



**DANBURY FIRE PENSION BOARD**

**19 New Street**

**Danbury, Connecticut 06810**

**(203) 796-1550**

**A regular meeting of the Fire Pension board was called to order on Dec 15 2011 at 10:30 am.**

**In attendance was Mr Johnson, Mr Curran, Mr Omasta, Attorney Rosemark, and Mr Pollard.**

**On the agenda was:**

- 1. A request by Doris Benz to appeal her widows benefits and have them changed from one half benefit to full benefit.**
- 2. QDRO for Rey Rodriguez and Bart McCleary.**
- 3. Proxy voting for pension members.**

**A motion to accept correspondence by Doris Benz was made by Mr Curran and seconded by Mr Omasta. Motion to accept was passed by all.**

**Under discussion was the circumstance of Mr Benz retirement. Mr Curran expressed concern over non firefighter positions covered or not covered by Heart and Hypertension rules. Atty Rosemark spoke about other area cases concerning Dispatchers and the rulings made. She would like to discuss the grey area further in another meeting. Atty Rosemark stated why Mr Benz could not be covered under Heart and Hypertension rulings. A letter with her opinion was read, (the letter is included with the minutes).**

**She also discussed rulings by courts on cases similar to Mr Benz.**

**A motion to deny Doris Benz appeal based on advice from Atty Rosemark was made by Mr Pollard and seconded by Mr Curran. Motion to deny was passed by all.**

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**Next on the agenda was the two QDROs concerning Rey Rodriguez and Bart McCleary. A motion to table the QDRO on Rey Rodriguez based on Mr Rodriguez request to review it. The motion was made by Mr Pollard and seconded by Mr Curran. The motion was passed by all. No action was taken on Bart McCleary QDRO as none was submitted.**

**Next on the agenda was a discussion on proxy voting for pension members. Atty Rosemark spoke about the legality of proxy voting and would like to look into the issue deeper with Mr St Hillaire and report back to the members. No action was taken.**

**A motion to adjourn was made by Mr Curran and seconded by Mr pollard.**

**See attachments**

- 1. Letter from Attorney Rosemark. (three pages)**

**Sincerely,  
Fred Pollard  
Secretary**

**Danbury Fire Pension Board**

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December 15, 2011

City of Danbury  
1967 Fire Pension Board

RE: Survivor Benefits, Mrs. Doris Benz

Dear Members:

You asked me to provide an opinion concerning Mrs. Doris Benz' claim that she is entitled to survivor benefits as a result of her husband's death due to his heart condition on May 12, 2009.

However, it is my opinion that for the following reasons, Mrs. Benz is not entitled to such survivor benefits. First, Mr. Benz elected to retire on an optional years of service pension based on his 33 years of service as a dispatcher in the Fire Department, awarded by the pension board on March 2, 2008. Since Mr. Benz' death on May 12, 2009, Mrs. Benz has received survivor benefits in the amount of one half (1/2) of her deceased husband's pension under Section 14-35(c), a benefit based on his death unconnected to the performance of duty with the fire department. Therefore, Mrs. Benz' survivor benefit emerges from a years of service pension, not a service-connected disability pension due to an impairment of the heart.

Moreover, while Mr. Benz filed a claim for heart and hypertension benefits under C.G.S. Section 7-433c while he was employed in 2000, he did not pursue obtaining a disability rating for his heart condition. Therefore, he never sought, and never received, benefits under Section 7-433c. The City's records reflect that the City only reimbursed him for co-pays for prescriptions relating to his heart condition.

Additionally, the issue of Mrs. Benz' survivor benefit under Section 7-433c was brought to the Workers' Compensation Commission by the Fire Union in May 2010. The WCC Chairman concluded that no survivor benefit under Section 7-433c was owed. The facts showed that Mr. Benz did not pursue obtaining a disability rating for his heart condition. Thus, he did not receive any heart and hypertension benefits while he was alive and his widow was not entitled to survivor benefits. Case law supports this finding. In Gorman v. Waterbury, 4 Conn. App. 226 (1985), the Connecticut Appeals Court held that a widow's husband, who suffered hypertension while he was a regular member of a police department, but who did not die or suffer any disability from his hypertensive condition while employed, did not meet the requirements of C.G.S. Section 7-433c for receiving heart and hypertension benefits, and thus, his widow was not entitled to survivor benefits pursuant to the statute for her husband's death, after he retired, as a result of his heart condition.

In other words, the court in Gorman held that condition of hypertension or heart disease and death or disability resulting from such a condition must be suffered while the individual was on or off duty as a regular fire fighter or police officer. The court reasoned that if this were not so, municipalities would in effect be bound by evidence submitted by a claimant that the death or

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disability, occurring years after employment as a fire fighter or police officer was retired or terminated, was traceable to the hypertension or heart disease suffered during the fire fighter's or police officer's years of service, without the municipality having *any opportunity* to challenge the claim that their death or disability was in fact traceable to the fire fighter's years of service. Thus, the court held that the statute provides that a recipient of its benefits be an active, not retired, member of a paid municipal police or fire department.

Therefore, it is my opinion that Mrs. Benz' is not eligible for survivor benefits connected to a heart condition where her survivor benefit is generated from a years of service pension; moreover, there was no award of heart and hypertension benefits while Mr. Benz was alive; lastly, his death, although cardiac related, occurred after retirement when he was no longer a member of the fire department. I have attached a copy of C.G.S. Section 7-433c for your reference.

Thank you.

\*Chapter 113. Municipal Employees (Refs & Annos)

\*Part II. Retirement (Refs & Annos)

**⇒§ 7-433c. Benefits for policemen or firemen disabled or dead as a result of hypertension or heart disease**

(a) Notwithstanding any provision of chapter 568 [FN1] or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, the term "municipal employer" shall have the same meaning and shall be defined as said term is defined in section 7-467.

(b) Notwithstanding the provisions of subsection (a) of this section, those persons who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section.

CREDIT(S)

(1971, P.A. 524, § 1, eff. June 28, 1971; 1977, P.A. 77-520, § 1, eff. July 5, 1977; 1992, P.A. 92-81, § 1, eff. July 1, 1992; 1996, P.A. 96-230, § 2, eff. July 1, 1996; 1996, P.A. 96-231, § 1, eff. July 1, 1996.)

[FN1] C.G.S.A. § 31-275 et seq.