
OPEN SESSION

HONORABLE SERVICE

(A motion to adopt Resolution B was made by Trustee Middlesworth seconded by Trustee Kaniuk. A subsequent motion to return to Open session was made by Trustee Middlesworth seconded by Trustee Kaniuk)

Bellomo, Ugo – Newark City - The Board considered and tabled the Initial Decision issued by the Honorable JoAnn LaSala Candido to allow attorney, Anette Verdesco adequate opportunity to offer a reply to the respondent's exceptions. When the Board considered this matter on April 11, 2016, discussion centered on the substance of DAG Garrison's exceptions, specifically the issue of Mr. Bellomo's criminal indictment and disciplinary charges. In her presentation, Ms. Verdesco reported that at pretrial conference, the ALJ ruled that the criminal and disciplinary actions were not part of the issues before her because the issue of honorable service was not part of the transmittal to OAL. The Board noted it was unaware of the criminal indictment and disciplinary charges brought against the member when it rendered its denial of Accidental Disability benefits on October 6, 2014.

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The Board advised Ms. Verdesco via letter dated April 14, 2016 that the Board would consider Mr. Bellomo's honorable service on May 2, 2016, as consideration of the member's honorable service may be relevant to the ultimate decision whether to grant AD benefits. On May 2, 2016, the matter was again reviewed by the Board along with a consideration of the issue of Mr. Bellomo's honorable service as it relates to his application for Accidental Disability retirement. At the meeting on May 2, 2016, the Board considered the following: all exhibits; the Administrative Law Judge's Initial Decision (ID) dated March 1, 2016;¹ exceptions filed by DAG Robert S. Garrison, Jr., dated April 5, 2016; reply to exceptions filed by Ms. Verdesco, dated April 6, 2016; consideration of the Uricoli factors regarding Mr. Bellomo's criminal and administrative charges; Ms. Verdesco's personal comments on April 11, 2016 and May 2, 2016; and the comments of DAG Robert Kelly at the April 11, 2016 meeting²; The Board noted the exceptions³ filed by DAG Garrison and the reply to exceptions filed by Ms. Verdesco's office.

The Issue of Honorable Service:

The Board considered Ms. Verdesco's comments, her brief dated April 15, 2016, and reviewed the charges levied against Mr. Bellomo and their impact on his AD application in accordance with N.J.S.A. 43:1-3.⁴ N.J.S.A. 43:1-3 establishes 11 factors which the Board is to consider and balance in view of the goals of the pension statutes when determining whether forfeiture or partial forfeiture is appropriate, taking account of the goals to be achieved under the pension laws. These factors are:

1. The member's length of service;	17 years 5 months
2. The basis of retirement;	Accidental Disability
3. The extent to which the member's pension has vested;	The member's pension is vested as he has more than 10 years of service.
4. The duties of the particular member;	Police Detective
5. The member's public employment history and record covered under the retirement system;	17 years, 5 months
6. Any other public employment;	None Noted

¹ An Order of Extension was granted on April 12, 2016 until May 30, 2016 for the Initial Decision.

² DAG Kelly appeared telephonically on behalf of DAG Garrison, who was in court on another matter.

³ An Order of Extension was granted to DAG Garrison to file extensions *nunc pro tunc* on April 5, 2016. It is noted that you did not consent to this request.

⁴ The Board considered Mr. Bellomo's honorable service under Board Agenda item F-4.

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<p>7. The nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated;</p>	<p>Mr. Bellomo was indicted by the Essex County Grand Jury for Aggravated Assault (4th) on March 15, 2013. He was accused of knowingly and with indifference to the value of human life, pointed a handgun, at or in the direction of another driver, contrary to <u>N.J.S.A. 2C:12-1B(4)</u>, a fourth degree crime.</p> <p>The indictment alleged that on November 3, 2012, while driving, the member pointed his service weapon at another driver who cut him off while turning onto Route 24 near the Short Hills Mall.</p> <p>Administratively, the City of Newark did not suspend or take other action against Mr. Bellomo.</p>
<p>8. The relationship between the misconduct and the member's public duties;</p>	<p>The relationship is direct;</p>
<p>9. The quality of moral turpitude or the degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations;</p>	<p>The misconduct shows a high degree of guilt and moral turpitude;</p>
<p>10. The availability and adequacy of other penal sanctions; and</p>	<p>Mr. Bellomo was accepted into the Pretrial Intervention program by order signed on January 10, 2014. By consent order, conditions were ordered that include: the forfeiture of all public employment and is permanently barred from any further public employment or office; completion of an anger management course; he is permanently barred from possessing any firearms; must have no contact with the victim; must remain arrest and crime free; immediately surrender his NJ Firearms ID Card, and is permanently barred from possessing a Firearms ID Card in the future.</p> <p>Administratively, he was terminated from employment effective January 10, 2014 pursuant to the Consent Order, in accordance with <u>N.J.S.A. 2C:51-2(d)</u>.</p>
<p>11. Other personal circumstances relating to the member which bear upon the justness of forfeiture.</p>	<p>Mr. Bellomo applied for Accidental Disability retirement benefits on September 30, 2013, requesting benefits effective January 1, 2014; His application was denied at the October 6, 2014 Board meeting; He was approved for an OAL hearing; an Initial Decision was issued March 1, 2016 reversing the Board's decision. The Board requested and was granted an extension until May 30, 2016, to consider the Initial Decision. Therefore, the matter remains open pending consideration by the Board.</p>

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The Board noted that the date of Mr. Bellomo's offense was November 3, 2012. He was later indicted on March 15, 2013, by the Essex County Grand Jury for Aggravated Assault, contrary to N.J.S.A. 2C:12-1B(4). He was accused of having pointed his service weapon at or in the direction of another driver who cut him off on Route 24 near the Short Hills Mall. The Board noted that even after becoming aware of the incident, the City of Newark did not suspend or take other action against him. Rather, he continued in active employment through his date of termination, January 10, 2014, ten days after his requested January 1, 2014 retirement date. Mr. Bellomo filed for Accidental Retirement on September 30, 2013. The record shows that Mr. Bellomo's termination of employment was a condition of the consent order by which he was allowed to enter Pre-Trial Intervention. The Board noted in particular the conditions placed on him by the Court:

1. He must complete an anger management course;
2. He has forfeited his public employment/office and is permanently barred from any future public employment or office, pursuant to 2C:51-2(d) by consent order;
3. He is permanently barred from possessing any firearms by consent order;
4. He is to have no contact with the victim of the incident;
5. He must remain arrest and crime free;
6. He must immediately surrender his NJ Firearms ID Card to the Essex County Prosecutor's Office and he is permanently barred from applying for or possessing a NJ Firearms ID Card by consent order;
7. Conditions 2, 3, and 6 are permanent and will survive completion of PTI and any future expungement petitions.

After careful consideration, the Board determined that the period from November 3, 2012 through January 10, 2014 is considered dishonorable for pension purposes. The Board noted that the Court imposed the conditions of entry into PTI for good reason and accepts that the conditions are deserved. Relying on N.J.S.A. 43:1-3(d) and N.J.A.C. 17:1-6.1(c)(7), the Board imposed a penalty of a six percent (6%) reduction on any benefit to which Mr. Bellomo is ultimately found to be eligible. This reduction corresponds to the period of dishonorable service (13 months) divided by the total service credited to his pension account (209 months). On appeal, Ms. Verdesco argued that Mr. Bellomo's misconduct was an isolated event unrelated to his official duties. The Board acknowledged that his misconduct is an isolated event, but finds that it directly relates to his official duties as a police officer, who is in possession of his service weapon, and is sworn to fulfill his duties 24/7. In this case, he used the weapon provided by his employer to commit this crime. To threaten the life of another person by pointing his service weapon is an egregious breach of his oath to protect and serve. Ms. Verdesco argued there are flaws in the case that cast doubt on the veracity of the charges against him, but the Board finds the imposition of conditions on his PTI, including treatment for anger management and the permanent prohibition to legally carry or possess firearms, is persuasive that misconduct occurred. The Board finds the pension penalty to be balanced and proportionate to the misconduct. The Board also noted that the consent order and conditions of PTI that prohibit Mr. Bellomo to possess or carry firearms precludes him from ever returning to employment as a police officer. The Board noted the statute, N.J.S.A. 43:16A-7, requires that persons receiving disability retirement benefits shall be reinstated to active service should their disability ever disappear or be substantially diminished. In Mr. Bellomo's case, this would not be a possibility.

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Subsequently, the Board again considered the Initial Decision issued by ALJ JoAnn LaSala Candido and rejected the decision essentially for the reasons outlined by DAG Robert Garrison in his exceptions, dated April 5, 2016.¹ Procedurally, the Board denied Mr. Bellomo's application for AD at the October 16, 2014 meeting. The member appealed the decision and requested a hearing in OAL. Even at that late date, the Trustees were unaware of criminal charges levied against him, and unaware that he forfeited his employment with Newark as a condition of dismissing the criminal matter and entry into PTI. While the hearing at OAL was pending, DAG Garrison became aware of charges of misconduct that had been brought against Mr. Bellomo and attempted to introduce the issue of the criminal charges and dismissal from service into the record because they may have some bearing on Mr. Bellomo's eligibility for AD retirement benefits. The ALJ denied DAG Garrison's request on procedural grounds because the issue of honorable service was not part of the Board's original transmittal. In the March 1, 2016 Initial Decision the ALJ reversed the Board's denial of AD, determining that Mr. Bellomo was totally and permanently disabled on an orthopedic basis as a direct result of a January 24, 2007 motor vehicle accident, and the delay of more than 5 years before filing was for reasonable cause. After the decision was issued, DAG Garrison requested an extension of time, *nunc pro tunc*, to file exceptions to the Initial Decision which was granted. Ms. Verdesco submitted a reply to DAG Garrison's exceptions objecting to the extension and inclusion of the issue of honorable service. After considering the submissions and arguments of counsel the Board voted to remand the Initial Decision back to the Office of Administrative Law. The Board is directing the ALJ to permit the presentation of evidence related to Mr. Bellomo's indictment and the circumstances under which he terminated employment with the City of Newark, as that evidence goes to Mr. Bellomo's credibility and provides an explanation other than a claimed total and permanent disability, as to why Mr. Bellomo left employment as a police officer with the City of Newark.

(Motion by Trustee Middlesworth seconded by Trustee Culliton)

¹ The Board considered the Initial Decision under Board Agenda item G-8.