> Conrad Taylor: Rose.

>> Rose Herrera: Thank you. So Dr. Das, back to the discussion portion on page 5 from your supplemental report. It says medical records indicate that Mr. Quayle was diagnosed with borderline hypertension back to 2005 and prescribed medication. So would that have would that be considered to be -- how would you look at that in terms of what presented in 2008 with his heart condition?

>> Dr. Das: Oh, I would not have predicted what happened to him in 2008 from that particular diagnosis. No. I mean, I -- when you have cardiovascular disease it can definitely progress. But in terms of the severe nature of

what he experienced in 2008 without any real, you know, Prodrome or anything earlier than that, I wouldn't -- how do I put it? I understand why things happen like that but I wouldn't have expected it in his case.

>> Rose Herrera: We didn't have an echocardiogram, or any test to show --

>> Dr. Das: His is one of a functional -- his was kind of an unusual situation where he had an acute presentation and from what can I tell he was fairly fit, I mean none of the typical risk factors that you see in individuals. And that's why I was a little bit more surprised. And then he had an acute presentation on the treadmill where it showed significant blockage and he was symptomatic.

>> Rose Herrera: And that was in 2008, right?

>> Dr. Das: When had he that first occurrence and he had to go through it, yes. It was not something I would have expected just based solely on the diagnosis of hypertension. But the fact that he has hypertension indicates to me that it's not due to renal stenosis or something like that it's probably due to cardiovascular disease.

>> Rose Herrera: Then given that can we indicate how far back that would have gone looking at symptoms in 2008? Is that right, to make that inference or not?

>> Dr. Das: I don't believe so. Hypertension is typically a silent disease. And when you have strongly -- the only type of symptom that you would have from the hypertension is, as you mentioned earlier, is the echocardiogram and the left ventricular hypertrophy which is the obvious link between the two and we don't have that. Your question is very good.

>> Rose Herrera: There wasn't enough apparently symptoms or concern to have medical records at that time to have further -- get further treatment for some kind of a condition that would have led somebody to have an echocardiogram?

>> Dr. Das: It doesn't appear that. I mean from a screening standpoint you can argue about whether an echocardiogram would have been helpful. But from a clinical standpoint, from the find of looking for something that is wrong, no.

>> Rose Herrera: That is one concern I have. The other is number 4 in 3.36.920, diseases harmful at the time. In terms of hypertension, first of all would that have been something, did we learn something now that would have caused us to do something different back then? Can you address that issue?

>> Dr. Das: I can't exactly come up with the time line in terms of when. But I do know that our aggression in treating hypertension has changed. 2005 might be too far, it might not be that far back as far as recommendations. But now cardiologists are very strongly pursuing a 120 over 80 as the blood pressure whereas before there was a little bit more margin in terms of treatment with 140 over 90 and people in the 130s being somewhat acceptable. But now it's a lot more aggressive in terms of 120 over 80. But I'm not that familiar with the literature to know exactly when that kind of change in thought happened.

>> Rose Herrera: So 140 over 90 now if you were presented with that would that be considered mild or would that be considered hypertensive?

>> Dr. Das: It's considered hypertension and it's something you would treat it to get it down to 120 over 80. Mild, I'm not sure what terminology they would use but they would definitely say that's not acceptable and you would want to bring it down to 120 over 80, and that's the goal.

>> Rose Herrera: But back in 2005, was that a treatable number, then? You don't know that?

>> Dr. Das: That's what I'd have to look and see, in terms of when the change happened, in terms of the literature. Some things trickle down in terms of the community in terms of how you practice, but in terms of coming up with official positions and literature that's a different issue.

>> Rose Herrera: Because that did it exist question, is did we know or even would we assume now, that that particular symptom would result in what happened in 2008? I mean can we make that linkage?

>> Dr. Das: It's not out of the question. It's not unreasonable but it's surprising.

>> Rose Herrera: But does it meet the kind of test that we're talking about where, I think this was meant for an officer's doing their job and there's a new disease discovered and they were basically being exposed to some chemical that at the time we didn't think caused cancer but later we found out it did.

>> Dr. Das: In my medical opinion no, I don't think there's a link like that. I think we had a definite idea about cardiovascular disease in 2005. We know hypertension is bad. In terms of the severity, in terms of our treatment approach, has definitely changed in terms of being more aggressive. And so if we are trying to make an analogy between an unknown or a chemical exposure at the time with the latency period to cause a cancer, and someone retires on a disability because they had a leukemia, and then we find out a little bit better that benzene is responsible for leukemia, then yes, that is a very clear link between the benzene and the leukemia. The epidemiology supports the linkage. It was not something that we necessarily knew a long long time ago, but there's a clear link between the two. Another analogy would be EMF or electromiatal force or energy waves in lieukemia where there's a lot of controversy surrounding that. But there is -- and when additional information is known there may be a clearer link between cancers and that.

>> Rose Herrera: Yeah, I think this is from my perspective very unfortunate. And I feel for the applicant, that the condition has progressed, and that you're dealing with this. But I -- I can't support this claim. Because of the fact that I don't see that linkage to what happened in 2005. That it should have been -- that we didn't know about it and that there's that link. That would prove to support based on 3.36.920, section 4. I don't see that so that's a problem for me. And also, showing that it was -- that it occurred while -- that it's service-connected, I think that's the other issue for me too. And so I really, as much as would I like to, and the final thing is the informational memo from Donna saying we have not violated this one-year rule in other cases. So I think we would be making

an exception and we need to have extremely strong evidence to be doing that and I don't see it so I'm going to make a motion to reject this.

>> Conrad Taylor: Sam, do you want to discuss?

>> Sam Liccardo: Yeah I guess I'd just say I actually don't have a problem with some of those issues that were raised. Actually my concern is slightly different. I think that -- I think Mr. Quayle has been very genuine in what he's said so far and I don't doubt for a moment that he had no intention of being here today when he retired. I think that's part of the issue for me, because it seems to me that the purpose of this is, this -- the function here is to be able to provide disability benefits for those who retire because they're forced to retire by virtue of their disability. And based on the historical data we see on page 12 there were positions open. I understand that today, Mr. Quayle wouldn't take that position understandably based on his own concerns and his own history of doing and apprehending violent suspects. But it seems to me this isn't why he retired, this isn't why he stepped away from duty. And seems to me we're supposed to evaluate whether there or not there is a position for him, as of the date in which he left service. I believe that is the critical inquiry, it's not today but rather, at the time he left service. So that's why I would support the motion.

>> Conrad Taylor: Scott.

>> Scott Johnson: I'd like to echo Rose's and Sam's comments. And also I really don't agree with the position in regards to article 39 position with the tow hearing officer. It's real clear that the requirements of the position, it's a light-duty status position, it is a nonuniformed position. I just reflect as my responsibilities as a finance director. I don't carry a gun but I lien property. I go after collections. We have two administrative hearing officers in the finance department to hear cases in regards to vicious animals, parking citations and so on. I have staff that are not police officers, that go and collect and go to small claims court and so on. So I really see this position as a tow hearing officer very similar to our administrative hearing officers which do not require someone to be a police officer. So I cannot support the application.

>> Conrad Taylor: Sean.

>> Sean Kaldor: I guess my challenge is in the code we have written, it has -- excuse me. It has the one-year requirement. I understand we have to limit our liability and exposure, and we can't have people coming back 30 years later and you know at some point you have to tie that disability. It should be resultant from work. The way this is written, makes it hard to approve this case. I would -- I wish there was greater clarity or maybe this is the intended consequence of how it was crafted. But that's the struggle I face, as much as I appreciate what you're going through. And how hard that is, and the genuineness of it and its origin, it is that one-year requirement that gets me -- binds me kind of like.

>> Conrad Taylor: Any further discussion? So the motion, Rose, your motion -- the motion to reject this application.

>> Sam Liccardo: It was already made.

>> Conrad Taylor: It was already seconded. All those in favor of rejecting. All those opposed? Aye. I'm sorry to say, Mr. Quayle, that your --

>> Well, thank you for your time. Appreciate it.

>> We thank the board and the counsel. It was a good discussion of this issue. Thank you.

>> Conrad Taylor: Okay moving on number 4, deferred vested, 4A, Rudolph E. Downing, police officer police department, effective November 27, 2010, 18.11 years of service. Is there a note in the file? That's just a note in the file. Under --

>> No, I think you have to approve. You do have to approve.

>> Conrad Taylor: We do?

>> Rose Herrera: Second.

>> Conrad Taylor: All those in favor, aye, motion passes. Under death notification. Number 5, notification of death of Jonathan Watkins active firefighters died 7/25-2010. Survivorship benefits to Ryan and Sean Watkins, both sons. And number 6, notification of death of Glenn McCourtie, retired police department, died 8-12 of 2010. Survivorship benefits to Mary Ellen McCourtie spouse and to Wesley McCourtie. Son. If I could have a moment of silence for these two individuals. [ Moment of silence ]

>> Conrad Taylor: Thank you very much, if we could put it a note and file. Moving on to new business. At the beginning of this meeting we indicated that item number 11 would move ahead of the other items under new business and that would be the presentation from auditors office on report titled, pension sustainability, rising pension costs threaten the city's ability to maintain service levels, alternatives for a sustainable future.

>> Sharon Erickson is not present. I e-mailed her just a few minutes ago, she said she was on her way down. She said she would be here. Perhaps we can move through the agenda.

>> Conrad Taylor: New business, number 7 then. Number 7 is approval of change of retirement date for Stephen J. Gutierrez from October 21st, 2010 to October 30th, 2010.

>> Motion.

>> Conrad Taylor: Is there a second?

>> Second.

>> Conrad Taylor: All those in favor, motion passes, item number 8. Discussion regarding lowest cost plan and Kaiser senior advantage plan. Donna, if you may.

>> This is a request that the board made last week or at least the chair, Bacigalupi, asking questions about the lowest cost plan and the Kaiser Senior Advantage plan. As we have a staff memo indicating that the presentation last month from Alex Gurza was mainly talking about active employees, that they are still going to -- that it is still the intent to offer the Kaiser senior advantage plan to the retirees this year. And that the Kaiser senior advantage plan would not be considered the lowest cost plan even though it's less expensive than the plans that they talked about last month. Because it's not available to the active members.

>> Conrad Taylor: Rose, go ahead.

>> Rose Herrera: So in the memo I'm looking on the conclusion, it says nonmedicare retirees will be have the option in enrolling in the new \$25 co-pay plan or if they're willing to pay the difference with the \$10 co-pay plan. Nonmedicare, how are they treated?

>> Non65 employees have the same options as the active employees. The difference is now the lowest cost plan would be the 10 dollar co-pay. I'm sorry, the \$25 co-pay plan. That premium is lower so if they elect to stay with the \$10 co-pay plan they may have to pay some out of pocket.

>> Rose Herrera: What about the folks on Medicare?

>> They are supposed to go through senior advantage one of the Medicare plans.

>> Rose Herrera: Will they still have Kaiser available to them? That's the question.

>> Yes, they will, the Senior Advantage.

>> Conrad Taylor: Donna, thank you very much, that was informational, that was a note and file. Sharon, looks like she arrived. If you're ready, we're ready. Okay.

>> Sharon Erickson: Thing about you being on TV is we can watch you upstairs and come down when you've reached that point in the agenda. So I just wanted to make a very brief presentation today, basically to let you know that we have issued our audit on pension sustainability. The bulk of the recommendations here are to the city council, and to the city administration. As you know, and I won't go into detail on this because we pulled most of the information from in this report from documents that you have prepared. I hope that some of the historical information is valuable to you. For those members who haven't been on the board as long. But we did find, just to summarize, that pension benefit increases have had dramatic impact on cost, even before the recent market losses. And now, rising pension costs threaten the city's ability to maintain service levels. There are three recommendations in the report that I wanted to point out to you. Recommendation number 2 was to ensure the reasonableness of the methods and assumptions used by the retirement plan's actuarial valuations. I'm recommending that the city council amend the Muni code to require a actuarial audit of such valuations every five years if the actuary conducting the valuation has not changed in that time. The basis for this recommendation is just that we were started by the extent of the changes in actuarial assumptions and want to make sure from the City's side that we're encouraging you to evaluate those assumptions on a frequent basis. Particularly, when you have a new actuary come in they of course are doing their reassessment. But in a case where you're having an actuary for a long time, we believe that five years was the reasonable approach. And then, secondly I wanted to point out recommendation number 5, which was to ensure the city council is fully informed on retirement plan performance. The impact of any potential reforms and pension costs, we're recommending that the retirement services department ensure that each city council member receive both plans comprehensive annual financial reports. I wish I could get you to require them to read them. But I don't think that's within your power.

>> Because we do indeed send them every year for many, many years.

>> Sharon Erickson: Right, so I would actually like to see those on an agenda at a committee meeting so that there was some discussion on the part of the council at least at the committee level of those reports because

they're extremely important. And then secondly, that the retirement services department does provide an annual report to the city council that includes updates on financial status, forecast and so on. This is the type of report that retirement staff did last year, as part of the budget process. I believe the council found it very valuable. And I'd like to make sure that the council continues to get that kind of information from your highly qualified retirement staff. And then, recommendation number 6 was to improve communication and understanding of the financial health of the retirement systems. We're recommending that the department prepare an annual summary that -- summary report to plan members that contains current and historical financial and actuarial information. So that plan members can stay informed. We have all learned, as members of the various retirement plans, that we employees cannot afford to ignore these issues. And employees need to be informed. We thought this kind of simple report to employees would keep them better informed and to retirees as well as the status of the plan. And with that, I don't believe there's any action you need take on this. But I wanted to keep you informed. The recommendations we were making to the council that could directly impact you and your staff.

>> Conrad Taylor: Sharon, thank you very much. I concur with recommendation number 2 from being a prior auditor, was surprised we didn't come in and look at this things. Even though we're going to be looking at them on a yearly basis here now, so I think that is going to help out. Sean.

>> Sean Kaldor: First of all I want to say thank you. It was a very detailed, in-depth report. I had the chance to sit in on the structural deficit committee yesterday and hear your more detailed presentation on it and of course I read it cover to cover. I appreciate the three recommendations you made. There are recommendations beyond that but they involve the city and the bargaining groups sorting out what they want to sort out. I take to heart the recommendations you made and I would make the motion, if it's appropriate at this time, that we ask staff to review those three recommendations and come back to us at the next meeting with a review of what we currently do and any pros or cons or costs associated with implementing the audit of the actuary if it's greater than five years and our reporting processes to council and current staff members.

>> Conrad Taylor: I would second that. But we have Scott.

>> Scott Johnson: Thank you. I'd just like to echo Sharon, I think you did a fantastic job of this report. Extremely thorough. And it's definitely something that we need to continue to pay attention to. In regards to recommendation number 2, I think this board has taken a very good eyes-wide-open approach just recently when we looked at all of our, what is referred to as noneconomic indicators, which actually result in significant economic impacts in regards to the contributions and our unfunded liability. I do have a question and that is related to recommendation number 5. You recommend two different initiatives, and first is to ensure that each city council member receives both plans' comprehensive annual financial report. I'd like to take that a little bit further. The financial reports, for example, is presented to each retirement board, each respective retirement plan's board. I would suggest that there should be a -- at least an oral presentation by the city external auditor and the retirement staff in regards to the retirement plan's comprehensive annual report to the board. It's in our packet but we don't really have a formal presentation, and I think that would be really helpful for that to be a requirement. In addition to that, I also think that although we present, you know, myself as the City's finance director present an overview of the City's comprehensive annual financial report which includes the financial activity of the two retirement plans, I'm wondering if you feel it would be helpful that staff and the, because this is usually a separate manager that audits the retirement plans, if they should be making a formal report to the Public Safety, Finance and Strategic Support committee. So I guess what I'm suggesting is a more proactive approach, and not just having the reports available but actually walking through them, and the implications of the financial stability of the two plans. And you if could comment on that I think we need to take a more proactive approach.

>> Sharon Erickson: That's precisely what we're recommending, a more proactive approach on the part of the city council. The city council, as the plan sponsor, cannot afford to let things come through as purely informational items. We need to make sure the plan sponsor is paying close attention which of course now they are. But I want to make sure that get institutionalized even in the good years.

>> Scott Johnson: One last question, I know it could be a little controversial. For example on page 67 you talked about, this is a recommendation for the city administration. Consider whether to join the California public employees retirement system in order to reduce administrative costs. In your view through this audit, what are your conclusions in regard -- you know because we as trustees, we need to watch our costs. Because you know,

even though we don't really focus on them especially on the city side, we really focus on the General Fund, but there's obviously an indirect impact to the employees in regards to the contributions that are made and to the employer. So I'm just wondering, if you -- what your findings were in regards to the administrative costs for this plan related to other plans, similar-type plans, and as we compare to, say, California PERS. So clearly this should be a benchmark that we should be looking at as trustees, in regards to how does our administrative cost weigh up in comparison to other plans?

>> Russell Crosby: I'd like to answer that question or address it at least. I think you're look at the wrong end of the telescope, plainly. Yes, you can save a few dollars by using Cal PERS administrative services. Unfortunately, just in the last two years, you've probably paid for that administrative differential for the next 110 years over our excess performance. So you can't just look at the administrative costs and say, oh, we have a problem because our administrative costs are higher. Look at the ultimate performance that those administrative costs have generated and they have more than paid for themselves for the next century. So yeah, you can focus on administrative cost but I think that's the wrong end of the telescope because that administrative entity at this point is generating literally hundreds of millions of more than Cal PERS would have done with your assets over the last few years.

>> Sharon Erickson: And if I could add to that on page 58 of the report, we did -- we did do some benchmarking of administrative cost. There is a hire cost to self-administer a plan. But the retirement director has explained some of the benefits of that. We did benchmark against some other independent plans and, San José compares favorably to those plans. So when we ran the figures, San José was about 2.6% of total contributions. It compared to San Bernardino with about 2.6%, excuse me Sacramento was 2.6%. San Bernardino was 3%. So in comparison to other self-administered plans, the cost appeared to be reasonable and we didn't do any further work in that area. We did want to point out to the city council that there is another option. So part of what we were doing in this report was surfacing as many options as we could. So I felt it was important to lay that out as an option.

>> Scott Johnson: Do you mind if I just add onto that? I wasn't -- don't misunderstand me, I wasn't suggesting that we then join in with Cal PERS. My comments were basically that this is something as trustees, you know we need to watch our costs and we need to look at the other benchmarks and we need to lack of a better term justify the cost-benefit relationship in regards to our administrative cost. And I think Russell explained that very well and Sharon I'm glad you went into the detail but I think it is something that we should discuss and trustees. Thank you for that.

>> Sharon Erickson: Thank you.

>> Russell Crosby: One other element on our cost between the two plans we've reduced the fees we pay the outside money managers by about \$12 million. So we have significantly reduced the overhead for both of these plans.

>> Conrad Taylor: Sam.

>> Sam Liccardo: Thanks, Conrad. Sharon, thank you again for another wonderful investigation report. I was most interested in the discussion on actuarial assumptions. And particularly on page 41, because I think it's been kind of common, in -- I guess in defense of the existing pension structures, for people simply to point the finger at the market losses we experienced in 2008 and say there's the culprit. Clearly we've got actuarial assumptions on returns that are set too high. Based on our historical experience you say it's 7.5% over the last 30 years. Should that be informing us about where our actuarial assumption really should be, should it be 7.5 rather than 8.0?

>> Sharon Erickson: You know I'm going to punt that one back to actuaries and investment people, who could better -- better make a judgment on that before I made a recommendation in that vein. We were looking at the overall drivers of cost. And how those assumptions could drive the unfunded liability. I would hate to make the step over into making a recommendation. But it appeared to us I could say an area of concern. And I believe the board has discussed that in the past and will continue to discuss it.

>> Sam Liccardo: Yeah, we've had a very lengthy discussion last year, I know. In this case, because of the actuarial assumptions set as high as it is, at 8.0, I understand that we've got another \$138 million that's been added to our unfund id liability, I think it's June ever '09. It is clear this is a significant driver of the unfunded liability we see today, is that fair to say?

>> Sharon Erickson: Yes. So when you're comparing investment losses to your rate of return assumptions, I mean it's the differential. So the higher you have that return assumption if you thought you were going to have 8% and you had minus X it's the differential between those two. So the higher it is the less realistic it is, the more likely you are to grow your unfunded liability in the recent economic climate.

>> Sam Liccardo: Right, well, I appreciate that and I hope we'll keep this in mind when we consider the actuarial assumptions in our next discussion.

>> Russell Crosby: I'd also like to point out that the board last year, made the assumption significantly more conservative in a number of areas. And in fact, when you compare this plan, to other public plans in California, there is an actuary out there, Rick Roeder financial that looks at all the plans and ranks them on conservatism, right now, this plan is number 7 in the state and moved up six positions. Federated did a another similar type move, it is significantly lower in the rankings but this plan has come up and across the board fairly conservative in its actuarial assumptions. I think you identified one that we can continue to look at.

>> Sam Liccardo: Right.

>> Russell Crosby: But great progress was made last year.

>> Sam Liccardo: And I don't mean to throw the baby out with the bath water, I think Russell's point was well taken with regard to particularly the noneconomic assumptions and several of the other economic assumptions. But clearly, this rate of return assumption is a big one. I know it's something that I've been working to reduce and I know we didn't get there last time around. But it seems to me it's terribly important for us to keep

that in mind and obviously ranking 7 is great. The company we're in though is pretty badly challenged. Cal PERS came up with their unfunded liability somewhere around half a trillion, I understand. So it's not great company to be in in any case. But certainly, I understand we made great progress and I appreciate Russell's leadership in that regard.

>> Conrad Taylor: Rose.

>> Rose Herrera: I just want to thank the auditor in doing such a great job again. I think the interesting thing and Sam talked about it a little bit. Is just most people assuming that the majority of the losses come from the investment experience, when I think what's very interesting to me is I set up here to see how much of a role the noneconomic assumptions play, actuarial assumptions, mortality retirement rates all these kinds of things. So I think that's a very good piece of information for people to become familiar with so we're not just looking at the investment rates. And I think the -- going back to Scott's earlier question about comparing us to Cal PERS, I think that's useful if only to highlight how well we're doing compared to them. So I think it's an argument to stay with this plan and not go with Cal PERS, because I think we've done a really good job in terms of managing the investment side. And even if we could get the administrative costs down to, I guess it was a percent, as Russell pointed out, the overall thing is you want to make sure your investments are managed well and I think we're doing -- looks like we're doing a pretty good job of that.

>> Conrad Taylor: If I may add on with rose, I think retirement services has done an excellent job. I think this past year they made 14.3% just on that. So let's applaud them. Sean.

>> Sean Kaldor: So in my motion I had those three recommendations, 2, 5 and 6. I purposely didn't include the other couple that have come up and I just wanted to comment real briefly why. On the actuary assumptions, as was mentioned, I think board prior to my joining took some clear action to take more conservative estimates and keep our costs at normal cost rather than the unfunded surprise cost. And I think there's a process, we're going to do this every year and as we look at this again the assumed investment return is one that definitely can be reexplored and I would support doing that. As it stands right now as the director mentioned we are seventh most

conservative, which leads to the next point which is Cal PERS, 38th most conservative. Some of the issues you identified like our asset smoothing and what that does to our visibility, where we stand. We have a five-year asset smoothing, Cal PERS has a 15-year asset smoothing, would make it less visible to us. Requiring two-thirds of the nope vote on this. Even though it's a great idea and we want to do it, there is support that needs to be gained from the city and the bargaining groups. The returns versus the cost aspect, saving \$3 million a year is always a worthy cause, but if we lose a quarter percent or half a percent on our returns, that's vaporized. And then I think importantly, as well, kind of the control aspect. Right now we are working, or the city is working with the bargain groups on their contribution rates, all those abilities go away and PERS, as I understand you presented yesterday, has a legislative cap to contribution rates. So we lose control over many of the levers as we evaluate a PERS model, so I didn't think that was one worth jumping on unless people saw differently. Thank you.

>> Conrad Taylor: Scott.

>> Scott Johnson: Thank you, Sharon on page 43, recommendation number 2, I just want to get your thoughts about how this would -- the logistics. This recommendation would be that the city council would amend the Muni code to require these actuarial audits on the evaluations every three years. And you mentioned that the state of Washington and Missouri, they have similar policies to these recommendations. So then the board would obviously have to cooperate with those audits. And I would imagine that any recommendations from that audit would then be forwarded to the respective boards for consideration, for recommendations and improvements and the like, right? I'm just wondering, how does -- how does it work? Once the audit, if for example the state of Washington, they are conducting these periodic audits of the actuarial valuations, right?

>> Sharon Erickson: Yes. Let me just say what -- our recommendation does not flesh out how this would happen.

>> Scott Johnson: Okay.

>> Sharon Erickson: So I'm not really prepared to talk about that. What we were recommending is that as a policy and in the Muni code the city would require these audits to be done. As the plan sponsor, the city has an incredible interest in make sure those assumptions are right. It is, we did not say who would conduct those, whether they would be conducted internally, by the boards, or through the city. I think all of that is subject to discussion. I think first, what I wanted to get us to was a place where everybody is agreeing that this needs to be done. The mechanics of how that works out, I do think, having seen some ordinances go through the city, that could take some negotiation and time to actually work out the mechanics. I think first, we've got to come to some consensus as a policy choice that this is a good idea.

>> Scott Johnson: Okay, thank you for that clarification. And then Sean your motion, so when I go through the recommendation, so your motion was to approve recommendation number 2, 5 and 6 some is that what you said?

>> Sean Kaldor: 2, 5 and 6, the two recording ones to the members and the council and two for the audit of the actuary, and the motion was to have staff review those and come back with their evaluation and what we're doing currently, any cost or unforeseen issues.

>> Scott Johnson: Okay, because it looked like there was no actual action for the board, it was basically for Sharon to make the presentation. So just -- I'm just --

>> Sean Kaldor: Okay.

>> Scott Johnson: I hear what you're saying but I'm looking at the recommendation to see who they're -- who the auditor's recommending take action and most of this is the city council's you're not recommending that this board take any action at this time in regards to this audit.

>> Mollie Dent: So in terms of the item as it's agendized, it is not an action item for the board however, it is certainly appropriate for the board to direct staff to come back at the next meeting with information related to the audit, whether you do this under this item or under future agenda items.

>> Sean Kaldor: I would propose it as a new agenda item if I didn't do it here, and we can have the discussion at the next meeting.

>> Scott Johnson: Do we want to provide any -- does this board want to provide any comments or feedback to the council when this item goes forward? Would that be appropriate or --

>> Conrad Taylor: Mollie.

>> Mollie Dent: Yes, it's not, it's not agendized as an action item. And it doesn't require you to take action on it. So I guess the comments can be -- you've made comments.

>> Russell Crosby: Well, and the chairman has directed staff to make an analysis and report back at the next meeting which we'll have it on the agenda at the next meeting. And then the board can either take action or not as they see fit.

>> Sean Kaldor: An that would include some kind of formal letter back to the auditor saying, thank you for the report, we received it and -- thank you.

>> Conrad Taylor: Okay. There's a motion on the table. Want to go with the motion?

>> Russell Crosby: Sean Kaldor made the motion and seconded --

>> Conrad Taylor: Everybody understand the motion?

>> Russell Crosby: You're right, we've got direction. Motion is off the table.

>> Sean Kaldor: Withdraw the motion.

>> Conrad Taylor: Okay so that would be a note and file. Sharon, thank you very much.

>> Sharon Erickson: Thank you.

>> Conrad Taylor: Back to new business. Number 9 was deferred. Number 10. Discussion regarding letter from David Santiago, retired police officer, requesting a rehearing of his service connected disability application. Mollie would you like to --

>> Mollie Dent: Is Mr. Santiago here?

>> Conrad Taylor: He is not here in the audience.

>> Mollie Dent: So this has been placed on your agenda basically as an item of correspondence. This board does not have a process for re-- members to request a rehearing, once their application has been denied. In order for you to hear Mr. Santiago's application again, the board would have to rescind its prior denial today, and then that would basically put his application back in play and you would basically start the thing all over again. I'm not suggest you do that. I'm telling you there is no process for him to request a rehearing. You have to decide for yourselves that you want to re-- totally reconsider his -- totally rescind what you did before and start all over again. You could put it on the agenda in the future if you wanted to, make a motion to rescind the prior application. In fact you have to do it that way, under the Brown Act, that that's what you'd have to do is agendize the rescission at a future meeting. So that people could come address the rescission.

>> Conrad Taylor: But we don't have to do anything at this point, we could just put it as a note and file or do we have to make it -- respond to this?

>> Mollie Dent: You can provide direction to us to get back to Mr. Santiago that the board decided not to do anything with his request.

>> Conrad Taylor: Okay. And we don't need a motion for that. So unless the board has anything else I would make that decision, that they have the -- have the attorneys respond back to Mr. Santiago.

>> Mollie Dent: Okay.

>> Conrad Taylor: Under old business, continued, deferred items. Number 12 discussion and action regarding change in pay reporting for labor coat section 4850 disability payments and impact on retirement fund. Continued from September 2nd, 2010. And under this we have under 12A a letter from Wylie, McBryde, Platten and Renner on pay reporting for disability payments. Number he B I guess we can do this all in one because on 12C we will have -- make a motion on the clarification of the definition for compensation. But under 12B a letter from Alex Gurza, office of employee relations regarding amendments to labor code sections 4850. And 12C, review and recommendation of ordinary amending SJMC 3.36.020.3 to clarify definition of compensation. Discussion. Mollie.

>> Mollie Dent: I think the paperwork speaks for itself but if anybody has any questions about the ordinance, I'd be glad to answer them.

>> Conrad Taylor: Sean.

>> Sean Kaldor: I just had the chance to participate in some of the meetings resolving this and I wanted to thank Mollie and the labor attorneys and the City Attorneys and Office of Labor Relations, Employee Relations, and everyone who is involved in responding to this quickly. We already saw we have one member in our agenda today who had to move back their retirement while this was sorted out. But I think the response was quite aggressive and appropriate, and from what I understand from both sides, everyone is happy with the solution so I just wanted to thank everyone for doing that.

>> Conrad Taylor: Okay, no further discussion. Do I have a motion on the floor to recommend the ordinance?

>> Scott Johnson: So moved.

>> Conrad Taylor: Okay, I have a first and a second. All those in favor? Aye, all those opposed, motion passes, thank you Mollie. Number 13, update on status of exit physicals. Donna.

>> The update is basically that we don't -- we still don't have the information back from the health providers to be able to come back with a recommendation. We're hoping to get that by next month. We're trying to nag them a little bit.

>> Conrad Taylor: Okay, thank you. My recommendation is since we don't have a definitive answer if we can defer this until next month. Do we have a second?

>> Sean Kaldor: Second if nagging.

>> Conrad Taylor: All those in favor? All those opposed? Scott I'm sorry.

>> Scott Johnson: I just have a question. (inaudible).

>> Conrad Taylor: Okay that's a note and file.

>> Scott Johnson: Just a question for staff. At the September board meeting we extended the exit physical program so I assume that it will continue to be extended until --

>> Correct, that's why we phrased it the way it was, we weren't sure we would be able to come back this month.

>> Scott Johnson: Thank you for the clarification.

>> Sure.

>> Conrad Taylor: Okay under standing committee reports and recommendations, we can put a note and file number 14. Investment committee, next meeting October 21st, 2010. And B, summary of minutes of the May 20, investment committee meeting, and 14B, summary of minutes of the May 12th, 2010 investment committee meeting, and number 15, committee of the whole, 15 A summary of minutes of the may 20th, 2010 committee of the whole meeting. 16 Real Estate committee, next meeting December 16th, 2010, 16 A, summary of the Real Estate committee meeting held July 1, 2010. 16B, summary of the board of directors meeting of 1737 North First Street corporation held July 1, 2010. 16 C, summary of the board of directors meeting of 3169 Dodddd rode corporation, held July 1, 2010. 16 D, summary of the board of directors meeting of 3201 C street LLC held July 1, 2010. 16 E, summary of the board of directors meeting of 3301 C Street LLC held July 1, 2010. And 16F, summary of the board of directors meetings of SJ progress point LLC held July 1, 2010. So this will be a note in the file. Under consent calendar, items number 17 through 26. If we could just --

>> Rose Herrera: Motion to approve.

>> Russell Crosby: If I could just note on item 18E, David Bacigalupi has decide not to attend the IFEBP conference even though he's just an island over.

>> Conrad Taylor: If I could have a motion and second to accept the consent calendar? All those in favor? All those opposed? Motion passes. Public comments?

>> Scott Johnson: Proposed agenda items.

>> Conrad Taylor: Go ahead.

>> Scott Johnson: Is this where we want to ask staff to come back in regards to Sean's comments and related to the audit of the pension plan?

>> Conrad Taylor: Yes, I would assume this is where it would be. That if we could have Sean's comments often number 2 --

>> Sean Kaldor: For the next agenda item or next meeting if we could agendize the discussion of the recommendations of the City Auditor with a staff review of what our current practices are and their recommendations.

>> Sam Liccardo: Amend that with any opportunity to offer comment to the council as well.

>> Conrad Taylor: Thank you. Is that a motion? Okay now open to the public, no public, no further, meeting adjourned.