

Resolution No. 312

WHEREAS, Stephen J. Smith, a member of the Bureau of Police, applied for service-connected disability benefits (including medical benefits) from the Fire and Police Disability and Retirement Fund (Fund) for injuries he sustained to his back (including a compression fracture at the T-12 level of the spine) as a result of doing exercises at the Northeast Precinct Fitness Room on or about June 21, 1995; and

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

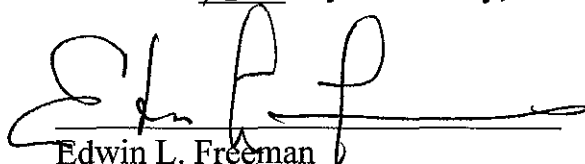
WHEREAS, the Fund and Stephen J. Smith desire to settle any and all disputes and terminate all conflicts which exist or may exist between them concerning Stephen J. Smith's claim that his claim is compensable by way of compromise and settlement; and

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, a copy of which is 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 authorized and directed to execute the Agreement attached hereto as Exhibit "A" on behalf of the Board of Trustees.

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 12<sup>TH</sup> day of January, 1999.



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, Stephen J. Smith (hereinafter referred to as "Smith"), a member of the Bureau of Police, has applied for service-connected disability benefits (including medical benefits) from the Fund for injuries he sustained to his back (including a compression fracture at the T-12 level of the spine) as a result of doing exercises at the Northeast Precinct Fitness Room on or about June 21, 1995; and

WHEREAS, there is a bona fide dispute as to whether the injury sustained by Smith on or about June 21, 1995 arose out of and in the course of his employment as a Portland police officer; and

WHEREAS, the Fund and Smith desire to settle any and all disputes and terminate all conflicts which exist or may exist between them concerning or related to Smith's claim that the injury he sustained on or about June 21, 1995 arose out of and in the course of his employment as a Portland Police Officer by way of compromise and settlement.

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**AGREEMENT AND STIPULATED SETTLEMENT AND RELEASE**

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**EXHIBIT "A"**

NOW, THEREFORE, it is agreed as follows:

**AGREEMENT**

1. The Fund shall pay to Smith the nonservice-connected disability benefits described in Section 5-307 of the Plan for the period from June 22, 1995 to July 7, 1995 in the amount of \$1,116.36.
2. In addition to the nonservice-connected disability benefits described in paragraph 1, the Fund shall pay to Smith the sum of \$316.22.
3. Smith 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 June 21, 1995. Smith 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 Smith's injury occurring on or about June 21, 1995 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, Smith, 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 injuries he sustained on or about June 21, 1995 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, Smith 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. Smith 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

**AGREEMENT AND STIPULATED SETTLEMENT AND RELEASE**

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. Smith further understands and agrees that the records of the Board will reflect that the back injury that he sustained on or about June 21, 1995, which prompted him to apply for service-connected disability benefits (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 Smith after this settlement.
6. Smith 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. SMITH 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, THAT NO FURTHER QUESTIONS REMAIN, AND THAT HE HAS HAD SUFFICIENT TIME 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.

AGREEMENT AND STIPULATED SETTLEMENT AND RELEASE

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

Stephen J. Smith  
Stephen J. Smith

Date 12/28/98

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

By Edwin L. Freeman  
Edwin L. Freeman  
Fund Administrator

Date 1.12.99

APPROVED AS TO FORM:

William R. Selby  
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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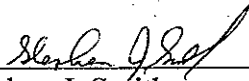
BEFORE THE BOARD OF TRUSTEES  
FIRE AND POLICE DISABILITY AND RETIREMENT FUND  
CITY OF PORTLAND, OREGON

In the Matter of the Application for Service-	)	
Connected Disability Benefits of	)	
STEPHEN J. SMITH,	)	STIPULATION AND ORDER
	)	OF DISMISSAL
Claimant.	)	

This matter came before the above-entitled Board of Trustees pursuant to the application of Stephen J. Smith requesting service-connected disability benefits (including medical benefits) for back injuries sustained by Stephen J. Smith on or about June 21, 1995.

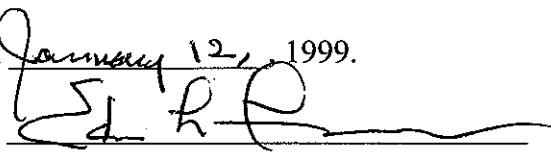
The matter having now been compromised and settled,

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

  
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Stephen J. Smith

BASED ON THE FOREGOING STIPULATION, it is hereby

ORDERED that the application of Stephen J. Smith requesting service-connected disability benefits (including medical benefits) for the back injuries sustained by Stephen J. Smith on or about June 21, 1995, be and the same hereby is dismissed with prejudice to the claimant.

Adopted by the Board of Trustees on January 12, 1999.  
  
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Edwin L. Freeman  
Fund Administrator

1 - STIPULATION AND ORDER OF DISMISSAL