

STATE OF INDIANA) SS:

BEFORE THE STATE BOARD OF THE
PUBLIC EMPLOYEES' RETIREMENT
FUND FOR THE 1977 POLICE AND
FIREFIGHTERS' PENSION AND
DISABILITY FUND

IN THE MATTER OF FRANK MARSHALL

ADMINISTRATIVE ADJUDICATION

The above referenced matter came on to be heard in accordance with I.C. 4-22-1-1 by the duly appointed hearing officer, Burton L. Garten, on the 26th day of July, 1982 in the offices of the Public Employees' Retirement Fund, Room 110, Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204. Respondent, the Public Employees' Retirement Fund, was represented by Frank Baldwin and the petitioner, Frank Marshall, was represented by G. Michael Loveall.

Witnesses were sworn and testimony and exhibits were heard and received into evidence.

Burton L. Garten now recommends transfer of the hearing findings of fact and decision to the State Board for its final decision and disposition of said matter.

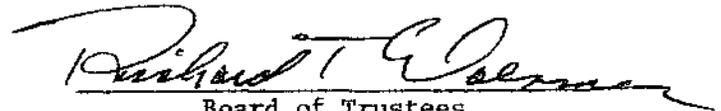
FINDINGS OF FACT AND DECISION AND CONCLUSIONS
OF LAW ARE FOUND IN THE ATTACHED REPORT
OF THE HEARING DATED JANUARY 27, 1983

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby deny disability benefits to Frank Marshall under I.C. 36-8-8-12 and I.C. 36-8-8-13, and does overrule the disability decision of the local board (Seymour Fire Pension Fund).

All of which is ordered this 18th day of February, 1983.

Richard T. Doermer, Chairman
J. Dwight Peterson, Vice Chairman
Myrl W. Deitch, Jr., Trustee
Herschell J. Umbaugh, Trustee
Marie T. Lauck, Trustee


Board of Trustees
Public Employees' Retirement Fund

STATE OF INDIANA

PUBLIC EMPLOYEES' RETIREMENT FUND
143 West Market Street, Suite 800
Indianapolis, Indiana 46204

In the matter of receiving additional evidence for the review of the findings of fact and the initial determination of the Public Employees' Retirement Fund on the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund under I.C. 36-8-8-12 and I.C. 36-8-8-13 by Frank Marshall.

Reason for Action: PERF initial determination denying the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing Date: July 26, 1982

Place: Public Employees' Retirement Fund
Suite 110, Harrison Building
143 West Market Street
Indianapolis, Indiana 46204

FINDING OF FACT AND DETERMINATION

The above matter coming to be heard before Burton L. Garten, duly appointed to conduct administrative hearings as provided by the Administrative Adjudication Act, Indiana Code 4-22-1.

The Public Employees' Retirement Fund (respondent) was represented by Frank Baldwin. Frank Marshall (petitioner) was represented by G. Michael Loveall.

Petitioner's Exhibits

Copy of:

1. The deposition upon oral examination of Dr. George F. Parker, taken on June 21, 1982.
2. Deposition Exhibit #1 - August 11, 1980 report from Dr. Kenneth E. Bobb to Mr. G. Michael Loveall, Attorney.
3. Deposition Exhibit #2 - July 29, 1980 report and test results from Dr. Charles F. Kemper to Dr. Kenneth Bobb.
4. Deposition Exhibit #3 - March 13, 1980 report and test results from Dr. Kenneth E. Bobb to the Seymour Fire Department Pension Board.
5. Deposition Exhibit #4 - December 21, 1977 report from Dr. Charles F. Kemper to Dr. Kenneth Bobb.
6. Deposition Exhibit #5 - Laboratory test results from Community Hospital in Indianapolis, Indiana dated February 27, 1981.
7. Test results from Dr. William Holland dated March 18, 1982.

8. March 16, 1981 letter from Dr. George F. Parker to Mr. G. Michael Loveall.
 9. March 21, 1980 and November 30, 1981 Letters to Seymour Fire Pension Board from Dr. Kenneth E. Bobb.
 10. December 29, 1981 and January 21, 1982 letters from Mr. G. Michael Loveall to Seymour Fire Pension Board.
 11. February 13, 1980 letter from Seymour Fire Pension Board to Mr. Frank Marshall.
 12. Mr. Frank Marshall's application for disability benefits dated February 3, 1982.
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13. February 3, 1982 letter from Seymour Fire Pension Board to the PERF Board.
14. Correspondence between Dr. Arthur P. Kebel and Mr. Thomas P. Derloshon, Jr. dated February 17, 1982, February 25, 1982 and April 9, 1982.
15. March 24, 1981 letter from Dr. George F. Parker to Mr. G. Michael Loveall.
16. Correspondence concerning Mr. Marshall's disability claim and hearing dated:
 - a. March 1, 1982
 - b. March 3, 1982
 - c. April 16, 1982 - Initial Determination Letter
 - d. April 19, 1982 - Seymour Fire Pension Board objection to initial determination
 - e. April 23, 1982
 - f. April 27, 1982
 - g. April 29, 1982
 - h. May 7, 1982
 - i. May 17, 1982
 - j. Motion for continuance dated June 16, 1982
 - k. June 18, 1982

Respondent's Exhibits

Copy of:

1. The deposition upon oral examination of Dr. Arthur P. Kebel, taken on July 22, 1982.
2. Respondent's Deposition Exhibit #1 - March 13, 1980 report from Dr. Kenneth E. Bobb to the Seymour Fire Pension Board.
3. Respondent's Deposition Exhibit #2 - Circle City Evaluation Clinic report on Frank Marshall dated March 18, 1982.
4. Respondent's Deposition Exhibit #3 - Community Hospital Pulmonary Function results dated February 27, 1981.

Evidence also included oral testimony of Mr. Frank Marshall.

FACTS:

On February 3, 1982 the local board recommended Mr. Frank Marshall for disability benefits. Mr. Marshall made application to the Public Employees' Retirement Fund for disability benefits on February 3, 1982. PERF, by initial determination letter of April 16, 1982, denied disability benefits to Mr. Marshall. The issue at hand is the denial of disability benefits to Mr. Frank Marshall by the Public Employees' Retirement Fund, and the subsequent review of the local board's findings and receipt of additional evidence.

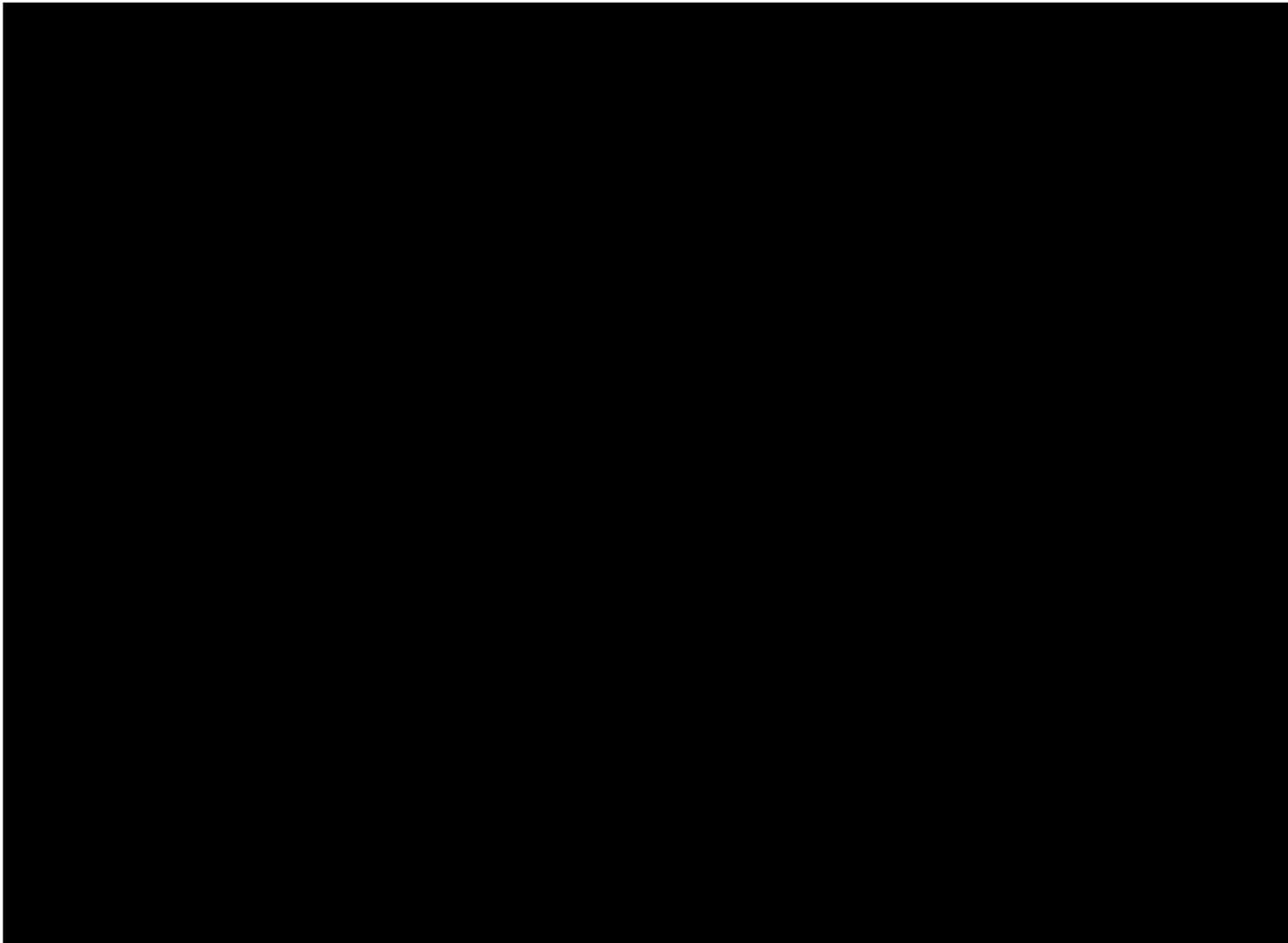
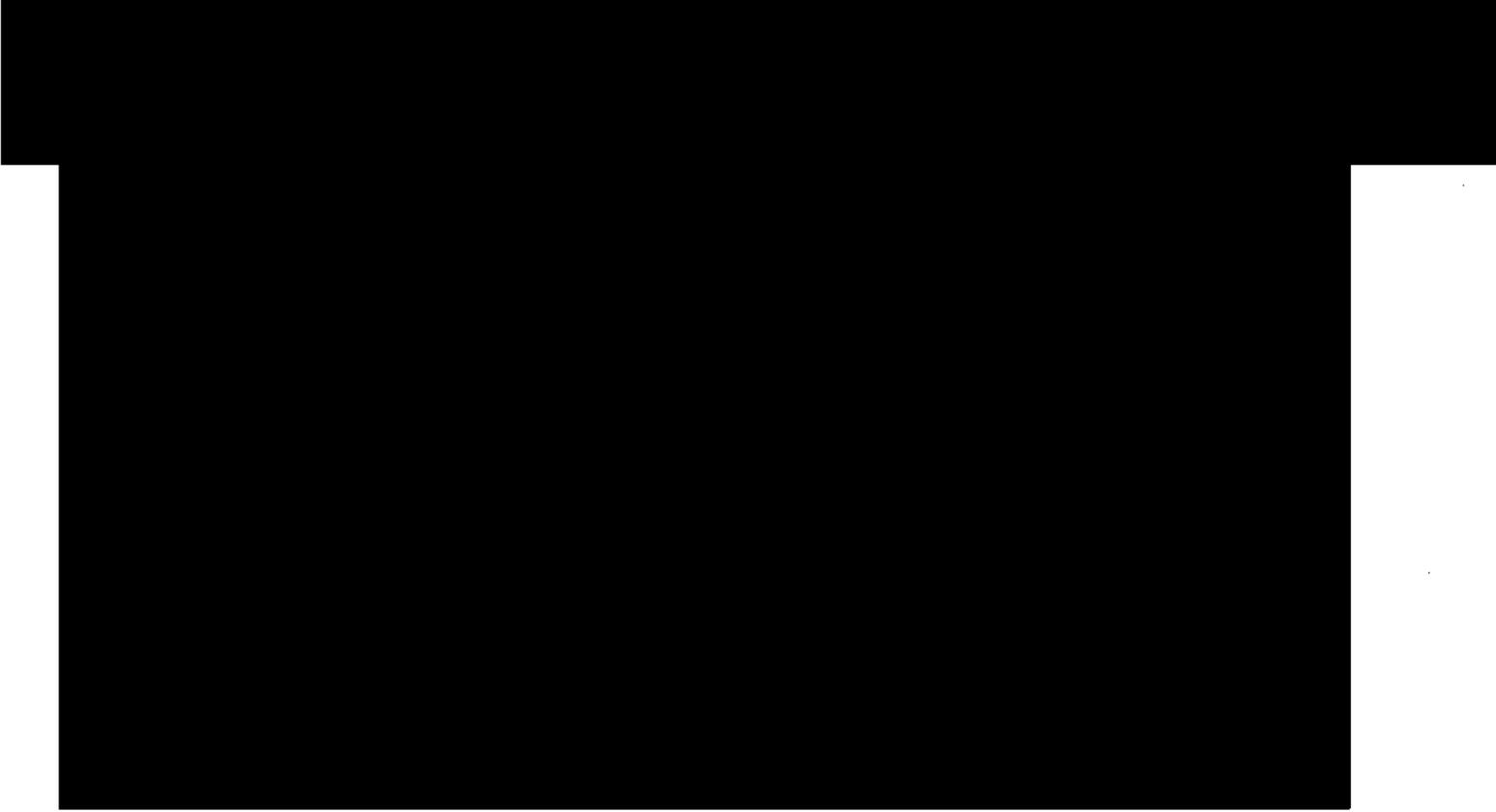
Mr. Marshall is 47 years old and has been a firefighter about 17 years. He reported to work with the Seymour Fire Department on April 19 after receiving the initial determination letter denying him disability benefits. At that time and since that time he has been told that there is no work for him at the firehouse. There has been nothing but firefighting work available. The fire department does not consider him restricted in any way. There has not been any clerical work available as it is done by the Chief and Assistant Chief.

A firefighter's duties at the Seymour Fire Department are made up of maintenance type work and firefighting work. Certain days are cleaning days and the firefighters clean the firehouse and check and clean the fire trucks. These are done when there are no fires to fight. Some of the firefighting duties are driving the truck, putting water on the fire and possibly going inside a building for rescuing people or putting out fires.

Mr. Marshall described the firehouse as constructed of cement block with cement floors covered with tile floors. It has a forced air furnace. The dust in the



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FINDINGS:

Indiana Code 36-8-8-12 reads in part:

Disability Benefits: If an active fund member is permanently or temporarily unable to perform all suitable and available work with the police or fire department for which he is or may be capable of becoming qualified as determined under Section 13 (36-8-8-13) of this chapter, he is entitled to receive during the disability a benefit equal to the benefit he would have received if he had retired.

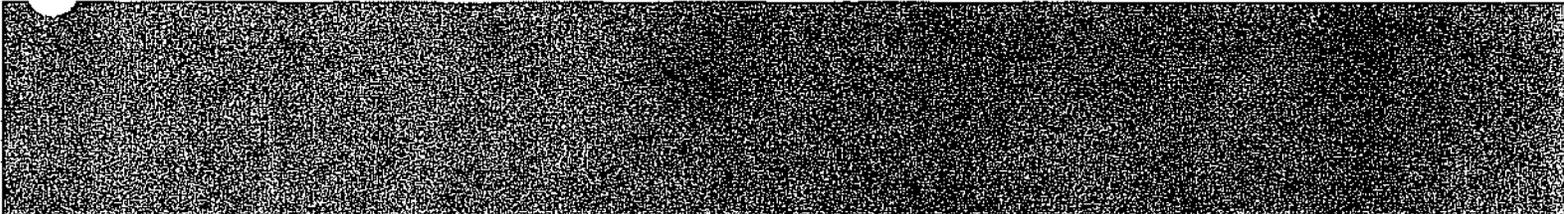
Indiana Code 36-8-8-13 reads in part:

Determination of Disability-Review-Termination of Benefits-Appeals:

- (a) The local board shall determine, using the procedures prescribed for the 1925, 1937 or 1953 fund, whether a fund member is disabled as defined in Section 12 (36-8-8-12) of this chapter.
- (b) The local board shall submit its findings of fact and its determination to the PERF Board. The PERF Board or its hearing officer shall review the findings of fact and the local board's determination. If the PERF Board approves the local board's determination, then the PERF Board shall comply with the determination. If the PERF Board does not approve the local board's determination, the PERF Board or its hearing officer may receive additional evidence on the matter before making its determination. The PERF Board or its hearing officer may request that the fund member be examined by a doctor selected by the PERF Board. The results of the examination shall be submitted to the PERF Board or its hearing officer. If a fund member refuses to submit to an examination, the PERF Board shall find that a disability does not exist.

It has been established, pursuant to I.C. 36-8-8-12 that:

1. The job of a firefighter is one requiring particular physical abilities.
2. Dust, smoke and other irritants are a part of the environment surrounding Mr. Frank Marshall's firefighting and maintenance duties.

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4. Mr. Frank Marshall's condition does not meet the standards for disability established by either the American Medical Association or the Social Security Administration.
 5. Mr. Frank Marshall does not have any condition that would impair his functioning as a firefighter.
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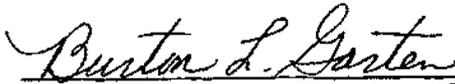
It has further been established, pursuant to I.C. 36-8-8-13 that:

1. The local board (Seymour Fire Pension Board) submitted its findings of fact and determination to the PERF Board on Mr. Frank Marshall's disability application.
2. The PERF Board did not approve the local board's determination.
3. Mr. Marshall was examined by several doctors including a doctor selected by the PERF Board, Dr. William Holland, Internist.

DECISION AND CONCLUSION OF LAW:

Based on the testimony of Mr. Frank Marshall, Doctors George F. Parker and Arthur P. Kebel, and in view of the above facts and findings, I, Burton L. Garten, duly appointed hearing officer for the State Board of the Public Employees' Retirement Fund, would recommend denying disability benefits to Mr. Frank Marshall, pursuant to I.C. 36-8-8-12 and I.C. 36-8-8-13. I would recommend that the decision of the local board be overruled.

January 27, 1983


Burton L. Garten, Hearing Officer
Public Employees' Retirement Fund