

“The standard to be applied to determine whether the total and permanent disability continues to exist shall be whether the member by reason of education, training and background has, would have or would be able to acquire, a reasonable and marketable skill which is or could be consistent with his health and which skill could or potentially could provide in his general residential area income which would be reasonable in respect to his earnings history at the time of his disability retirement.”

In addition, the Ordinance also requires the Board to determine whether a disability retirement beneficiary is eligible to continue receiving a benefit and, if so, what the appropriate amount of that benefit is.

The Board has invited Mr. Preston here today to provide any relevant information he wishes to provide that can aid the Board in making the determinations it is required to make. Mr. Preston has been advised that his attendance today is voluntary and that he is not required to participate if he does not wish to.

In advance of today's hearing, in a letter dated August 15, 2013, the Board requested that Mr. Preston provide some information to aid it in making its determinations. In response to those requests, Mr. Preston has provided some information. All of the information provided by Mr. Preston is before the Board today.

You have things Mr. Preston that you would like to give to the board. By the way, I noticed that your Attorney is not here and that he has the right to an Attorney if he would like and that if you want to delay this for some reasonable amount of time we are amenable to doing that. Mr. Preston responded that he would like to get through this and I may have to ask for a continuance depending on what you actually want to get into and if I don't feel comfortable I would like to preserve that right. I do have information, and my log which I have here but it is part of my records which I have to keep with me. I also have my medical files but my biggest problem is what the board wants to do as proceeding. I am just trying to preserve my benefits, that's all. You are all decent people here, I am not sort of saying otherwise. You are volunteering to do this, providing a public service and I appreciate that. You have an excellent lawyer too and I have no ill feelings about it anyway. I am just trying to preserve my right. The first thing I do disagree with your perception of what the court ruled and it bounces back in to 24-23 of the ordinance and I probably shouldn't get into that yet but I want to submit all of my information and hopefully that's enough for you to make a determination but as far as making a determination of my disability I feel like that was already done and you can't go back to that time because we are in 2013 now and to remand everything back to a date prior to this to me would be wrong. I don't know but that is my opinion. In the first sentence it says, except as otherwise provided by subsection (d); the member continues to normal retirement age. I am 55. I have obtained normal retirement age so I don't know if that makes everything after that irrelevant. I agree with everything you said and the premise of this hearing and that's the one issue I have; I am not against giving the board information. I'm in the situation that I have a job and I'm caught in between trying to comply with what they need and my medicals and all that and at the same time you know that you guys have your requirement and you want medical information. Basically could open a can of worms and cause me to loose my job. So don't, I don't want you to look at it as if I'm not complying. I'm trying to protect my rights as a worker and protect my job so you know if we are going to get into all that then I need a lawyer. But if

you want information that you have asked for in this packet then just about all of it I can give you.

The court said to reverse the board's decision and they actually cited it. If you refer to my letter of September 6th it says in the court's ruling they reversed and actually they remanded it back to you. There was no mention of the word reversed and I mean, the court actually reversed the decision and they quoted the ordinance. The retirement board may require the disability beneficiary who has not reached normal retirement age for members of this class to undergo a medical evaluation and further should the beneficiary further refuse to submit to examination or otherwise refuse to provide the requested information then I could be terminated and may be discontinued until withdrawal of such refusal. I actually have a letter from August 8th 2009 where I withdrew my refusal. So I should have been reinstated at that time. In addition to that I asked for a hearing prior to that and the court also said that a hearing should have been provided and I was going to provide that at that time. And it says like the board wants the beneficiary, um to not refuse. I was wanting a hearing to give you the information. You guys, you know actually terminated me when I was always trying. I've tried since May of 2009 so what I am saying is the board should reinstate me now and not going back to look at any records just because the board says it should and I mean I would like to be paid all of my back disability from that time. And that is what the court ruling is and if we can't do that I mean then I think that I would have to get a lawyer and again I am trying to get through this and I really will provide the information, tax returns and all. I have it all here and I do have some medical stuff that I might be willing to share. Do you mind going into executive session, you know, I can strip down and show you what my problems are but I don't want it to become public record for fear that it would jeopardize me.

Mr. Strouse asked Mr. Preston – In your opinion were you totally and permanently disabled, after the first 2 years had expired, in June 2009? Were you total and permanently disabled? Mr. Preston responded, I was at medical end and permanently disabled.

Mr. Wick – I wonder, maybe I missed this part because I was doing some reading of the materials but did you cover the process today? Was that John's opening statement? and when do we get a chance to ask questions and I know you are starting, as the Chair, asking questions but a couple of things – I happen to think that we are all on the same page with you, a lot more than you realize so I think we are stumbling over some terms here like remand or reverse. I don't have the Supreme Court case in front of me but I do remember when I read it; it did say remand and remand means send it back to the board to make the determination we are required, that we didn't make properly in the first case because we never brought you in for a hearing. So now we are and this is just my understanding, and I have one vote here, so understand this, this is my opinion and view but what we are trying to determine today, in my view is after the first 2 years of your disability the statute says we have to figure out whether or not you actually got another job or could have gotten another job which, I think, the way I read that means if your actually working at another job, the statute says that we have to look at how much you were actually earning. There is another part which says "could have earned" but because I think you were working with the City on that voc rehab thing that we have got to look at what you actually earned from 2009 to the present and then we have to take the 75% disability, let's assume we have been paying it to you, the 75% plus what you actually earned and to the extent it is over what you earned when you became disabled, which was that \$47,000, we cut back what we pay you by the excess of that. For me, for the most part, it's clear to me from reading the record last

night that you agree and we agree on the fact that you were training to be a pilot. Before that, yeah, you might have been up at UVM doing some Engineering stuff but basically since 2009 you were able to be gainfully employed, perhaps not as a Firefighter and I'm willing to concede that and I don't think it's worth getting in to all that, that's where we would have to get into all of the medical stuff but I mean subject to what we learn later, it strikes me that this is more of a simple math problem today. Now that we've got what you actually earned we've got to add up the 75% disability income to what you actually earned, see if it's more than the 47 and to the extent that it is more than the 47, that's how much we cut back what the 75% to reduce it so that nobody's getting a windfall here. And then we have to apply the concept of the 12% interest. At what point does the 12% interest apply given that the court pretty much said that we really should have given you due process by holding a hearing in the first place which we are doing now. So, if the board believes that you withdrew your refusal back in July or August 2009, you know, then the board could reasonably find we have to apply 12% simple interest to each amount that we owed you in a given year and I've just done all that math and figured all that out. I don't happen to believe that on top of that 12% simple interest we ought to pay you for the loans from family members and the interest on those loans. That is what the 12% interest is intended for, to compensate you for that time value of that lost money. And then perhaps, there were a few other side dollars you requested but I don't see that.

John Preston – I can defend that and I would like the chance to do so. I think you are right on track and I don't disagree.

Jeff Wick – And that is just one voice and just cutting to the chase that's kind of my reading of the statue and my reading of the fact that he was working. We know that he was working for the airline so he could get gainful employment since July 2009.

John Preston – I hate to interrupt you but the definition of work; I followed a plan by voc rehab to go to training and part of the training. Going through a professional pilot training, and part of that is just getting a certificate and you can go into two different areas. One is Instructor, which sometimes you get paid a small amount and sometimes it's just about hours. It's still training until you get to 3 or 4 thousand hours you are a trainee so I can call the whole thing training. Like you guys want to call it a job. It's supplemental income so you can keep training. So I was just following this voc rehab plan all along. It wasn't like I did anything to become gainfully employed. It was like if I was enrolled at UVM but they gave me a work study program, would you count that against the person at UVM? It's similar to what my argument is. The only reason I said that is to try to clarify it, cause it is complicated. See, I can't fit into some of the financial aid because it's not a semester based program and it's an accredited program, you get a degree to be a pilot in that airline but you cannot get FAFSA, you cannot sign up for all that stuff because it's not based on semesters. It's a messed up system they should fix it. Training is training whether it's in college or not.

Jeff Wick - So in terms of process then I'm guessing that other board members, we should have an opportunity to ask John questions. He should have an opportunity to present his opening case if you will and address things that have come up and we should have an opportunity to follow up with questions. I get the feeling, process wise and for efficiency to get this done.

John Preston – There is two issues and maybe we can simplify cause one of the things like we have 2 different situations. Like one is my normal retirement which I hadn't got yet and I was

supposed to get it on my birthday which was July 14th and we are stuck on the number of years of service and if we could get through that part then I could start getting some money, then maybe I could come to these hearings without trying to take the bus.

Jeff Wick - Well I think we have to figure out the first part first which is during the period from 2009 to 2013, until you turned 55 in 2013. What does the City owe you and I'm not saying the City owes you anything. I think what I'm suggesting is if we find the City owes him anything then we can figure out whether those years are creditable toward your benefit. That's why Marina can't figure out what you are due now. Everyone knows you are due.

John Preston - I'm trying to make it easier, that doesn't help.

Jeff Wick - I think we have to handle the first before we can get to the second.

Bob Rusten - I appreciate, Jeff, your comments and I think I agree with your general outline but one area that I think I need to understand better because I don't think we can just pass it over and probably hearing from you but also our Attorney is the fact the sentence that talks about "by reason of education, training or background; would have or would be able to acquire." I think the "would be able to acquire" is, to me, the important part of that sentence. Understanding in choosing a different direction to go in, who makes that decision because the decision impacts the actual earnings that occur and if....I am partly looking at it in your situation but am looking at the implications beyond you in that in fact if a person could have chosen to do an occupation that could earn the 50 thousand per year but in fact chose something else.

John Preston - I can address that simply and that's through Voc Rehab and I have that paperwork and it shows initially when I went in there their approval and the City signed off on it for me to enter this program and I was in the program until August 1st 2013. I never shied away from that, or tried to do anything other than that. So if that answers your questions. If I had gone off and tried something else then I could see.

Bob Rusten - Can I bring up something for one second? Just to be clear, the City said that it was acceptable to the City, that this was in fact what you are going to do while you were on disability as opposed to a different occupation?

John Preston - Yes Sir. Well it had to do with the Vermont Department of Labor, voc rehab and the Attorney for the City.

Bob Rusten - And what you said, there is a difference between voc rehab signing off on saying this is okay for you to do versus voc rehab saying here are 10 options that are a possibility for you to do some of which may have earned you more income or less income. So, I'm just trying to partly understand the process that occurred in terms of saying this was okay, this was the thing you should be doing, who made that decision?

John Preston - There was a report put out by Jay Spiegel and he made the determination, and there's other people too, Carol Herman(?), I think her name is; that's who I dealt with. They made the determination based on my skills and employment. There's a whole report on it and it has to do with potential earnings and actually I was in the engineering program at UVM. For me to go back to that, the potential earnings were actually less at least in the short term and they

used a lot of comparables, different types of employment, civil engineering and what have you versus being a pilot and they actually determined that. It's not like I was told what to do, I always wanted to be a Pilot and I thought that that would meet the physical demands. And they actually approved it and I looked into it. I just didn't do this on a whim because I am trying to play a game against the board. I'm trying to get my life back together, that's what I was trying to do. The doctor told me 5 years prior to my retirement that I needed to try to find another_____? And that's what I was doing, that's why I was at UVM. Unfortunately at that time, let me just say, after being injured several times in my career I was advised several times by my family doctor that the injuries and arthritis would grow worse and I should go back to school to facilitate a less physically demanding career. In 2003 I enrolled in the UVM engineering program. After completion of several full time semesters and being almost finished with my degree I injured my back a second time and Dr. Ramsay and Dr. Johnson, they told me to retire and they would support me in any way; paperwork, letters, whatever and that there was a disability program for me, not to worry cause it is a very stressful thing to be permanently retired when it was a secure job. All of a sudden to have to make that decision, to get a new career was difficult but I was following this medical plan which was set up by the doctor's. The whole process was to go to the City doctor and I have his report. See, we are getting into the medical again which I would need a lawyer. I just want to give you a highlight of what actually transpired so that you can see that I was following a medical plan and then I met with the City doctor and he supported me although his reports weren't very good. Then I met with Vermont voc rehab and waited for approval to return to UVM. It took 2 years, 2 years with no pay or anything and I had to live with a friend, this is the truth of what happened. And no money and I'm not allowed to work, I don't know what I'm allowed to do. I'm just trying to wait to start pursuing a career. It's wait a month and then next month it's going to go through and then next month and two years later. Actually I hooked up with a girlfriend down there and I couldn't even contribute to the household income and I basically lost a relationship because the City dragged their feet for two years. I don't want to start getting upset so I should probably just get a lawyer but this is just how the system works.

Jeff Wick – John, help me understand what was this delay that you said took two years? What were you waiting for?

John Preston – I was waiting for the City, the voc rehab. The City wanted me to go to all these different doctors and so they could determine that I was permanently disabled and whether this was.

Jeff Wick – and what year was this?

John Preston – This was 2005 to 2007 and I got my first check in the summer of 2007.

Jeff Wick – So two years after you, was there a particular incident when you could no longer go to work?

John Preston – 2005

Jeff Wick – was it an accident?

John Preston – yes, I fell at work and I actually bruised my back and I went to a doctor for it and

it was Dr. Ramsay and Dr. Johnson and they said we have been telling you that you are not going to be able to do this. I actually took 3 months, I was actually out sick my whole career working from injuries and trying to recover after working. I was in trouble all the time for being out sick but the truth of the matter is I was trying to hide it from the department but I went to these doctor's and they told me that I should retire and I tried to get everything in order and it took so long and I retired. And I was hoping this process would work and unfortunately like I said it took two years and it put me under unbelievable financial strain. And then after that, ok, let me finish so after that process it took two years, doctor appointments, FCE exams, voc rehab evaluation, entrance exams, independent medical evaluations, I was cleared to return to UVM and start receiving my disability. It was determined that I was at medical end and I go back to UVM and the curriculum changed and they wouldn't allow me to change, I had a semester and a half to go. Now they told me it was going to be 3 years. I was like you have got to be kidding me and they acknowledged to me that I need to get a different career. At this time I was still following the medical and physical rehab and I had a plan of trying to go back to UVM. I knew a voc rehab plan was formed for professional pilot training with voc rehab. After UVM told me, what do I do now and they wrote another report.

Jeff Wick – Did the City ever pay John, did it ever determine that he was totally disabled in the first couple of years?

John Preston – Yes, yes.

Jeff Wick – And you got a lump sum payment?

John Preston – Yes and it went to pilot training, it all went to that.

Jeff Wick – So you did get paid, when did you get that?

John Preston – That's what I'm saying. There is a form 15 settlement agreement which you get if you are not permanently injured. I wanted to come here in 2009 and tell you guys this instead I'm suffering all this time. You know, I'm sorry but that's the truth and everyone's like, I'm being my own lawyer here trying to fight this mess.

Colin McNeil – For the record, this is Colin McNeil and the way this process is set up is I am effectively representing the City's interests here today. Ms. Sturtevant is the attorney for the board so I'm asking for just a minute. Mr. Preston, you have raised a couple of times that you would like to have counsel present here and you don't feel comfortable without an attorney and I just want to make a few things clear that we are proceeding today with the understanding that you are satisfied with representing your own interests without counsel. If for any reason you don't feel comfortable doing that I think that the Chair has made perfectly clear that they would be okay with postponing this for you to have an attorney. You have now hear was Mr. Wick's opinions are and you have heard the Chair outline what his beliefs are about how this hearing goes and as far as the procedure and how it is set up for everyone's purposes here today I think it would be best if you just let us know whether you feel comfortable going forward today knowing the standard that the board wants to apply or would you feel more comfortable with

John Preston – I don't know, this could open up a can of worms, you see, any information I give and if the board intended on terminating me then I don't want to be under the scrutiny of the

board, I went to the courts and I won. So if I could submit some information that might be contrary to, you know, I'm not a lawyer and the board could potentially hang their hat to terminate me permanently now. I don't know I'd rather have a lawyer for that.

Jeff Wick – John, in fairness to us then maybe you should say “listen guys, let's continue until I get my attorney to the next meeting” because I got to go to work man. We don't want to do this twice, that's not fair to us.

John Preston – I prepared a letter to ask for a continuance but my hope was that you guys saw that and were just going to pay me.

Jeff Wick – Well, bottom line John, the court remanded it back to us, we are the only one with authority to take the evidence to figure out what we owe you. The court can figure that out, they are in the ivory tower.

John Preston – Here is the evidence, here is my log's, here's what I made, here's my taxes, you know.

Jeff Wick – So do you want to do it today or do you want to come back with an attorney?

John Preston – If that's all you want then I am happy to give it to you.

Jeff Wick – Well I don't know what other people want but either we do it today or we continue so you have to decide if you want an attorney. I don't want you wasting my time man; I'm trying to help you.

John Preston – Well I appreciate that but my time is now wasted too, I mean.

Jeff Wick – So, do you want to do it today or do you want to continue?

John Preston – If you are not going to determine whether or not I am disabled then I don't know what to do.

Jeff Wick – What does that mean?

Bob Hooper – I would like to move that the board go into executive session to discuss matters that premature disclosure may put the City at harm, seconded by Mr. Wick at 9:35 AM. Motion carried 8:0. The board moved back into regular session at 9:56 AM.

Jim Strouse – it is about 5 minutes to 10 and we are back in regular session.

Bob Rusten – so what we were doing in executive session without getting into the specifics was talking about this issue of your representation and trying to be clearer amongst ourselves, what were the questions that we need to get in order or get answered so that we can express this to you so that you can make the decision whether you want an attorney here or not. So, the questions that I think we need to get answered are, in the proper order are, because I think, the first question is, In July of 2009 were you permanently and totally disabled or were you not totally and permanently disabled? Because the answer to that question leads to what sections of the

ordinance would apply to your situation. And once that question is answered, what would be the basis for any payments from the city for that time period between 09 and when you became eligible for retirement which would then answer the question of what would be the basis for creditable service. Those are sort of the questions to which we think we need answered in that order so that there is a logical process. So that lead us to, so if that is clear, if those are the questions we need to address, the first one being whether you were totally and permanently disabled or not do you want to proceed without an attorney here for that conversation or do you feel like you should really have an attorney here to go through those question in which case we should continue this.

John Preston – If in 2009 I was totally and permanently disabled what does the ordinance, what are the repercussions of that?

Bob Rusten – There are different sections of the ordinance that apply to being permanently disabled versus not being totally and permanently disabled,

John Preston – So what would be my years of service if it accumulates after that.

Bob Rusten – Actually I think that your years of creditable service are different based on whether you are totally and permanently disabled or whether or in fact you are in a training program. So that is why we are sort of saying that we have got to ultimately answer the first question first.

John Preston – Well, my question to the retirement board or the representative back then was that that had already been determined. Yeah, I would have to get a lawyer for that because that is already water over the dam. You can't go back.

Bob Rusten – Again, I think what we are saying is to ultimately answer what you are asking for, that is the first question we need answered in order to make a determination.

John Preston – Here's why. That first court ruling, that I read earlier, you know, that the board erred and they should have had a hearing about that issue.

Jeff Wick – That is why we are doing it now. That is what the court means, we are not deciding but we are sending it back to you jerks to have the hearing that you should have had 5 years ago or whatever.

Kim Sturtevant – Mr. Preston I am hearing your uncomfortable.

John Preston – yeah, here is why I am resisting because I don't want to go another year without getting my benefit you know.

Jeff Wick – How soon can you be ready? How soon can your attorney be ready? Because I want to get back here and decide this.

John Preston – I wish it was today.

Jeff Wick – oh no, you can proceed today my good man. We will make the decision the Supreme Court and the statue requires, it's your choice.

Bob Rusten - I think part of what we are doing right now is we are trying to be fair to you, to make sure we follow an appropriate due process that protects you and at the same time.

John Preston – But I know you guys have the orders I don't and I'm everything was all legal today and I tried to follow what my doctors told me to do and they also told me the benefits would be available and that hasn't been the case. That's the facts and

Kim Sturtevant – Okay, Mr. Preston we should probably just stop and decide when we can continue this hearing.

John Preston – You told me 10 days and that comes up to October 6th and I have a request for a continuance right here. Mr. Preston said his attorney is Robert Scharf from Shelburne.

Kim – Is he available 10/7 Mr. Preston?

John – Yes, he needed 10 days to read through all of this.

The board and Mr. Preston agreed to continue on October 7th at 8:30 AM.

Colin McNeil – Let's not close but suspend this meeting and reconvene at the 10/7 date.

Mr. Hooper moved to recess the meeting and reconvene the hearing on October 7th at 8:30 AM, seconded by Mr. Wick. Motion carried 8:0.

Mr. Preston, Mr. McNeil, S. Reid, M. Collins left the meeting.

At 10:06 Mr. Hooper moved to go into executive session to discuss matters of which premature disclosure could put the City at risk, seconded by Mr. Wick. Motion carried 8:0.

Board moved out of executive session @ 10:18 a.m.

R. Hooper: May go to super bowl of indexing, anyone interested should go, VPIC paying.

J. Strouse: No conflict with VPIC.

B. Rusten: Retirement summit discussion. City Council authorized the Mayor to set up summit by October 15, set a series of goals to capture understanding of what is going on with retirement system. Once Committee comes up with draft, they are authorized to meet with others to discuss the plan before going back to City Council. Summit primary goal is not solutions, but rather to understand the issues. Committee gets process, meets with others and then takes the process to City Council for approval.

J. Federico: Questioned what process? What was the format for the meeting?

B. Rusten: steps—1) format submitted, 2) Council ultimately decides what summit will look like, 3) have summit, and 4) then determine what to do with it. Personally believe it must be done collaboratively, do not believe anyone has a set solution, need to discuss.

J. Federico: Does the Board get an opportunity to weigh in?

B. Rusten: The resolution specifically says that after it is drafted, the Board and the four bargaining units have opportunity to see and comment.

J. Federico: Does the resolution say who is on committee?

B. Rusten: No criteria on who is on the committee; after committee, then will come back to the Board.

J. Federico: Has the committee been selected and met already?

B. Rusten: Committee has met, includes B. Rusten; City Attorney E. Blackwood; Human Resource Director Susan Leonard; City Councilors: Karen Paul, Chip Mason, and Norm Blais; Mayor staff present, not on committee.

J. Federico: Committee includes only those employed by City or Councilors?

B. Rusten: Yes.

J. Wick: Committee will make the agenda?

B. Rusten: Yes, to bring back as indicated in the resolution.

J. Wick: Sense skepticism. Question of if the plan was fully funded then would we be having this summit?

B. Rusten: Even if fully funded, amount of contribution is significant. Part of underfunding is the mortgage. Part of impact effects all of the City, employees, etc.; if don't deal with it where will be in the future?

R. Hooper: Motion to adjourn.

B. Rusten: Seconded.

Motions passed 8-0. Adjourned at 10:33 a.m.