

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 W. GARRISON III CAUSE NO. [REDACTED]

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 July 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 W. Garrison III, was represented by R. Lawrence Daly.

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.

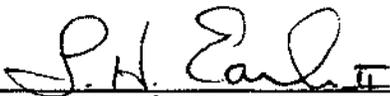
FINDINGS OF FACT AND DECISION AND CONCLUSIONS
OF LAW ARE FOUND IN THE ATTACHED REPORT
OF THE HEARING DATED JULY 18, 1986

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby grant disability benefits to Phillip W. Garrison III under IC 36-8-8-12 and IC 36-8-8-13.

All of which is ordered this 20th day of February, 19 87.

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



Executive Secretary
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 W. Garrison III

Reason for Action: PERF initial determination letter dated May 8, 1986 denying disability benefits to Phillip W. Garrison III from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing Date: July 18, 1986 Place: Public Employees' Retirement Fund
Basement Conference Room-Harrison Bldg.
143 West Market Street
Indianapolis, Indiana 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 W. Garrison III (petitioner) was represented by R. Lawrence Daly.

EXHIBITS

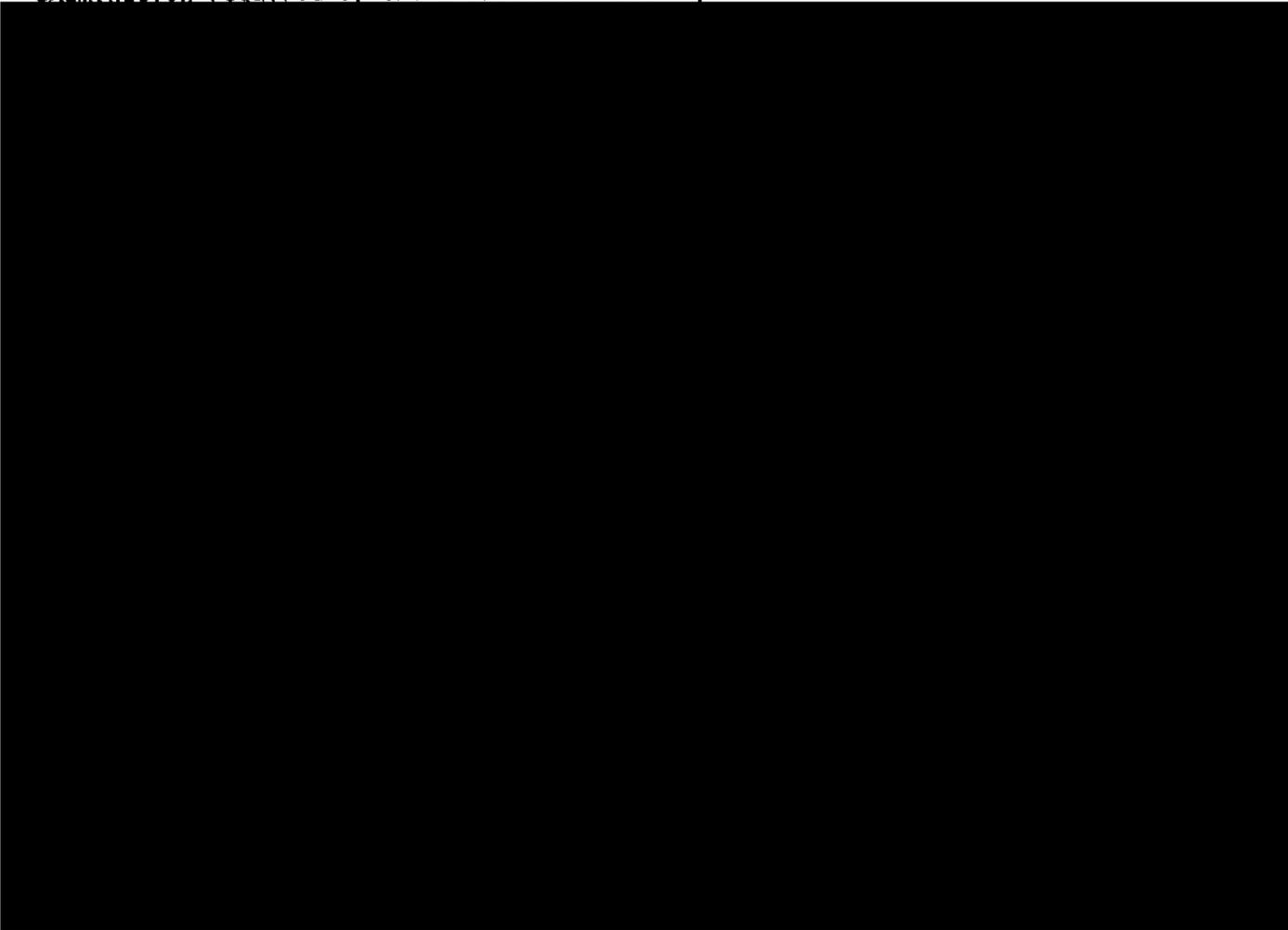
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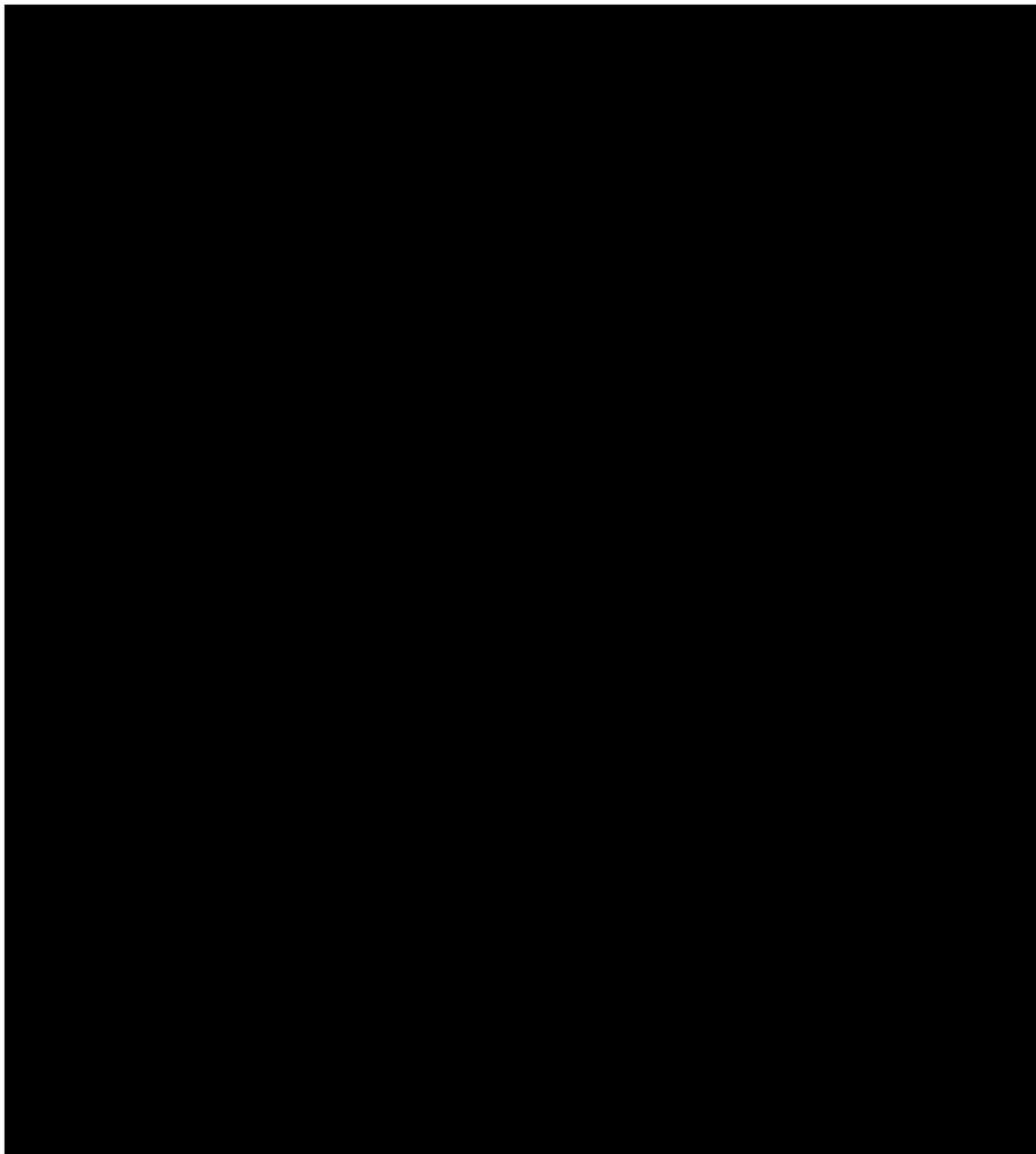
1. Medical records on Phillip W. Garrison from St. Mary's Hospital, Evansville, Indiana. (32 pages)
2. Letter dated November 5, 1985 from Kenneth J. Rudolph, M.D., to the Evansville Fire Department Pension Board. (1 page)
3. Letter dated October 10, 1985 from T. W. Talley, M.D., to Dion Dulay, M.D. (2 pages.)
4. Form from Dion Dulay, M.D., regarding Phillip W. Garrison. (2 pages)
5. Evansville Fire Department Medical Leave Report. (1 page)

6. Letter dated April 22, 1986 from John E. Mitchelson, M.D. to Tom Derloshon, Jr., Pension Administrator, PERF. (1 page)
7. City of Evansville Employees' Service Record of Phillip W. Garrison. (4 pages)
8. Application For Disability Benefits for Phillip W. Garrison III, dated January 15, 1986. (1 page)
9. 
10. Letter dated July 23, 1986 from John E. Mitchelson, M.D. to H. Dudley Miller. (1 page)
11. Letter dated August 22, 1986 from Dion J. Dulay, M.D. to T. P. Derloshon, Jr. (2 pages)

FACTS:

Mr. Garrison was hired by Evansville Fire Department in June, 1974. The physical examination required by the Evansville Fire Department Pension Board showed no





FINDINGS:

Indiana Code 36-8-12 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:

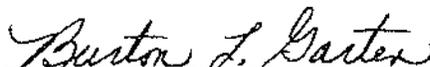
1. Phillip W. Garrison III joined the Evansville Fire Department in June of 1974.
2. There is suitable and available work on the Evansville Fire Department.
3. Phillip W. Garrison III is not unable to perform his duties as a firefighter with the Evansville Fire Department.

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

1. The local board (Evansville Fire Pension Board) submitted its findings of fact and determination to the PERF Board on Phillip W. Garrison's disability application.
2. The PERF Board did not approve 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 W. Garrison, III, pursuant to IC 36-8-8-12 and IC 36-8-8-13.



Burton L. Garten, Administrative Law Judge

September 23, 1986