

RESOLUTION NO. 336

WHEREAS, Michael Barkley, a Member of the Fire and Police Disability, Retirement and Death Benefit Plan (Plan) has requested interest on retroactively paid disability benefits and attorney's fees; and

WHEREAS, the Board of Trustees concluded at a hearing on August 14, 2001 that such request should be denied; and

WHEREAS, the Findings of Fact and Determination of Law of the Board relative to the claim of Michael Barkley is attached as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED that the Findings of Fact and Determination of Law in connection with the request of Michael Barkley for interest on retroactively paid disability benefits and attorney's fees attached hereto as Exhibit "A" be and the same hereby are adopted as the Findings of Fact and Determination of Law of the Board of Trustees of the Fire and Police Disability and Retirement Fund.

ADOPTED by the Board of Trustees on the 9<sup>th</sup> day of October, 2001.

*Babette Heefle*

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Babette Heefle  
Fund Administrator

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

4	In the Matter of the Application	)	
	for Service Connected Disability	)	
5	Benefits	)	FINDINGS OF FACT
		)	AND DETERMINATION
6	of	)	OF LAW
		)	
7	MICHAEL BARKLEY,	)	
		)	
8	Claimant.	)	

9           This matter came before the City of Portland Fire and Police Disability and Retirement  
10 Fund ("FPDRF") Board of Trustees ("the Board") on May 8, 2001 pursuant to the application  
11 of Michael Barkley's request for service-connected disability benefits under Section 5-306(a)  
12 of Chapter 5 of the Charter of the City of Portland, Oregon ("the Charter"). The hearing was  
13 continued on June 12, 2001 and August 14, 2001.

14           Michael Barkley appeared in person and by and through his attorney, Elden M.  
15 Rosenthal. The Board, after reviewing the record and listening to testimony and the arguments  
16 presented, now make the following findings of fact and determination:

17                                   FINDINGS OF FACT

- 18           1. Michael Barkley is a sergeant employed by the Portland Police Bureau ("PPB").  
19           2. Sgt. Barkley filed a claim for stress related disability on March 6, 1996. His treating  
20 physician, Dr. Loyal Marsh, found him to be suffering from post traumatic stress disorder and  
21 unable to work.  
22           3. Prior to filing his claim for disability, Sgt. Barkley had been indicted by a  
23 Multnomah County Grand Jury which led to a trial on felony theft charges and ultimate  
24 acquittal in 1999.  
25           4. Sgt. Barkley returned to work at the Portland Police Bureau on April 16, 1999. On  
26 August 25, 1999, he filed another claim for stress related disability. That claim was approved

1 on February 8, 2001.

2 5. At the May 8, 2001 meeting of the Board of Trustees, the Board approved Sgt.  
3 Barkley's claim for disability for the period March 6, 1996 through April 16, 1999.

4 6. By letter dated November 3, 2000 and prior to the commencement of the May 8,  
5 2001 hearing, Sgt. Barkley's attorney, Mr. Ted Sumner, an associate of Mr. Elden Rosenthal,  
6 claimed Sgt. Barkley was entitled to interest on back due time loss if his 1996 claim was  
7 approved.

8 7. Mr. Rosenthal also asserted that Sgt. Barkley was entitled to attorney fees for his  
9 attorney services in obtaining approval of the 1996 claim.

10 8. According to Ms. Julie Leonard, Disability Claims Examiner in 1996, Sgt. Barkley's  
11 claim was initially handled in a routine fashion. FPDRF staff was aware of Sgt. Barkley's  
12 indictment on a theft charge and that the charge could lead to discipline.

13 9. Section 5-306(a)(2) prohibits the Board from approving a stress claim that arises  
14 from "reasonable disciplinary...actions by the employer."

15 10. According to former Fund Administrator, Mr. Edwin Freeman, there had been a  
16 history of members with disciplinary problems filing stress claims. Given the staff concern  
17 about compensability of the claim, staff made an internal decision to delay presenting the claim  
18 to the Board until the legal issues were resolved.

19 11. Claims are delayed at times because of the need for further investigation or because  
20 a claimant seeks delay.

21 12. According to FPDRF staff's estimate, 97 to 98 percent of the disability claims are  
22 decided within 60 days of filing the claim.

23 13. In Sgt. Barkley's case, claim investigation included an independent medical  
24 examination performed by Dr. Ronald Turco. Dr. Turco found Sgt. Barkley to be fit for duty.

25 14. The medical record also included the opinions of Dr. Davis and Dr. Marsh who  
26 agreed that Sgt. Barkley was, in 1996, suffering from post traumatic stress disorder and was

1 unable to work.

2 15. After Dr. Turco's report, Mr. Barkley was advised by his then-attorney, Michael  
3 Shinn, that the claim was unlikely to be approved.

4 16. No FPDRF staff advised Sgt. Barkley that his claim was unlikely to be approved  
5 or suggested that the report from Dr. Turco "was the end of the road" for Sgt. Barkley's claim.

6 17. It is not uncommon for claimants to contact FPDRF staff regarding the status of  
7 their claim.

8 18. Neither Sgt. Barkley nor Mr. Shinn contacted the FPDRF after the receipt of Dr.  
9 Turco's report to inquire as to the status of the claim or request that it be placed on the Board's  
10 agenda.

11 19. The FPDRF staff did not contact Sgt. Barkley between 1996 and 1999 to advise  
12 him that he could have his claim heard before the Board.

13 20. The FPDRF has no policy or rule to formally notify claimants that their case is or  
14 is not going to be presented to the Board.

15 21. Current policy is that the Fund Administrator receives a bi-weekly report listing  
16 pending claims. At the time of the August 14, 2001 hearing there were 15 to 20 pending  
17 claims.

18 22. In a February 21, 2001 arbitration decision, Arbitrator Marvin L. Schurke  
19 determined that the City of Portland had violated the collective bargaining agreement between  
20 the Portland Police Association and the City of Portland by suspending Sgt. Barkley without  
21 just cause. The arbitrator allowed the employer the right to argue that Sgt. Barkley was  
22 disabled from work for any or all of the period in question at a further proceeding which  
23 would concern the remedy for the City's violation.

24 23. Section 5-202(a) of the Charter grants the Board power to decide applications for  
25 benefits and to prescribe rules and regulations for administration of the Charter.

26 24. The Board "may pay for its administrative expenses from the Fund." Section 5-

1 202(b).

2 25. The Charter contains no language empowering or authorizing the Fund to pay  
3 interest on retroactively paid disability benefits or attorney fees for claimants appearing before  
4 the Board.

5 ULTIMATE FINDINGS OF FACT

6 1. The Charter does not authorize or empower the Board to pay interest on  
7 retroactively approved disability claims or attorney fees for claimants' attorney's assistance in  
8 obtaining benefits.

9 CONCLUSION OF LAW

10 1. In the absence of statutory authority permitting payment of interest on retroactively  
11 paid disability benefits and/or payment of attorney fees, the Board is prohibited from approving  
12 such payment.

13 BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSION OF  
14 LAW, it is hereby

15 ORDERED that Sgt. Barkley's request for interest on retroactively paid disability  
16 benefits and for attorney fees are DENIED.

17 Adopted by the Board of Trustees on this 9<sup>th</sup> day of October, 2001.

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Fund Administrator

20 TO THE CLAIMANT: THIS DECISION IS SUBJECT TO REVIEW BY THE  
21 MULTNOMAH COUNTY CIRCUIT COURT PURSUANT TO ORS 34.010 TO 34.100.

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