

Resolution No. 272

WHEREAS, Ernest F. Carneau (Carneau), a member of the Bureau of Police, has applied for service-connected disability benefits (including medical benefits) from the Fire and Police Disability and Retirement Fund (Fund) in connection with a chest injury he sustained on or about July 18, 1993; and

WHEREAS, there is a bona fide dispute as to whether Carneau's claim is compensable as a service-connected injury; and

WHEREAS, the Fund and Carneau desire to settle any and all disputes and terminate all conflicts which exist or may exist between them concerning Carneau's claim that his injury of July 18, 1993 arose out of and in the course of his employment as a police officer by way of compromise and settlement; and

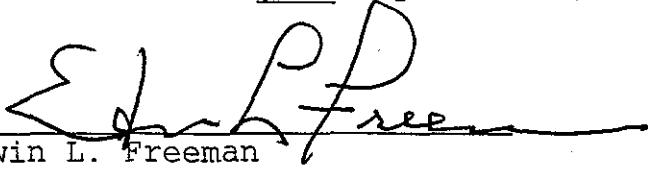
WHEREAS, a reasonable disposition of this matter under such circumstances can be accomplished pursuant to the terms and conditions of the Agreement and Stipulated Settlement and Release attached hereto as Exhibit A and by this reference made a part hereof.

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Fire and Police Disability and Retirement Fund that the Fund Administrator is hereby authorized and directed to sign an Agreement and Stipulated Settlement and Release substantially in accordance with the Agreement attached hereto as Exhibit A on behalf of the Board of Trustees and the Fire and Police Disability and Retirement Fund.

BE IT FURTHER RESOLVED that Ernest F. Carneau be and hereby is granted nonservice-connected disability benefits from the Fund for the period from July 19, 1993 to September 16, 1993 in the amount of \$4,229.75.

BE IT FURTHER RESOLVED that the Stipulation and Order of Dismissal attached hereto as Exhibit B and dismissing the above described application for service-connected disability benefits be and the same hereby is adopted as the Order of the Board of Trustees of the Fire and Police Disability and Retirement Fund.

ADOPTED by the Board of Trustees on this 14<sup>TH</sup> day of June, 1994.

  
Edwin L. Freeman  
Fund Administrator

AGREEMENT AND STIPULATED SETTLEMENT  
AND RELEASE

RECITALS

WHEREAS, THE FIRE AND POLICE DISABILITY, RETIREMENT AND DEATH BENEFIT PLAN (hereinafter referred to as the "Plan") which appears as Chapter 5 of the Charter of the City of Portland, Oregon, and the FIRE AND POLICE DISABILITY AND RETIREMENT FUND (hereinafter referred to as the "Fund") were created for the purpose of providing disability, retirement, and death benefits for the members of the Bureau of Fire, Rescue and Emergency Services and Bureau of Police of the City of Portland, Oregon; and

WHEREAS, the Plan delegates the authority and responsibility for supervising and administering the Plan and the Fund to a Board of Trustees (hereinafter referred to as the "Board"); and

WHEREAS, Ernest F. Carneau (hereinafter referred to as "Carneau"), a member of the Bureau of Police, has applied for service-connected disability benefits (including medical benefits) from the Fund for a chest injury he sustained on or about July 18, 1993; and

WHEREAS, there is a bona fide dispute as to whether the injury sustained by Carneau on or about July 18, 1993 arose out of and in the course of his employment as a Portland police officer; and

WHEREAS, the Fund and Carneau desire to settle any and all disputes and terminate all conflicts which exist or may exist between them concerning or related to Carneau's claim that the injury he sustained on or about July 18, 1993 arose out of and in the course of his employment as a Portland Police Officer by way of compromise and settlement.

NOW, THEREFORE, it is agreed as follows:

AGREEMENT

1. The Fund shall pay to Carneau the nonservice-connected disability benefits described in Section 5-307 of the Plan for the period from July 19, 1993 to September 16, 1993 in the amount of \$4,229.75.
2. In addition to the nonservice-connected disability benefits described in paragraph 1, the Fund shall pay to Carneau the sum of \$2,114.88.

AGREEMENT AND STIPULATED SETTLEMENT AND RELEASE

3. Carneau agrees that the sum of the amounts described in paragraphs 1 and 2 above is in lieu of any and all service-connected disability benefits and medical benefits which are or could be claimed by him in connection with the injury he sustained on or about July 18, 1993. Carneau further agrees that the payment of money to him under the provisions of this Agreement does not in any way or fashion constitute an admission by the City of Portland, the Board, the Plan or the Fund that his claim is compensable as a service-connected disability or that his disability was in any way attributable to his employment as a Portland police officer, and that the parties hereby released deny that Carneau's injury occurring on or about July 18, 1993 arose out of and in the course of his employment as a Portland police officer.
3. In consideration of the Fund's promise to pay him the sum of money referred to in paragraphs 1 and 2 hereof, Carneau, for himself and for his heirs, successors and assigns, agrees to and does hereby irrevocably release and forever discharge the City of Portland, the Board, the Plan and the Fund (including each of their commissioners, trustees, employees, agents and representatives, individually and collectively) from any and all causes of actions or claims that the chest injury he sustained on or about July 18, 1993 is a service-connected disability or is in any way attributable to his employment as a Portland police officer.
4. In consideration of the Fund's promise to pay him the sum of money referred to in paragraphs 1 and 2 hereof, Carneau hereby withdraws all pending requests for a hearing relative to his application for service-connected disability benefits and agrees that his claim for service-connected disability benefits (including medical benefits) shall be dismissed by the Board with prejudice. Carneau further agrees that the amount of money referred to in paragraphs 1 and 2 hereof shall be accepted in full and final settlement of all issues raised or which could have been raised with respect to his application for service-connected disability benefits (including medical benefits) and extinguishes any right to future recourse with respect to such claim.
5. Carneau further understands and agrees that the records of the Board will reflect that the chest injury that he sustained on or about July 18, 1993, which prompted him to apply for service-connected disability benefits

AGREEMENT AND STIPULATED SETTLEMENT AND RELEASE


(including medical benefits) from the Fund, is a nonservice-connected disability under Section 5-307 of the Plan and that said condition shall remain classified as a nonservice-connected disability and that he shall have no legal right to dispute said nonservice-connected disability status, either present or future, express or implied, that shall survive after the execution of this Agreement, and none shall arise on behalf of Carneau after this settlement.

6. Carneau understands and expressly agrees that if he ever asserts any claim, action or suit against the Fund, the Plan, the City of Portland, the Board, or their respective commissioners, trustees, employees, agents or representatives, arising out of or concerning the subject matter of this Agreement, the Fund, the Plan, the Board, the City of Portland, and their respective commissioners, trustees, employees, agents and representatives may plead this Agreement as an absolute defense to any such claim, action or suit. Furthermore, in the event any claim, action or suit is asserted, this Agreement shall be construed so as to allow the Fund, the Plan, the City, the Board, and their respective commissioners, trustees, employees, agents, and representatives to use in their defense any and all matters, evidence, testimony, documentation, and records that exist or existed prior to the execution of this settlement.
7. CARNEAU FURTHER STIPULATES AND CERTIFIES THAT HE HAS READ THIS DOCUMENT IN ITS ENTIRETY AND FULLY UNDERSTANDS THE MEANING AND EFFECT, BOTH PRESENT AND FUTURE, OF THIS DOCUMENT AND THAT HIS QUESTIONS HAVE BEEN FULLY AND COMPLETELY ANSWERED BY HIS ATTORNEY, VICTOR CALZARETTA, THAT NO FURTHER QUESTIONS REMAIN, THAT HE IS SATISFIED WITH THE ADVICE AND COUNSEL GIVEN TO HIM BY HIS ATTORNEY, THAT HE HAS HAD SUFFICIENT TIME AND COUNSEL WITH HIS ATTORNEY TO INTELLIGENTLY, KNOWINGLY, AND VOLUNTARILY ENTER INTO THIS AGREEMENT AND DOES IN FACT INTELLIGENTLY, KNOWINGLY, AND VOLUNTARILY AGREE TO THE TERMS CONTAINED HEREIN.
8. THE TERMS SET FORTH HEREIN IN THE 7 PARAGRAPHS IMMEDIATELY PRECEDING THIS PARAGRAPH ARE CONTRACTUAL AND NOT A MERE RECITAL.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

  
Ernest F. Carneau

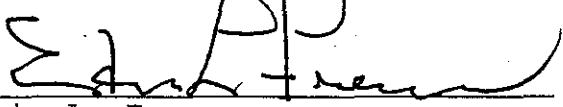
Date 5-25-94

APPROVED:

  
Victor Calzaretta  
Attorney for Ernest F. Carneau

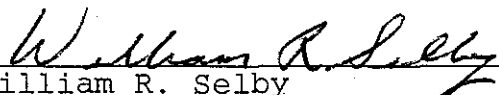
Date 5-25-94

BOARD OF TRUSTEES OF THE FIRE AND  
POLICE DISABILITY AND RETIREMENT FUND

By   
Edwin L. Freeman  
Fund Administrator

Date 6-14-94

APPROVED AS TO FORM:

  
William R. Selby  
Senior Deputy City Attorney  
Of Attorneys for the Board of Trustees,  
Fire and Police Disability and Retirement Fund

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AGREEMENT AND STIPULATED SETTLEMENT AND RELEASE

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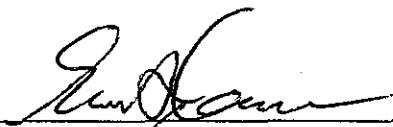
BEFORE THE BOARD OF TRUSTEES  
FIRE AND POLICE DISABILITY AND RETIREMENT FUND  
CITY OF PORTLAND, OREGON


In the Matter of the Application	)	
for Service-Connected Disability	)	
Benefits of	)	
	)	STIPULATION AND ORDER
ERNEST F. CARNEAU,	)	OF DISMISSAL
	)	
Claimant.	)	

This matter came before the above-entitled Board of Trustees pursuant to the application of Ernest F. Carneau requesting service-connected disability benefits (including medical benefits) for a chest injury sustained by Ernest F. Carneau on or about July 18, 1993.

The matter having now been compromised and settled,

IT IS HEREBY STIPULATED by the claimant and his attorney, Victor Calzaretta, that the application for service-connected disability benefits referred to hereinabove may be dismissed with prejudice to the claimant.

  
\_\_\_\_\_  
Ernest F. Carneau


  
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Victor Calzaretta  
Attorney for Ernest F. Carneau

BASED ON THE FOREGOING STIPULATION, it is hereby

ORDERED that the application of Ernest F. Carneau requesting service-connected disability benefits (including medical

benefits) for the chest injury sustained by Ernest F. Carneau on or about July 18, 1993, be and the same hereby is dismissed with prejudice to the claimant.

Adopted by the Board of Trustees on June 14, 1994.



Edwin L. Freeman  
Fund Administrator