



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. TYP 16066-13

AGENCY DKT. NO. 3-95732

MICHAEL WHITTLE,

Petitioner,

v.

**POLICE AND FIREMEN'S RETIREMENT
SYSTEM,**

Respondent.

John D. Feeley, Esq., for petitioner (Law Office of Feeley & LaRocca, attorneys)

Jeffrey S. Ignatowitz, Deputy Attorney General, for respondent (Robert Lougy,
Acting Attorney General of New Jersey, attorney)

Record Closed: March 31, 2016

Decided: April 8, 2016

BEFORE **EVELYN J. MAROSE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Michael Whittle (Whittle), appeals the Police and Firemen's Retirement System (PFRS) Board of Trustees' (Board) denial of his application for accidental disability retirement benefits. The Board states that, pursuant to N.J.S.A.

43:1-3, it considered and balanced eleven factors, taking into account the goals of the pension system in determining whether forfeiture or partial forfeiture of any pension rights was appropriate. The Board determined that total forfeiture was appropriate. Accordingly, the Board found petitioner ineligible to file for accidental disability retirement benefits.

This matter was transferred, to the Office of Administrative Law (OAL) on November 6, 2013, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing was conducted on January 23, 2015.

Simultaneous with the filing of a written summation, a Motion to Supplement the Record was filed by PFRS, seeking to admit into evidence the Transcript of Trial, State of New Jersey v. Michael P. Whittle, dated February 29, 2012, and the Transcript of Sentence, State of New Jersey v. Michael Whittle, dated April 2012. Whittle objected to the introduction of this supplemental evidence post-hearing and a time when both parties' written summations were due.

Motions to re-open the record before an Initial Decision is filed must be addressed to the judge and may be granted only for extraordinary circumstances. N.J.A.C. 1:1-18.5. While the Motion to Supplement the Record was made before an Initial Decision was issued, I **FIND** that no extraordinary circumstances were submitted justifying the supplementing of the record by PFRS, concurrent with the submission of written closing arguments. The supplemental records are transcripts dated February 29, 2012, and April 16, 2012. PFRS had knowledge of the proceedings details in the criminal transcript from at least September 11, 2013, when the Board voted that Whittle should forfeit his entire pension and salary credit based on the charges detailed in the transcripts. PFRS could have obtained and offered the documents into evidence at the time of the hearing, which would have allowed examination and cross-examination to be conducted regarding the documentation during the hearing. In addition, I note that the issue at stake in this matter, whether Whittle should forfeit part or all of his pension rights, is not identical with the charges involved in the criminal matter. Accordingly, I

CONCLUDE that PFRS has not met its burden to supplement the record post hearing.

Due to a voluminous caseload and medical leave, the time for the issuance of this Initial Decision was extended to March 10, 2016. Prior to March 10, 2016, the record was re-opened for additional information clarifying, among other things, treatment dates. The record re-closed on March 31, 2016.

FACTUAL DISCUSSION AND FINDINGS OF FACT

No witnesses' appeared on behalf of PFRS. Witnesses for petitioner were Whittle and his psychiatric expert.

Whittle's Testimony

Whittle served as a police officer for the Township of Montclair from January 2003 to January 2010. Whittle represented the police department at numerous events as a member of the Montclair Police Department Honor Guard during his employment and for three years from the Guard's inception. Whittle received numerous citations and commendations for honorable service during his employment at Montclair. (P-6.) Prior to serving as a police officer, Whittle served for two years as a police dispatcher for North Caldwell. He graduated seventh in his class from the Essex County Police Academy.

In February 2009, Whittle was dispatched to a home where a nine-year-old child was unconscious. The child's father was frantic. He kept saying, "She was just breathing." Whittle unsuccessfully performed CPR for, in his estimation, forty-five minutes in an attempt to revive the child. He continued to assume responsibility for the revival attempt after the ambulance arrived, and during the ambulance ride to the hospital where the child was declared dead. Whittle was very distressed. He believed that he should have been able to revive the child. Months after the incident, Whittle did

learn that the child was deceased for approximately a half hour before his arrival at her home.

Whittle stated that he changed after the February 2009 incident. He began to drink more alcohol and more hard liquor. His colleagues commented that he was moody and irritable. In the summer of 2009, Whittle got into a physical altercation with a fellow police officer while they were on duty, which was something that he had never done before.

In November 2009, Whittle noticed a group of young men hanging out in front of a liquor store while he was on a "one-man" patrol. As he always did, he took the initiative, parked his vehicle and did "a little on street investigation." After the loitering men left the front of the liquor store in accordance with Whittle's directions, Whittle discovered a jacket in an unlocked hallway leading from the sidewalk to some apartments where the young men were standing. The jacket contained, among other things, a zip-lock sandwich bag crumpled into a ball with chewing gum wrappers and what Whittle suspected were bags of marijuana. Whittle put the zip-lock bag into his pocket, a procedure which Whittle, who dealt with narcotics on many occasions, characterized as common. Then he called the young men back for questioning. Whittle informed an officer who had arrived at the scene as back-up, "I have ten bags. I have ten bags." He told another back-up officer, "I might have an arrest here" and showed the officer a zip-lock bag that he partially removed from his pocket.

Whittle described himself as overwhelmed at this point and not able to make a decision as to whether to arrest or not to arrest, since the suspected marijuana was not found on any of the young men but rather in a jacket in a nearby hallway. Whittle telephoned a narcotics supervisor who he felt comfortable with and asked him how to proceed. Whittle was not sure if the supervisor was on or off duty. He told the narcotics supervisor that he might have a few "bags" here but his real concern in speaking with the supervisor was to determine if he should "arrest or not." The narcotics supervisor informed Whittle that, in his opinion, he could not arrest any of the young men because the suspected marijuana was not found on their persons.

Shortly thereafter, a road supervisor arrived on the scene and asked, “What do you have here?” Whittle said he was frazzled/not thinking clearly. He said he panicked and answered, “Nothing.” When the suspects, back-up police officers, and road supervisor left the scene, Whittle got into his patrol car, had a breath, and digested the situation properly. He realized that he should have told the road supervisor about the suspected marijuana that he found. He called the narcotics supervisor again, told him about his communication with the road supervisor, and asked for his advice. The narcotics supervisor advised Whittle to tell the road supervisor exactly what he had found. Whittle telephoned the road supervisor, met him in a parking lot and told him about finding the jacket with suspected bags of marijuana in the hallway. Later, Whittle filed an Incident Report indicating that he had found two small zip-lock bags of marijuana at the scene. (J-2.)

After the day of the narcotics incident, Whittle was essentially on desk duty. In January 2010, he was suspended without pay, brought up on disciplinary charges, and criminally indicted. Whittle disputed the charges stemming from the November 2009 incident, including the assertion that he found ten bags of suspected marijuana. About six months later, the criminal indictment was voluntarily dismissed. The Prosecutor’s Office voluntarily dismissed one charge and downgraded the remaining charges to two disorderly offenses—tampering with evidence and falsifying records. (J-3.) The matter was tried for eight days over a period of several months. On February 29, 2012, Whittle was found guilty of tampering with public records and obstructing the administration of the law. Whittle received a \$250 fine, two six-month suspended sentences, and forfeited his public employment. (J-4, J-5.)

Whittle said that he did not seek medical, psychiatric, or psychological help after either the February 2009 incident or the November 2009 incident. However, his friends and family encouraged Whittle to speak to somebody after seeing Whittle in his court proceedings. Whittle went to Eugene Stefanelli, Ph.D., a local PBA psychologist to whom he could speak without paying a fee for several sessions beginning November 15, 2011.

Whittle applied for accidental disability retirement in February 23, 2012, without ever being diagnosed by a medical caregiver as disabled. Whittle obtained the documents that he needed to complete his disability application over the internet and according to the requirements for completing the application, he went to see two doctors for evaluation. On April 3, 2012, Whittle presented himself to Michael R. Bizzarro, Ph.D. for evaluation. Dr. Bizzarro diagnosed Whittle as suffering from generalized anxiety disorder and post-traumatic stress disorder (PTSD). He concluded that Whittle was totally disabled from performing his job duties. (R-2.) On April 20, 2012, Dr. Stefanelli diagnosed Whittle with PTSD and concluded that in his opinion, Whittle was disabled. (P-4.) Months later, on August 29, 2012, Whittle presented himself to Alexander M. Golin, M.D. for evaluation. Dr. Golin agreed that Whittle suffered from PTSD and was totally disabled.

Whittle testified that his whole life changed after November 2009. Prior to then, he had a professional job, where he worked hard. His initiative and hard work was recognized and rewarded. He had many friends in the community. (P-6.) After the charges and indictment, Whittle lost his sense of honor. He was disgraced. He no longer went through town, just in fear of his own embarrassment. He lost his job and suffered economic hardship. Whittle stated that he had no reason to keep any suspected marijuana since he never used the substance.

Expert Testimony on behalf of Whittle

Alexander M. Golin, M.D., who is board certified by the American Board of Psychiatry and Neurology, testified that he examined Whittle on August 29, 2012, after Whittle had filed his application for accidental disability retirement benefits. (P-1 to P-3.) He conducted an extensive interview of Whittle and administered a self-report test called the "PTSD Checklist, Civilian Version." Whittle described to the doctor an incident that occurred in February 2009 where he was dispatched to a 911 call and found a young child unresponsive. Whittle administered CPR but nevertheless the child died. Whittle told the doctor that he had distressing recollections of that incident.

Whittle also told the doctor that after that incident he had sleep difficulties, nightmares, feeling of anxiety, and became more aware of all of the dangers in the environment. Whittle told the doctor that he avoided people and places that reminded him of the incident. Whittle also told Dr. Golin of an incident that occurred on November 10, 2009. After approaching a group of people, Whittle became suspicious that narcotics might be involved. Whittle told the doctor that “for the first time in his career as a police officer, and he had done this sort of thing before, he questioned himself.” Whittle told Dr. Golin that he called an off-duty supervisor to seek advice.

Dr. Golin commented that it is not unusual for someone suffering from PTSD to question their judgement. He noted that Whittle’s behavior on November 10, 2009, was abhorrent. Whittle had described himself as an exemplary officer; he was a member of an Honor Guard and he had been promoted and commended in many ways. (P-6.) Whittle’s only other negative work experience also occurred post-February 2009. In the summer of 2009, Whittle had a confrontation with another police officer that resulted in Whittle being dismissed from the Honor Guard.

Based upon the representations of Whittle, Dr. Golin concluded that Whittle’s behavior on November 10, 2009 had to stem from a past pathology, which in Whittle’s case had to be the incident where a young child died despite Whittle’s attempt to revive her. Dr. Golin did not opine that Whittle’s specific behavior of not reporting the bags of marijuana that he found at a scene was a symptom of PTSD but rather that being zoned out or confused and indecisive would have been consistent with PTSD.

Dr. Golin stated that Whittle’s testing score on the “PTSD Checklist” met the threshold for PTSD, and his symptoms were consistent with PTSD. The doctor concluded with a reasonable degree of medical probability that, among other things, Whittle suffered from PTSD and that his PTSD behaviors led to his being disciplined/criminally charged/dismissed from duty, and that he is unable to work as a police officer. In forming his medical conclusions, Dr. Golin also relied upon the medical reports of Michael R. Bizzarro, Ph.D. dated April 3, 2012, and Eugene M.

Stefanelli, Ph.D. dated April 20, 2012. Both medical caregivers opined that Whittle suffered from PTSD and anxiety. (P-2, P-4; R-2.)

Dr. Golin acknowledged that Whittle received no mental health treatment prior to 2012. However, he stated that PTSD symptoms sometimes take time to appear and be recognized. Whittle never discussed his reaction to being indicted with Dr. Golin. He only discussed the February 2009 and November 2009 incidents. Dr. Golin was never Whittle's treating physician. He saw Whittle twice for evaluation.

Based upon a review of the testimony and the documentary evidence presented, and having had the opportunity to observe the demeanor and assess the credibility of the witnesses, I **FIND** the following pertinent **FACTS**:

- 1.) In February 2009, Whittle was dispatched to the scene of a nine-year-old child who was unconscious. He unsuccessfully performed CPR on the child. While Whittle was distressed that he could not revive the child, he later learned that the child had been deceased prior to Whittle initiating CPR.
- 2.) Whittle stated that he changed after the February 2009 incident. He was more moody and irritable and drank more. He presented no witness or other evidence in support of this assertion.
- 3.) Whittle continued to work as a police officer from February 2009 to November 2009 without seeking any medical attention or counseling. While Whittle did have a physical altercation with another officer during the summer of 2009, no charges and/or disciplinary action were filed against him during this period. In fact, no charges or disciplinary action was ever filed against Whittle prior to an incident in November 2009.
- 4.) In November 2009, while on solo patrol Whittle noticed a group of young men loitering in front of a liquor store. He parked his car and directed the

men to “move along.” Whittle then discovered a jacket in an unlocked hallway leading from the front of the liquor store to some apartments. Among other things, the jacket contained some bags of what Whittle suspected was marijuana. Whittle put the suspected contraband in his pocket and called back the group of young men who had been loitering.

- 5.) Whittle called for back-up. Three officers responded to the scene. Whittle told one officer that he found ten bags.
- 6.) When a road supervisor arrived at the scene and asked, “What do you have here?” Whittle replied, “Nothing.”
- 7.) After finding the suspected marijuana, Whittle made two telephone calls to an off-duty narcotics supervisor. Prior to the road supervisor’s arrival, Whittle sought advice from the supervisor regarding possibly arresting the young men. The supervisor stated that because the suspected marijuana was not found on any person but in a jacket in a hallway between where the young men had been loitering and some apartments, the incident did not support an arrest. After Whittle told the road supervisor that he had not found anything at the scene, he again called the narcotics supervisor. This time he asked for advice about misinforming the road supervisor that he had “nothing.” The narcotics supervisor advised Whittle to accurately inform the supervisor of the details of the incident.
- 8.) Whittle then met with the road supervisor, told him that he had found what he suspected was marijuana at the scene and described where he found the substance. Whittle later filed an incident report detailing a finding of only two bags of suspected marijuana.
- 9.) Whittle did not seek medical, psychiatric or psychological help after either the February 2009 incident or the November 2009 incident.

- 10.) Whittle came to be charged with tampering with evidence and obstructing the administration of justice.
- 11.) Whittle's friends and family encouraged Whittle to speak to somebody after seeing Whittle in his court proceedings. Whittle went to Eugene Stefanelli, Ph.D., a local PBA psychologist to whom he could speak without paying a fee for several sessions beginning November 15, 2011.
- 12.) Five days before he was found guilty of tampering with evidence and obstructing the administration of justice, Whittle filed for accidental disability retirement benefits. At the time of his filing, no medical caregiver had ever opined that Whittle was disabled.
- 13.) Five days after his filing, on February 29, 2012, Whittle was found guilty of tampering with evidence and obstructing the administration of justice. He was given two six-month suspended sentences, a fine of \$250, and forfeited public employment.
- 14.) Three health care providers executed "Medical Examination by Personal or Treating Physician" forms in connection with Whittle's asserted accidental disability.
- 15.) Alexander M. Golin, M.D. examined Whittle on August 29, 2012, and had Whittle complete a post-traumatic stress disorder checklist (Checklist). Based upon the information that Whittle provided including that he was symptom free prior to 2009 and Whittle's score on the Checklist, Dr. Golin opined that Whittle developed post-traumatic stress disorder as a result of the 2009 incidents and was disabled from working as a police officer. (P-2, P-3.)
- 16.) In forming his opinion, Dr. Golin also relied, in part, upon the opinion of Dr. Michael R. Bizzarro, who saw Whittle on one occasion on April 3, 2012,

and opined that he suffered PTSD and Generalized Anxiety Disorder with delayed onset; since Whittle said he didn't suffer from either condition prior to February 2009. (R-2.)

- 17.) Dr. Golin also relied upon the opinion of Eugene M. Stefanelli, Ph.D., given on April 20, 2012. Dr. Stefanelli opined that Whittle suffers from PTSD and anxiety, as a result of the tremendous emotional impact of the CPR incident and as a result of cumulative stress from critical incidents during his eighteen years as a police officer. Dr. Stefanelli did not identify even one of the alleged "critical" incidents to which he referred. He did not explain the basis for his belief that Whittle had eighteen years of experience as a police officer. He did not detail the factual basis for his statement that Whittle was denied professional assistance after experiencing two traumatic events. None of the foregoing three factual assertions are consistent with the evidence presented at the hearing, including Whittle's testimony. (P-4.)

- 18.) Neither Dr. Bizzarro nor Dr., Stefanelli testified at the hearing. Accordingly, their opinions are hearsay. Hearsay is admissible subject to the "residuum rule," which mandates that the administrative decision cannot be predicated on hearsay alone. There must be a residuum of legal competent evidence in the record to support it. Weston v. State, 60 N.J. 36, 51 (1972). In assessing hearsay evidence, it should be accorded "whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability." N.J.A.C. 1:1-15.5(a).

- 19.) Neither Dr. Bizzarro's nor Dr., Stefanelli's opinions are reliable. Whittle did not seek treatment from either doctor after either the February 2009 CPR incident or the November 2009 Narcotics incident. In fact, he did not

seek treatment from any medical care provider for at least two years after the later incident.

- 20.) Whittle only sought medical treatment from Dr. Stefanelli in November 2011, upon the encouragement of his family and friends after they observed him while he was being tried for tampering with evidence and obstructing the administration of justice.
- 21.) As noted above, Whittle's application for accidental disability was made after eight days of trial and five days before he would be sentenced for tampering with evidence and obstructing the administration of justice. Although the evaluations of both Dr. Stefanelli and Dr. Bizzarro were conducted months after his criminal sentencing, neither doctor noted the emotional impact upon Whittle as a result of being indicted, charged, tried, and sentenced, which Whittle acknowledged during the hearing.
- 22.) Both doctors essentially formed their opinion that Whittle was disabled based upon statements made by Whittle, who sought their medical support for his application for accidental disability pension benefits. One doctor came to believe and note in his report that Whittle was "never afforded the opportunity to seek professional counseling." The other doctor noted that Whittle was denied professional assistance. (P-4; R-2.) In fact, Whittle testified that he never sought any assistance after either incident or for approximately three years after the incidents at issue.
- 23.) I had the ability to observe Dr. Golin testify and be subjected to cross-examination. I also found his opinion not to be credible. For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility

determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F. 2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

- 24.) Dr. Golin was motivated to find Whittle qualified for accidental disability pension benefits. He saw petitioner not as a treating physician but solely on one occasion to complete a form required by Whittle in support of his disability application. Like Dr. Bizzarro and Dr. Stefanelli, Dr. Golin's opinion was based upon the subjective information provided to him by Whittle and not supported by the testimony of other persons or documentation. While Dr. Golin administered one test to Whittle, the test was a post-traumatic stress disorder checklist, which essentially was a vehicle for Whittle to detail his present alleged stress symptoms, rather than to assist a medical provider in determining the cause of any expressed stress. Dr. Golin, like Dr. Bizzarro and Dr. Stefanelli, relied upon the representations of Whittle, whose goal was to pension qualify. Dr. Golin did not note the inconsistencies of Whittle's testimony. He never noted that Whittle learned that he could never have saved the little girl upon whom he applied CPR since she had died before he arrived upon the scene. He never mentioned that Whittle successfully performed all of his job duties from February to November 2009, that he never sought medical attention during this period or that he never acted in a manner to lead to disciplinary charges before the November incident at issue.
- 25.) None of the doctors noted that Whittle's anxiety and/or stress was or could be the result of the charges and indictment filed against him or the

eight days of trial proceedings addressing the charges of tampering with evidence or obstructing the administration of justice.

- 26.) None of the doctors noted that Whittle's anxiety and/or stress was or could be the result of being convicted of the charges and the loss of his job. Yet, Whittle testified as to the severe impact his conviction had upon him. Whittle testified that, as a result of those charges, he lost his job, his profession, many friends in the community, and his sense of honor. He felt disgrace and embarrassment and suffers continuing economic hardship.

LEGAL ANALYSIS AND CONCLUSIONS

It is well-established that all government pensions are subject to forfeiture for dishonorable service. The seminal case in pension forfeiture matters is Uricoli v. Board of Trustees, Police and Fireman's Retirement System, 91 N.J. 62 (1982). The Uricoli test, an eleven-point balancing test developed by the Supreme Court and codified by the Legislature in N.J.S.A. 43:1-3, establishes eleven factors which the Board is to consider and balance. The test was later codified by the Legislature as N.J.S.A. 43:1-3(c).

As explained by the Court in a subsequent decision, the Uricoli balancing test "[is the] answer in weighing the prevailing view of pensions as deferred compensation, whose purpose is to provide employment stability and financial security, against pension forfeiture, whose purpose is to punish for wrongful conduct." Corvelli v. Bd. of Trs., Police and Firemen's Ret. Sys., 130 N.J. 539, 552 (1992). If the board determined that a part of the employee's service was dishonorable, the employee will generally be required to forfeit benefits commencing with the date the misconduct first occurred. Total forfeiture must be reserved for the most egregious cases. Uricoli, supra, 91 N.J. at 79-81.

Applying the eleven factors of the Uricoli balancing tests to the **FACTS** of this matter, indicates the following:

- 1.) The member's length of service. The parties agree that Whittle served nine years and three months.
- 2.) The basis of retirement. Petitioner seeks accidental disability.
- 3.) The extent to which the member's pension has vested. Whittle's pension has not vested since he has less than ten years of service.
- 4.) The duties of the particular member. Whittle served as a police officer with the Township of Montclair for approximately seven years.
- 5.) The member's public employment history and record covered under the retirement system. Whittle also served for two years as a police dispatcher for North Caldwell.
- 6.) Any other public employment history. No other public employment was detailed.
- 7.) The nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense or whether it was continuing or isolated. While an indictment and third charge were dismissed prior to trial, Whittle was found guilty beyond a reasonable doubt of misrepresenting to his supervisor the amount of suspected marijuana that he recovered during an incident, and to filing a report falsifying the amount of suspected marijuana that he recovered during an incident. The incident occurred in one day. However, Whittle's conduct in denying the charges spanned some three years and eight days of trial.
- 8.) The relationship between the misconduct and the member's public service. There is a direct relationship. This matter concerns Whittle's misconduct while he was on duty.

- 9.) The quality of moral turpitude or the degree of guilty or culpability, including the member's motives and reasons, personal gain and similar circumstances. After eight days of trial, Whittle was found guilty beyond a reasonable doubt of tampering with evidence and obstructing the administration of justice.
- 10.) The availability and adequacy of other penal sanctions. Whittle was convicted of tampering with public records and falsifying public records. He received two six-month sentences but those sentences were suspended. His monetary fine was small--\$250. His forfeiture of public employment was his most severe sanction.
- 11.) Other personal circumstances relating to the member which bear upon the justness of the forfeiture.
- a.) Petitioner received numerous awards and commendations during his service.
 - b.) Petitioner seeks monthly accidental disability based upon the distress that he suffered after failing to revive a nine-year-old child to whom he administered CPR. While Whittle's actions in attempting to revive a child are admirable and his distress at being unsuccessful understandable, before the November Narcotics Incident, Whittle knew that he never could have saved the child at issue since she died prior to his arrival at the scene. Whittle never sought counseling or any form of medical attention as a result of the alleged distress he suffered from the February 2009 incident until more than three years after the unsuccessful revival incident.
 - c.) As detailed above, the medical care providers that opined that Whittle was totally disabled as a result of the February 2009 incident lack credibility. While Whittle could have suffered from stress and anxiety at the time of examination

by his experts, Whittle's symptoms were not credibly connected to the failed CPR incident nor to his ability to perform the job duties of a police officer, which Whittle successfully performed from the date of the CPR incident to the date when he failed to correctly report the amount of suspected marijuana that he found.

In summary, after balancing all of the Uricoli factors, I **FIND** Whittle is not a long-term employee. Though he has more than nine years of service, his pension rights have not vested. His misconduct involved a high degree of moral turpitude and had a direct relationship to his duties as a police officer. While his egregious conduct in misreporting the amount of suspected marijuana that he found occurred on a single day, Whittle's continued denial of the charges that were proven against him beyond a reasonable doubt occurred for years—including and during eight days of trial that took place over several months. Accordingly, it is not unjust to deny petitioner monthly accidental retirement benefits even if he suffered some distress and anxiety after failing to revive a deceased child with CPR. Whittle's symptoms were not substantial enough to lead him to seek medical attention for some two and a half years from the date of the incident and until he experienced the stress of being tried for charges of tampering with public records and obstructing the administration of justice. In fact, Whittle filed for accidental disability pension benefits only five days before the charges filed against him were sustained and prior to any medical care provider ever opining that he was disabled. While Whittle was sentenced for the charges sustained against him, the majority of his punishment was minor. He received a small fine of \$250. His two six-month sentences were both suspended. The only serious discipline that Whittle received, prohibition from public employment, would be almost meaningless if Whittle received substantial monthly benefits from the Police and Firemen's Retirement System without working as a police officer and without ever vesting in the pension system.

Based upon the foregoing **FINDINGS**, I **CONCLUDE** that total forfeiture of petitioner's pension is warranted.

ORDER

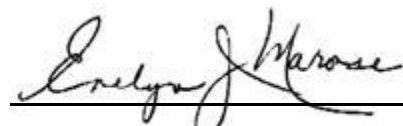
Based upon the foregoing, I **ORDER** that respondent, the Police and Firemen's Retirement System's denial of petitioner's application for Accidental Disability Retirement benefits is hereby **AFFIRMED**. I further **ORDER** that petitioner's appeal requesting Accidental Disability Retirement be **DENIED**.

I hereby **FILE** my Initial Decision with the **BOARD OF TRUSTEES OF THE POLICE AND FIREMEN'S RETIREMENT SYSTEM** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF TRUSTEES OF THE POLICE AND FIREMEN'S RETIREMENT SYSTEM**, which by law is authorized to make a final decision in this matter. If the Board of Trustees of the Police and Firemen's Retirement System does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF PENSIONS, One State Street Square, 50 West State Street, P.O. Box 295, Trenton, New Jersey 08625-0295**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 8, 2016
DATE


EVELYN J. MAROSE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EJM/dlc

APPENDIX

WITNESSES

For Petitioner:

Alexander Golin
Michael Whittle

For Respondent:

None

EXHIBITS

Joint:

- J-1 Letter, dated September 11, 2013, from the PFRS to petitioner, denying petitioner's application for Accidental Disability
- J-2 Incident Report, Montclair Police Department, dated November 10, 2009
- J-3 Essex County Prosecutor's Recommendation for Dismissal of Indictment/Accusation of Charges of Tampering with Evidence and Falsifying Records, dated August 11, 2010
- J-4 Disposition of Charges
- J-5 Order, dated April 16, 2012, permanently disqualifying petitioner from holding any public office, position or employment
- J-6 Letter to the Secretary of the PFRS, dated September 6, 2013, informing the Secretary of petitioner's representation by counsel and detailing reasons why petitioner should be entitled to accidental disability

For Petitioner:

- P-1 Curriculum Vitae, Alexander M. Golin, M.D.
- P-2 Expert Report by Alexander M. Golin, M.D., dated August 29, 2012

- P-3 Medical Examination, submitted in support of Application for Disability Retirement, Alexander M. Golin, M.D., dated August 29, 2012
- P-4 Medical Examination, submitted in support of Application for Disability Retirement, Eugene M. Stefanelli, Ph.D., dated April 20, 2012
- P-5 Withdrawn
- P-6 Citations and Commendations

For Respondent:

- R-1 Superior Court Appellate Division, Criminal Case Information Statement, dated April 30, 2012
- R-2 Medical Examination, submitted in support of Application for Disability Retirement, Michael R. Bizzarro, Ph.D., date of examination April 3, 2012