

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 John E. Whalin.

Reason for Action: PERF Initial Determination Letter dated August 26, 1985 denying the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing Date: December 19, 1985 Place: Public Employees' Retirement Fund
Suite 800 Harrison Building
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. John E. Whalin (petitioner) was represented by Walter Lockhart.

JOINT EXHIBITS

Copy of:

1. Letter from Joselito L. Millan, M.D., M.P.C. to John C. Ruckelshaus, dated December 18, 1985.
2. Letter from T. P. Derloshon, Jr. to John E. Whalin, dated September 23, 1985.
3. Letter from John E. Whalin to Police Pension Fund, Indianapolis, Indiana, dated August 30, 1985.
4. Initial Determination Letter from L. H. Earle II, PERF Executive Secretary, to the Charlestown Police Pension Fund, dated August 26, 1985. (2 pages)

5. Letter from Joselito L. Millan, M.D., M.P.C. to Whom It May Concern (RE: John Whalin), dated August 21, 1985.
6. Letter from Arthur Paul Kebel, M.D. to the Police and Firefighters' Pension Fund, dated August 14, 1985.
7. Letter from Aftab A. Chaudhry, M.D. to Whom It May Concern (RE: John Whalin), dated July 30, 1985.
8. Letter from T. P. Derloshon, Jr. to John E. Whalin, dated June 7, 1985.
9. Application for Disability Benefits for John Edward Whalin, dated June 19, 1985.
10. Follow Up Psychiatric Evaluation of John Whalin by David H. Thurman, M.D., dated May 30, 1985. (2 pages)
11. Follow Up Psychiatric Evaluation of John Whalin by David H. Thurman, M.D., dated May 8, 1985. (2 pages)
12. Follow Up Psychiatric Evaluation of John Whalin by David H. Thurman, M.D., dated April 29, 1985. (2 pages)
13. Follow Up Psychiatric Evaluation of John Whalin by David H. Thurman, M.D., dated April 18, 1985. (2 pages)
14. Follow Up Psychiatric Evaluation, Electromyographic Examination of John E. Whalin, by David H. Thurman, M.D., dated April 10, 1985. (4 pages)
15. Initial Psychiatric Evaluation of John E. Whalin by David H. Thurman, M.D., dated April 3, 1985. (4 pages)
16. Letter from Husam M. Nazer, M.D. to Tom Derloshon, dated March 20, 1985.
17. Letter from Joselito L. Millan, M.D., M.P.C. to Whom It May Concern, dated March 19, 1985.
18. Letter from Mohammed Hussain, M.D. to Whom It May Concern, dated March 19, 1985.
19. Letter from Mayor Clay Hall to John Whalin, dated March 18, 1985.
20. Letter from T. P. Derloshon, Jr. to the Charlestown Police Pension Fund, dated March 5, 1985. (2 pages)
21. Letter from Joselito L. Millan, M.D., M.P.C. to Whom It May Concern, dated February 26, 1985.
22. Letter from John E. Whalin to Police and Firefighters' Pension Fund, dated February 13, 1985.
23. Minutes of Charlestown Police Pension Board meeting of February 4, 1985. (2 pages)

24. Report and test results from Circle City Evaluation Clinic. (7 pages)
25. Letter from Husam M. Nazer, M.D. to Whom It May Concern, dated December 27, 1984.
26. Letter from John Whalin to Chief Kenneth E. McDonald, dated December 13, 1984.
27. Letter from Joselito L. Millan, M.D., M.P.C. to Whom It May Concern (RE: John Whalin), dated December 11, 1984.
28. Discharge summary on John Whalin from Clark County Memorial Hospital, dated November 21, 1984.
29. Letter from Joselito L. Millan, M.D., M.P.C. to Whom It May Concern (RE: John E. Whalin), dated October 19, 1984.
30. Appointment for CAT SCAN on October 17.
31. Reports on John E. Whalin from Clark County Memorial Hospital. (39 pages)
32. Report from Mark O. Gladstein, M.D.
33. Report of Joselito L. Millan, M.D., M.P.C. on John E. Whalin, dated October 15, 1984. (2 pages)
34. X-ray Examination Report by William R. Fortner, M.D. on John E. Whalin, dated October 17, 1984.
35. Statement by Mark O. Gladstein, M.D., dated August 7, 1984. (2 pages)
36. Statement from J. R. Stewart & Son's Ambulance Service, Inc., dated June 30, 1984.
37. Discharge summary and history and physical account of John E. Whalin by Clark County Memorial Hospital, dated July 4, 1984. (4 pages)
38. Minutes of Charlestown Police Pension Board, dated October 29, 1984. (2 pages)
39. Letter from Joselito L. Millan, M.D., M.P.C. to Whom It May Concern (RE: John Whalin), dated December 11, 1984.
40. Letter from John E. Whalin to Chief Kenneth E. McDonald, dated December 13, 1984.
41. Minutes of the Charlestown Police Pension Board meeting of December 14, 1984.
42. Letter from James Ennis, Secretary of the Charlestown Police Pension Board to John E. Whalin, dated December 20, 1984.

43. Letter from Husam M. Nazer, M.D. to Whom It May Concern, dated December 27, 1984.
44. Minutes of Charlestown Police Pension Board, dated January 18, 1985.
45. Personnel order from Chief K. E. McDonald to John Whalin, dated January 25, 1985.
46. Appointment of John E. Whalin to Charlestown Auxiliary Police Unit December 19, 1980.
47. Appointment of John E. Whalin to Charlestown Police Department April 23, 1982.

FACTS:

John E. Whalin is a 28 year old police officer who was employed by the Charlestown Police Department on April 23, 1982. In June of 1984 he was



FINDINGS:

Indiana Code 36-8-8-12(a) reads in part:

Disability Benefits: 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. If the PERF board approves the local board's determination, then the PERF board 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 making its determination. 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.

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

1. Mr. John E. Whalin was injured [REDACTED] while on duty, in June, 1984.
2. Mr. John E. Whalin suffers [REDACTED] as a result of the accident.
3. Mr. John E. Whalin is unable to perform his duties as a police officer with the Charlestown Police Department.
4. There is no suitable or available work on the Charlestown Police Department which Mr. Whalin can perform.

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

1. The local board (Charlestown Police Pension Board) submitted its findings of fact and determination to the PERF Board on Mr. John E. Whalin's disability application.
2. The PERF Board did not approve the local board's determination.
3. Mr. Whalin was examined by a doctor selected by the PERF Board, William O. Starks, M.D.
4. Mr. Whalin's disability claims were set forth in his disability application, dated June 19, 1985.

DECISION AND CONCLUSION OF LAW:

Based on the testimony of John E. Whalin, and in view of the above facts and findings, I, Burton L. Garten, duly appointed hearing officer for the State Board of the Public Employees' Retirement Fund, would recommend granting of disability benefits to John E. Whalin, pursuant to IC 36-8-8-12 and IC 36-8-8-13.

Burton L. Garten
Burton L. Garten, Hearing Officer
Public Employees' Retirement Fund

February 25, 1986