

A regular meeting of the Michigan State Employees' Retirement System Board was held at the State Secondary Complex, General Office Building, First Floor, Conference Room A, Lansing, Michigan, on September 1, 2011. The following members, staff and observers participated:

- Members Present: Robert Brackenbury, representing State Treasurer  
 Douglas Drake, Retiree Member  
 George Elworth, representing the Attorney General  
 John Gnodtke, representing State Personnel Director  
 Randall Gregg, representing Commissioner of the Office of Financial and Insurance Regulation  
 Douglas Johnson, Retiree Member  
 Craig Murray, representing the Deputy Auditor General
- Staff Present: Laurie Hill, Acting Executive Secretary  
 Chanda Donnan, Recording Secretary
- Others Present: Patrick Fitzgerald and Brian LaVictoire of the Office of Attorney General

### **Call to Order**

Chair Douglas Drake called the meeting to order at 1:35 p.m.

### **Excusing Absent Members**

Craig Murray moved, John Gnodtke supported, to excuse the absence of Matt Fedorchuk and Robert Brackenbury\*. The motion carried unanimously.

\*Robert Brackenbury arrived at 1:50 p.m. during the discussion of Docket 2010-44829 SERS.

### **Approval of Agenda**

George Elworth moved, Douglas Johnson supported, to approve the agenda as presented. The motion carried unanimously.

### **Approval of Minutes**

John Gnodtke added the correction to page 624 that he voted no on Docket 2010-44866 SERS. John Gnodtke moved, Douglas Johnson supported, to approve the regular session meeting minutes of July 21, 2011, with the correction of striking "The motion carried unanimously." and replacing it with "The motion carried." The motion carried unanimously.

## **Disability Retirement Applications**

### Non-Duty Disability Retirement Applications

Douglas Johnson moved, Craig Murray supported, to approve non-duty disability applications 1-2, 4-5, and 7-16 as presented in the Supplemental Information to the Agenda, 7A. The motion carried unanimously.

George Elworth moved, Randall Gregg supported, to refer non-duty disability application 3 back to staff for an updated Independent Medical Advisor Statement of Disability for the Board's review. The motion carried unanimously.

Douglas Johnson moved, Craig Murray supported, to approve non-duty disability application 6 as presented in the Supplemental Information to the Agenda, 7A. The motion carried with John Gnodtke abstaining.

### Duty Disability Retirement Applications

Craig Murray moved, Douglas Johnson supported, to approve duty disability application 1-1 as presented in the Supplemental Information to the Agenda, 7B. The motion carried unanimously.

## **Administrative Hearings**

### Proposal for Decision – Docket 2010-44857 SERS

The Board considered the case materials. Craig Murray moved, Randall Gregg supported, that the Board adopt as its own the recommendations of the Presiding Officer William D. Bond in the January 20, 2011 PFD, including the proposed Findings of Fact and Conclusions of Law, and deny Petitioner's application for non-duty disability retirement benefits under Section 24 of the State Employees' Retirement Act. The motion carried unanimously.

### Proposal for Decision – Docket 2011-24472 SERS

John Gnodtke notified the Board he would recuse himself from discussion and voting on this case.

The Board considered the case materials. Craig Murray moved, Douglas Johnson supported, that the Board adopt as its own the recommendations of the Presiding Officer in the June 6, 2011 PFD, and dismiss this matter, with prejudice, and deny Petitioner's application for duty disability retirement allowance under section 67a of the State Employees' Retirement Act. The motion carried with John Gnodtke abstaining.

Proposal for Decision – Docket 2010-44829 SERS

The Board considered the case materials. Douglas Johnson moved, George Elworth supported, that the Board adopt as its own the recommendations of the Presiding Officer Dennis W. Mack in the April 1, 2011 Proposal for Decision, including the proposed Findings of Fact and Conclusions of Law, except for the changes requested by Respondent, with the modification to the PFD of adding the word “not” to page 7 of 14, line three, to correct the sentence to read “As for the nature of her condition, Dr. Holmes determined it does not preclude....,” and deny Petitioner’s application for non-duty disability benefits under Section 24 of the State Employees Retirement Act, using the form of decision and order offered by Respondent. The motion carried with Robert Brackenbury abstaining.

Proposal for Decision – Docket 2010-55009 SERS

The Board considered the case materials. Craig Murray moved, Randall Gregg supported, that the Board adopt as its own the recommendations of Presiding Officer Robert J. Meade in the April 13, 2011 Proposal for Decision, including the proposed Findings of Fact and Conclusions of Law, and approve Petitioner’s request for non-duty disability retirement benefits under Section 24 of the State Employees’ Retirement Act, and deny Petitioner’s request for duty disability retirement benefits under Section 21 of the Act. The motion carried unanimously.

Proposal for Decision – Docket 2010-54886 SERS

The Board considered the case materials. Douglas Johnson moved, George Elworth supported, that the Board remand the case to the Independent Medical Advisor for a Supplemental Statement of Disability to specifically determine whether Petitioner is totally and permanently disabled from further performance of duty under the *Nason* standard. The motion carried unanimously.

**New Business**

Circuit Court Remand – Genesee Circuit No. 07-087461-AA. Docket 2006-AH-068 SERS

The Board considered the case materials. Craig Murray moved, Douglas Johnson supported, that the Board grant Petitioner’s application for a non-duty disability retirement under Section 24 of the State Employees’ Retirement Act on the basis that Petitioner is found to be totally and permanently incapacitated for further performance of duty of his former position as a Youth Specialist. The motion carried unanimously.

**Executive Secretary Comments**

No comment was made.

## Board Comments

Comments were received from Doug Drake regarding the taxation of pensions.

## Public Comments

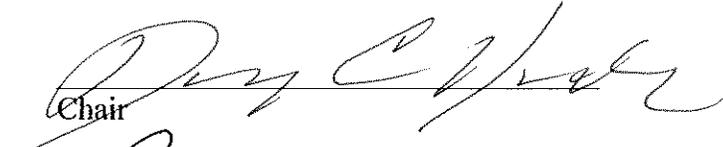
Patrick Fitzgerald updated the Board regarding the published *Monroe v SERS* Court of Appeals decision. The Petitioner raised the conflict of interest argument that the attorney general's participation as a member of the Board and as an attorney on behalf of the retirement system created an unconstitutional conflict of interest, a presumptively biased situation, and that it violated the rules of professional conduct. The Court rejected that argument and found that there was no presumptive bias created by the dual role of the attorney general in these matters and that the attorney general's participation did not violate profession rules of conduct.

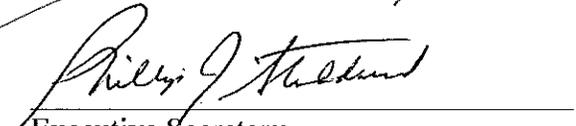
There was also the argument raised as to whether the language in MCL 31.3824 requiring or providing, that as a condition of being awarded a disability retirement allowance, that a medical advisor conduct a medical examination and certify total and permanent disability. The Petitioner argued that because the medical examiner only reviewed medical records as opposed to personally examining the individual, that the process did not comport with statutory language that provides for a medical examination be conducted. Respondent argued inturn that the language "to conduct a medical examination" doesn't mean to personally examine an individual. The Court has recognized that the Board has correctly decided and, more importantly, interpreted statute and rules.

## Adjournment

Douglas Johnson moved, Robert Brackenbury supported, that the meeting be adjourned. The motion carried unanimously. The Chair adjourned the meeting at 2:23 p.m.

## OFFICIAL MINUTES

  
Chair

  
Executive Secretary