

MINUTES OF THE
CIVIL SERVICE COMMISSION MEETING
Public Works Conference Room
Wednesday, November 18, 2015

Attendance: Scott Orille, Chairman
Timothy Maloney, Secretary

Valerie Rosmarin, Clerk

Also in attendance: Chief Huerner, HR Director DeTillio, Mayor Zilka, Dana Szymanowski, Steven Peter, Mark Aufdenkampe.

The meeting commenced at 6:00 p.m.

1. Hearing – Pursuant to Civil Service Rule 12 Section E

Correspondence dated November 10, 2015 requesting the appearance of Steven Peter for a hearing pursuant to Civil Service Rule 12 Section E was delivered to Mr. Peter at his home address. (See attached).

Mr. Peter was in attendance along with his legal representative, Mark Aufdenkampe, and union representative, Dana Szymanowski.

Chairman Orille addressed Mr. Peter and Attorney Aufdenkampe with the format of the hearing and stated that the Commission could go into Executive Session to discuss medical issues at their request. Attorney Aufdenkampe stated that they would prefer not to go into Executive Session and wanted the meeting recorded.

Chairman Orille stated that the Commission may have questions for Mr. Peter and that he is under no obligation to answer any question if Attorney Aufdenkampe determines it violates any type of privilege or if Mr. Peter does not want to answer the question for whatever reason. Also, Mr. Peter will not be sworn in.

Chairman Orille stated that the issue before the Commission is that Mr. Peter has been out of work on a work related injury and he is the number one candidate on the promotional list for the rank of lieutenant and if he has subsequent to the creation of the list become incapacitated or is he otherwise unable to perform the essential functions of the rank of lieutenant. Under Civil Service Rule 12 Section E, the promotional candidate has the obligation to demonstrate to the Commission that he is capable of performing the essential job duties.

Attorney Aufdenkampe addressed the Commission and stated that this issue has never been considered by the Commission, has far reaching effects for any employee who may

seek promotion, and the letter of November 10th does not follow the rule. The rule states that if at any time after the creation of an eligibility list, the Commission has reason to believe that a person whose name appears on any eligibility list is disqualified for appointment because of incapacity developed subsequent to his examination. Mr. Peter was injured before he took the examination. The Commission knew in advance of the examination that he was injured. Mr. Peter had an on duty rotator cup injury on February 9, 2015. The written examination was February 18, 2015, the assessment center was March 21, 2015, and the list certified on April 9, 2015. Mr. Peter had shoulder surgery on July 20, 2015 and has completed at least 23 rehabilitation sessions since August 10, 2015 at the Cleveland Clinic. The physical therapists at the Cleveland Clinic have stated that they expect a full recovery with no restrictions, that his right arm should return to full function, and that physical therapy will be completed in the next two to four weeks. (See attached). Under Civil Service Rule 6, the Commission had an opportunity to exclude Mr. Peter from the application process due to his injury and had an opportunity to have him examined. With full recovery expected with full function, there is no reason not to promote him. He is scheduled to meet with his surgeon on November 19, 2015.

Chairman Orille asked what the status of any worker's compensation claim is. Attorney Aufdenkampe stated he had no knowledge of any claim and is not involved. There are rules within the collective bargaining agreement that require Mr. Peter to turn over any compensation to the City because he is receiving his full pay. There has been no application for permanent total disability.

In response to Chairman Orille, Mr. Peter stated that his surgeon will determine when he can return to work. He is scheduled to meet with the doctor on November 19th and will provide the Commission with the doctor's orders.

Secretary Maloney stated that the ideal circumstance for the City is to promote the best qualified individual and Mr. Peter has demonstrated he is the best qualified individual. The question becomes is the best qualified individual able to perform the physical aspects of the job due to his injury. If he is not and the Commission certifies him to the promotion, that is unfair to the number two individual who is qualified for the job. He informed Mr. Peter that there is a provision for a probationary period. If during the probationary period, the City determined he is unable to do the duties of the job, he would return to the lower rank; however, if that lower rank position has been backfilled, which it has, he would be without a job.

In response to Secretary Maloney, Mr. Peter stated that he strongly believes he will be able to perform the duties of job and has felt that from the beginning. That was the reason he decided on the surgery. This is his career and because of that, he found the best surgeon and expects a full recovery. He has advanced through therapy. When he meets with his doctor, he will be advised when he can return to work.

Secretary Maloney asked Mr. Peter if the people attending to him medically feel that he is in a position to return to work given that there are still some physical limitations. Mr. Peter stated that the medical staff feel he can return to work even with limitations and he

has addressed that issue with the Chief and the other Fire Department officers at a staff meeting wherein they discussed the role he would provide if he returned in a modified aspect.

Chairman Orille requested Mr. Peter provide the Commission with any supplemental documentation he receives from his doctor which will indicate when he can return to work and what type of basis it will be.

HR Director DeTillio stated that all the reports the City has received from Worker's Compensation indicates that Mr. Peter has fully cooperated and is progressing through the system.

Chief Huerner stated that Mr. Peter aspired to be an officer and he has been taking blue card classes (command class) while he has been on injury leave.

Motion: Secretary Maloney made a motion to conditionally certify Steven Peter to the position of lieutenant in anticipation of the information from the physician and reserving the right to rescind this certification if said information from the physician is not in favor of Mr. Peter's ability to perform the functions of the job description. The motion was seconded by Chairman Orille. **Vote:** 2-0.

2. Laborer – Public Works Department

The Clerk reported that Laborer Ronald Hoerig submitted his letter of resignation effective November 30, 2015. Public Works Director Reitz requested the Commission forward applications of the next eligible candidates. Of the top five candidates, two were previously interviewed and considered in the last two appointments. The Clerk forwarded three additional applications on November 11, 2015.

The Public Works Director contacted all three candidates to schedule interviews. Candidate Jeremy Fialkowski was interviewed for the position and candidate David Kral decline consideration and requested removal of the eligibility list. It was discovered that the third candidate, Kyle Maurer, did not possess a CDL and was inadvertently certified to the laborer eligibility list. Mr. Maurer was contacted and informed that he is not eligible for the position in the Public Works Department because he does not meet the minimum qualifications of the job. He will remain on the eligibility list for Laborer in the Utilities Department because he does meet the minimum qualifications.

Therefore, Mr. Kral and Mr. Maurer should be removed from the eligibility list and two additional applications should be forwarded to the Public Works Director. The Clerk reviewed the applications of the next two candidates, Brandan Haas and Joseph Brailer. Mr. Brailer is qualified for the position; however, the Clerk stated her reservations about the qualifications of Mr. Haas. At the time of application, Mr. Haas held a temporary CDL permit. He received his CDL prior to the certification of the eligibility list and the Commission placed him on the list. Upon closer examination, Mr. Haas did not meet the

minimum qualifications at the time of application as is required by the job description; therefore, Mr. Haas is not eligible for this position.

Motion: Chairman Orille made a motion to remove David Kral, Kyle Maurer, and Brandan Haas from the eligibility list and to forward the applications of Joseph Brailer and Shawnasey Stewart to the Public Works Director. The motion was seconded by Secretary Maloney. **Vote:** 2-0.

Meeting was adjourned at 6:47 p.m.

Respectfully submitted,

Valerie Rosmarin, Clerk

