

STATE OF INDIANA) SS:

BEFORE THE STATE BOARD OF THE PUBLIC
EMPLOYEES' RETIREMENT FUND FOR THE 1977
POLICE AND FIREFIGHTERS' PENSION AND
DISABILITY FUND

IN THE MATTER OF PHILLIP O. BRANSON CAUSE NO. 86-12

ADMINISTRATIVE ADJUDICATION

The above referenced matter came on to be heard in accordance with IC 4-22-1-1 by the duly appointed hearing officer, Burton L. Garten, on the 18th day of September, 1986 in the offices of the Public Employees' Retirement Fund, Suite 800 Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204. Respondent, the Public Employees' Retirement Fund, was represented by H. Dudley Miller and the petitioner, Phillip O. Branson was represented by Jeffrey A. Been.

Testimony and exhibits were heard and admitted as evidence.

Burton L. Garten now recommends transfer of the hearing findings of fact and decision to the State Board for its final decision and disposition of said matter.

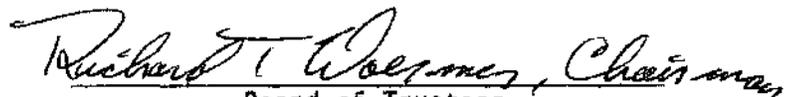
FINDINGS OF FACT AND DECISION AND CONCLUSIONS
OF LAW ARE FOUND IN THE ATTACHED REPORT
OF THE HEARING DATED SEPTEMBER 18, 1986

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby deny disability benefits to Phillip O. Branson, pursuant to IC 36-8-8-12(b) and IC 36-8-8-13.

All of which is ordered this 4th day of December, 19 86.

Richard T. Doermer, Chairman
Al H. Harding, Jr., Vice Chairman
Myrl W. Deitch, Jr., Trustee
Marie T. Lauck, Trustee
Marjorie Meyer, Trustee


Board of Trustees
Public Employees' Retirement Fund

STATE OF INDIANA
PUBLIC EMPLOYEES' RETIREMENT FUND
143 WEST MARKET STREET, SUITE 800
INDIANAPOLIS, INDIANA 46204

In the matter of receiving additional evidence for the review of the findings of fact and the initial determination of the Public Employees' Retirement Fund on the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund under IC 36-8-8-12 and IC 36-8-8-13 by Phillip O. Branson.

Reason for Action: PERF initial determination letter dated May 20, 1986 denying disability benefits to Phillip O. Branson from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing date: September 18, 1986 Place: Public Employees' Retirement Fund
PERF Conference Room-Harrison Bldg.
143 West Market Street
Indianapolis, IN 46204

FINDING OF FACT AND DETERMINATION

The above matter coming to be heard before Burton L. Garten, duly appointed to conduct administrative hearings, are provided by the Administrative Adjudication Act, Indiana Code 4-22-1.

The Public Employees' Retirement Fund (respondent) was represented by H. Dudley Miller. Phillip O. Branson, (petitioner) was represented by Jeffrey A. Been.

PETITIONER'S EXHIBITS

Copy of:

1. Initial Case Report of the Muncie Police Department involving a break in at Johnson's Karate Club, Muncie, Indiana on March 17, 1984. (4 pages)
2. Emergency room chart for Phillip O. Branson at Ball Memorial Hospital, Muncie, Indiana dated March 17, 1984. (1 page)
3. Notes by Steven Neucks, M.D. about Phillip O. Branson. (2 pages)
4. Notes by Steven Neucks, M.D. about Phillip O. Branson. (2 pages)
5. Letter dated April 11, 1985 from Thomas F. Trainer, M.D. to Diane Wojcicki, Claims Examiner, Orion Group, EBI Companies. (2 pages)

6. Letter dated June 3, 1985 from Thomas F. Trainer, M.D., to Phillip Branson. (1 page)
7. Letter dated June 28, 1985 from Thomas F. Trainer, M.D. to Whom It May Concern regarding Phillip Branson. (1 page)
8. Letter dated May 30, 1986 from Diane Eirich, Claims Examiner about Phillip Branson. Also State Industrial Board Agreement Between Employee and Employer as to compensation. Also attached is copy of exhibit 5. (4 pages)
9. Letter dated November 8, 1985 from Steven Neucks, M.D. to Phil Branson. (1 page)
10. Letter dated July 23, 1986 from Steven Neucks, M.D. to Phillip Branson. (1 page)
11. Letter dated June 25, 1986 from Neil H. Levine, M.D. regarding Phillip O. Branson. (1 page)
12. Letter dated October 16, 1984 from Phil Branson to T. P. Derloshon, Jr. Administrator of the 1977 Police and Firefighters' Pension Fund. (3 pages) Certified mail cards attached. (1 page)
13. Letter dated August 11, 1986 from T. K. Garner, Assistant Chief, Noblesville Police Department along with the Physician's Report of Medical History and Physical Exam for the 1977 Fund for Phillip Branson. (12 pages)
14. Note signed by Phil Branson dated May 20, 1986, about a telephone call to Captain Duke of the Muncie Police Department. (1 page)
15. Objection dated May 22, 1986 to initial determination of L. H. Earle, II, Executive Secretary of the Public Employees' Retirement Fund, by Phillip O. Branson plus attached certified mail cards. (3 pages)

RESPONDENT'S EXHIBITS

- A. Letter dated October 26, 1984 from T. P. Derloshon, Jr., Pension Administrator to Phil Branson. (1 page)
- B. Letter dated August 3, 1984 from Phillip O. Branson to Chief of Police, Muncie Police Department. (1 page)
- C. Application for Disability Benefits from Phillip Oran Branson dated March 12, 1986. (1 page, two sides)
- D. Letter dated April 17, 1986 from Harold Bart Duke, Muncie Police Department Pension Secretary to T. P. Derloshon, Jr. (1 page)
- E. Note from Steven Neucks, M.D. for Phillip Branson, dated June 16, 1984. (1 page)

FACTS:

Phillip Branson was on duty on March 17, 1984 when called to a break in at a business in Muncie, Indiana. While searching for suspects in the attic of an old building, he slipped and put his legs through the ceiling. He went to the Ball Memorial Hospital emergency room for treatment of these injuries which included

He returned to work but found [REDACTED] became painful if he ran or walked for a long period of time. He was referred to a doctor at Community Hospital in Indianapolis. He was referred to a Dr. Robert Reed who put him in Community Hospital.

Mr. Branson stated that he felt harassed by the Muncie Police Chief, who he said called him every day in the hospital. He felt his job was in jeopardy.

Dr. Steven Neucks examined Mr. Branson and suggested he had [REDACTED]. At this time his problem was turned over to the police department's workmen's compensation carrier. His medical expenses were covered.

Mr. Branson wrote a letter of resignation to the Chief of Police in Muncie on August 3, 1984. The effective date of the resignation was August 14, 1984. The reason given in the letter was to accept a position with the Federal Government. At the hearing he stated that his reasons were due to difficulties he was having with the department. He said he felt he had no choice but to resign.

In October of 1984 Mr. Branson contacted the insurance carrier about his problem which he believed, from what doctors had told him, was a temporary condition. The insurance carrier told him to schedule an appointment with a doctor of their choice, Dr. Thomas F. Trainer. He was also told that he had a partial disability [REDACTED]. He wrote a letter to Mr. T. P. Derloshon, Jr. of PERF about his problem.

Mr. Derloshon informed him by letter that he had to be an active member of the police department to qualify for a disability benefit.

Dr. Trainer in his letter of April 11, 1985 found Mr. Branson to have a permanent partial impairment rating of 20% [REDACTED]. This letter was written to the workmen's compensation insurance carrier.

Mr. Branson settled his workmen's compensation claim in June 1985. The doctors consulted, Dr. Neucks and Dr. Levine agreed with Dr. Trainer's assessment.

In August of 1986 he was rejected by PERF for membership in the 1977 Police and Firefighters' Pension and Disability Fund through his application to the Noblesville Police Department.

FINDINGS:

Indiana Code 36-8-8-12 reads in part:

Disability Benefits-Amount-Effect on Determination of Retirement Benefits:

- (a) If an active fund member is permanently or temporarily unable to perform all suitable and available work with the police or fire department for which he is or may be capable of becoming qualified, as determined under Section 13 (36-8-8-13) of this chapter, he is entitled to receive during the disability, a benefit equal to the benefit he would have received if he had retired....

Indiana Code 36-8-8-13 reads in part:

Determination of disability - Review - Termination of benefits - Appeals.

- (a) The local board shall determine, using the procedures prescribed for the 1925, 1937, or 1953 fund, whether a fund member is disabled as defined in section 12 (36-8-8-12) of this chapter.
- (b) The local board shall submit its findings of fact and its determination to the PERF board. The PERF board or its hearing officer shall review the findings of fact and the local board's determination and issue a final order within one hundred eighty (180) days after receipt of the findings and determination. If the PERF board does not issue its final order within one hundred eighty (180) days and if the delay is not attributable to the fund member or the member's employer, the local board's findings and determination are deemed to be the PERF board's final order.
- (c) If the PERF board approves the local board's determination, then the PERF board shall issue a final order adopting the local board's findings of fact and determination and shall comply with the determination. If the PERF board does not approve the local board's determination, the PERF board or its hearing officer may receive additional evidence on the matter before issuing its final order.

- (d) The PERF board or its hearing officer may request that the fund member be examined by a doctor selected by the PERF board. The results of the examination shall be submitted to the PERF board or its hearing officer. If a fund member refuses to submit to an examination, the PERF board shall find that a disability does not exist.
- (e) Disability benefits terminate when the disabled member reaches fifty-five (55) years of age and becomes eligible to receive retirement benefits. At least yearly until the member is fifty-five (55) years of age, the local board shall review the condition of the disabled fund member to determine whether the disability continues. The PERF board or its hearing officer shall review the local board's determination in the manner specified in subsections (b), (c), and (d). If the local board makes no determination, the PERF board shall determine if the fund member's disability continues.
- (f) Appeals of the PERF board's final order may be made under IC 4-22-1.

It has been established, pursuant to Indiana Code 36-8-8-12, that:

1. Phillip O. Branson was injured in a fall while on duty on March 17, 1984.
2. Phillip O. Branson resigned from the Muncie Police Department effective August 14, 1984.
3. Phillip O. Branson applied for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund on March 12, 1986.
4. Phillip O. Branson was not an active fund member on March 12, 1986.

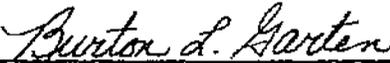
It has further been established, pursuant to Indiana Code 36-8-8-13, that:

1. The local board (Muncie Police Pension Board) submitted its findings of fact and determination to the PERF Board on Phillip O. Branson's disability application.
2. The PERF Board approved the local board's determination.

DECISION AND CONCLUSION OF LAW:

Based on the testimony and exhibits, and in view of the above facts and findings, I, Burton L. Garten, duly appointed administrative law judge, for the State Board of the Public Employees' Retirement Fund, would recommend denying disability benefits to Phillip O. Branson, pursuant to IC 36-8-8-12 and IC 36-8-8-13.

September 30, 1986



Burton L. Garten, Administrative Law Judge
Public Employees' Retirement Fund