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July 30, 2021


D.C. Retirement Board/Benefits Department
Member Services – Suite 200
900 7th Street, NW
Washington, DC 20001

Re: *Erin Smith (Petitioner)*
Jeffrey L. Smith (Deceased)

Case No. PD21-1045

Dear Sir/Madam:

Enclosed please find additional documentation in support of the application for survivor benefits on behalf of the Petitioner, Erin Smith. Specifically, please find the Memorandum in Support of Survivor Benefits. Also, in addition to the exhibits (A thru K) submitted on May 7, 2021, please find the following exhibits (J thru O):

- J. Dr. Patrick Sheehan's report of 07/12/21.
- K. Dr. Jonathan Arden's Declaration of 07/29/21 and his CV.
- L. Injury or Illness Report (Complaint No. 21-002-555).
- M. 2019 & 2020 Income Tax Returns.
- N. Medical Records from the Metropolitan Police Clinic.
- O. Photograph of Officer Smith on 01/06/21 on the west side of the US Capitol.

On behalf of our client, we appreciate your consideration of this matter.

V 

Richard J. Link

RJL/rb
Encl

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Police and Firefighters' Retirement and Relief Board

In the matter of:

*D.C. Metropolitan Police Department
Case No. PD21-1045*

ERIN SMITH
Petitioner

Survivor Annuitant

MEMORANDUM IN SUPPORT OF APPLICATION FOR SURVIVOR BENEFITS

COME NOW, the law firm GOODWIN WEBER PLLC, and David P. Weber and Richard J. Link, attorneys at law, on behalf of Erin Smith, widow of Washington, D.C., Metropolitan Police Officer Jeffrey Smith. In support of Erin Smith's application for survivor benefits:

Facts

1. Officer Jeffrey Smith was employed as a police officer for the Metropolitan Police Department for over twelve (12) years.
2. Officer Smith married Erin Smith ("Erin") on February 2, 2019 in South Carolina and they remained married until Officer Smith's death.
3. In 2019, Officer Smith earned [REDACTED] and Erin earned [REDACTED]. In 2020, Officer Smith earned [REDACTED] and Erin earned [REDACTED]. Erin was dependent on her husband for financial support. (See 2019 and 2020 tax returns, attached hereto)
4. On January 6, 2020, MPD assigned Officer Smith to the Civil Disturbance Unit ("CDU"). While protecting the United States Capitol building, Officer Smith was assaulted by a violent mob (they threw metal objects at him and struck him in the head). Chief Robert Contee was an eyewitness:

[T]he Capitol – hallowed ground for our country – was under attack. MPD police officers were engaged in a literal battle for hours. Many were forced into hand-to-hand combat to prevent more rioters from gaining entry into the Capitol. This was not a peaceful protest.... Those seven hours between the urgent call for help from the Capitol Police to MPD and the resumption of work by both houses of Congress will be indelibly etched on the memories of

every law enforcement officer who was on the scene.

Five people lost their lives on January 6th – Capitol Police Officer Brian Sicknick and four others. And tragically, two officers who were at the Capitol on January 6th, one each from the Capitol Police and MPD, took their own lives in the aftermath of the battle. We honor the service and sacrifices of Officer Brian Sicknick, Howard Liebengood and Jeffrey Smith. (See Congressional Testimony of Chief of Police Contee)

5. On January 6, 2021, Officer Smith presented himself to the Metropolitan Police Clinic where he reported the following: “I was outside of the US Capitol and people started throwing things metal objects around 535 pm – some kind of object hit me in the face shield.” The January 6, 2021 Police Clinic office notes state as follows:

On duty injury as he was controlling the protestors today
He jarred his neck when an object hit his face shield.

On the new injury questionnaire, Officer Smith wrote that the incident was “Assault – Intentional”.

6. Sgt. Dustin Nevel performed an investigation and completed an MPD Form entitled “Injury or Illness Report” (Complaint No. 21-002-555). The form noted that Officer Smith sustained a “performance of duty” injury from the events that occurred during the Capitol riots:

On January 6th 2021, Officer Jeffrey Smith was on a CDU line along with fellow CDU 23 members on the east side of the United States Capitol Building. Officer Smith reported that he was struck on the front of his helmet with unknown object . . . The investigating sergeant was on the same CDU line as Officer Smith and observed the crowd throwing metal poles at, and striking, several officers on the line. . . . At the time of the incident, the scene was very chaotic and dangerous. (See Form “Injury or Illness”)

7. While the Injury or Illness Report indicates that Officer Smith was assigned to the east side of the Capitol, contemporaneous photos of Officer Smith indicate that he was also at points during the events of January 6 present on the west side of the Capitol. See attached photo of Officer Smith wearing gas mask, with the Washington Monument behind him, indicating he is on west side of the Capitol.

8. Undersigned counsel have repeatedly sought Officer Smith’s body camera footage of

January 6, 2021, but have not been provided this footage by the Metropolitan Police Department. Upon information and belief, a source has told the Washington Post that he or she has viewed the body camera footage, and that the footage depicts Officer Smith being violently assaulted and being struck with a metal pole, consistent with the reports and investigation made.

9. Nine days after the Capitol Insurrection - on January 15, 2021 - while Officer Smith was driving from his home in Virginia to report to his scheduled shift, his vehicle left the roadway and struck a tree. The medical examiner ruled his death a suicide based on a single gunshot wound to the head.

10. On February 26, 2021, the Board approved Erin's application for survivor annuity benefits as a surviving spouse of Officer Smith.

11. On May 7, 2021 Erin submitted a claim for enhanced survivor benefits under DC Code §5-716(a).

12. By Order dated May 20, 2021, the Board extended the deadline to submit additional evidence in support of the survivor application until July 30, 2021.

13. On July 12, 2021, a forensic psychiatrist, Dr. Patrick Sheehan, prepared a detailed medical report addressing causation and other issues related to this case.

14. On July 29, 2021, a forensic pathologist, Dr. Jonathan L. Arden, submitted his Declaration addressing the issue of causation.

Analysis

Background

District of Columbia law provides that widows of deceased Metropolitan Police Officers are entitled to a survivor annuity. The law also permits a surviving spouse to collect an enhanced retirement annuity and a lump sum payment if the conditions of DC Code §5-716(a) are met. That

provision provides in pertinent part as follows:

a) If any member:

(1) dies in the performance of duty and the Mayor determines that:

(A) the member's death was the sole and direct result of a personal injury sustained while performing such duty;

(B) his death was not caused by his willful misconduct or by his intention to bring about his own death; and

(C) intoxication of the member was not the proximate cause of his death;

The central question for the Board to decide is whether Officer Smith died in the performance of his duty.¹ In resolving this issue, it bears mentioning that the Police and Firefighters Retirement and Disability Act is to be given liberal construction so as to enforce its humanitarian purposes.

The law was passed to benefit police officers and their families as a consequence of the challenges they face.²

Expert Evidence

The forensic psychiatrist, Dr. Sheehan, performed an extensive investigation into the circumstances surrounding Officer Smith's death. Dr. Sheehan reviewed medical records. In addition, he conducted in-depth interviews with those who know Officer Smith well. Based on this investigation, Dr. Sheehan learned the following:

- Erin relayed the following history: "Smith's unit was sent to the Capitol. . . . While his unit was in the building, it came over the radio that shots were fired. Officers did not know who was shooting or if they were walking into gunfire. . . . he didn't know if he was going to get out alive. During the riot [] he texted me back saying it was crazy, it

¹ In this case, there is no evidence that Officer Smith's death resulted from willful misconduct or from intoxication. (See the autopsy report).

² Congress has expressed a distaste for "resolution of doubts against them in the administration of laws passed for their protection." *Newell-Brinkley v. Walton*, 84 A.3d 53 (2014).

was the craziest thing he'd ever been a part of." (Report, p. 9)

- Erin relayed that when Officer Smith came home, he said that he had been punched in the face, hit in the head with a metal pole. (Report, p. 9)
- After the January 6th Insurrection, "he became extremely quiet. He didn't want to walk the dog or go anywhere. He became short tempered. . . . His mood changed. He didn't want to talk about anything. He didn't want to do anything. He was eating very little. He had problems sleeping. I'd wake up in the middle of the night and he was pacing in the hallway inside the house. He wasn't listening. He'd get angry with me.. A few nights when she woke up, he was in bed crying." She knew he was not right. (Report, p. 10)
- Prior to the January 6, 2021 incident, Officer Smith called his parents daily. After January 6, 2021, he stopped calling them daily. (Report, p. 11)
- Following the January 6, 2021 incident, "if I talked to him, his mind was someplace else." (Report, p. 11)
- He was very close to his dog. It was his dog. It was so unlike him to not want to walk the dog. He had ben so close to the dog." (Report, p. 11)
- There was no prior history of depression. Officer Smith's colleague and first partner, [REDACTED] said he had never seen him depressed or thought he would be the type of person to take his own life. (Report, pp. 11-12)
- Officer Smith's childhood friend, [REDACTED] said that Officer Smith had never been depressed. During a conversation on January 7 or 8, Officer Smith seemed down, quiet, tired, his voice was slow and he did not seem talkative as usual. Also, Officer Smith had a friend who had committed suicide and could not comprehend how this had happened.

(Report, p. 12)

- Another friend, [REDACTED], spoke to Officer Smith, who described the insurrection of January 6, 2021: “it was crazy, like a movie.” Before January 6, 2021, he was “even keeled, not easily riled, with perspective.” (Report, p. 13)
- Officer Smith’s parents said that he had no history of depression. After the January 6th incident, he was not offered mental health services. He told his parents that the riot was crazy, they were outnumbered by the crowd. (Report, pp. 13-14)
- Dr. Sheehan opined that, within a reasonable degree of medical certainty, the proximate cause of Officer Smith’s depression was the trauma experienced on January 6, 2021. (Report, p.14) The cause of Officer Smith’s death was the depression. The illness caused by the Capitol insurrection killed him. (Report, p.15-16)
- Dr. Arden has opined that there is a direct link between the workplace trauma (the Capitol insurrection) and Officer Smith’s death.

The Evidence Supports a Causal Nexus Between the Events of January 6, 2021 and Officer Smith’s Death

In order to show a causal connection, expert testimony is key. “Determining the root cause of a psychological condition and ruling out other possible causes are questions better elucidated by expert opinion.”³ The Board may only reject an expert opinion based on a careful and reasoned basis.⁴ Generally, the Board should not substitute its own judgment in place of expert opinion.⁵ In this case, great weight should be accorded to the medical opinions of Dr.

³ *Beckman v District of Columbia*, 810 A.2d 377 (2002).

⁴ *Pierce v District of Columbia*, 882 A.2d 199 (2005).

⁵ *Beckman v District of Columbia*, 810 A.2d 377 (2002).

Sheehan and Dr. Arden.

Under District of Columbia workers' compensation law⁶ a claimant can recover for emotional injuries if "the conditions of employment, as determined by an objective standard and not merely the claimant's subjective perception of his working conditions, were the cause of his emotional injury. The objective standard is satisfied where the claimant shows that the actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury."⁷ Applying this objective standard, there is no dispute that Officer Smith suffered physical and psychological injury on January 6, 2021. Officer Smith's death arose from the performance of his duties as an MPD police officer. The death can be traced directly to the events of January 6, 2021. As we now know, the events of January 6, 2021 were some of the most horrific in our nation's history. The Capitol Insurrection led to a confrontation between law enforcement and a violent mob on the steps of the United States Capitol. There is no dispute that Officer Smith was on duty during the riots or that he experienced a very real confrontation with the angry mob.⁸ This life-threatening event could be expected to produce psychological injury to first responders like Officer Smith.⁹ Further, from an

⁶ *Nounally v District of Columbia*, 184 A.3d 855 (2018) (Court of Appeals will attempt to construe DC Police and Firefighters Retirement and Disability Act in harmony with DC workers' compensation laws).

⁷ *Spartan v DOES*, 584 A.2d 564 (1990).

⁸ The facts of this case stand in contrast to *Pierce v District of Columbia*, 882 A.2d 199 (2005) where the Board found that the claimant's psychological injury did not arise in the performance of duty because there was no actual evidence that on-the-job harassment had occurred.

⁹ By way of analogy, the Board previously found a firefighter's PTSD was causally related to responding to the Pentagon on September 11, 2001, *Leach v District of Columbia*, 965 A.2d 849 (2009).

objective standpoint, Officer Smith was not the only officer to take his own life in connection with the events of January 6, 2021, demonstrating that Officer Smith's actual working conditions did cause similar injury to at least one other police officer, here, U.S. Capitol Police Officer Howard Liebengood.

The next question is whether Officer Smith's suicide breaks the causal nexus between the January 6, 2021 injury and his death. In other words, is the suicide a superseding or intervening cause? "If a claimant makes a showing of an injury incurred in the line of duty, the opposing side must **then offer evidence disproving the logical inference that the ensuing disability was the long term result of such injury.**"¹⁰ The undersigned counsel is unaware of any District of Columbia decision directly on point. In that regard, District of Columbia courts will often look to Maryland law, because the District of Columbia derives its common law from Maryland as of 1801.¹¹ Under Maryland law, suicide does not necessarily break the causal connection between an on the job injury and an illness in the workers compensation setting.¹²

¹⁰ *Beckman v District of Columbia*, 810 A.2d 377 (2002).

¹¹ *West v United States*, 866 A.2d 74 (2005)

¹² *Young v Hartford Insurance*, 303 Md. 182 (1985). In that case, the Maryland Court of Appeals stated:
The first question is whether Young's injuries which are the basis of this tort suit are sufficiently work related to be covered by the Act. The injuries result from self-infliction. Section 15 of the Act, [] makes compensation payable "except where the injury is occasioned by willful intention of the injured employee to bring about the injury or death of himself..." And see § 45 ("[N]o employee ... shall be entitled to receive any compensation ... on account of any injury ... caused by self-inflicted injury..."). This Court has held that, depending on the circumstances, death benefits under the Act may be paid where the worker has in fact committed suicide. See *Baber v. Knipp & Sons*, 164 Md. 55, 163 A. 862 (1933). [] To determine whether the worker's death arose out of and in the course of his employment, we applied a proximate cause test to the relationship between the death and the accidental injury. We said that, with respect to workers' compensation cases, " 'proximate cause' means that the result could have been caused by the

The facts of this case are clearly distinguishable from the line of cases where the Board found that off-duty police officers were not in the performance of duty.¹³ In contrast to those cases, Officer Smith's death can be traced to the criminal actions of the violent mob he encountered on January 6, 2021, while performing his duties as a Metropolitan Police Officer. As Dr. Sheehan has explained, the trauma of that day led to a serious depression. The depression, in turn, caused Officer Smith's death. Similarly, the former Chief Medical Examiner of the District of Columbia, Dr. Jonathan Arden, completely agrees with Dr. Sheehan's opinion; i.e. Dr. Arden says that there is a direct causal nexus between the line of duty work trauma on January 6, 2021 and Officer Smith's death on January 15, 2021. Dr. Arden explains that this causal nexus is supported by the social history (as outlined in Dr. Sheehan's report); the lack of a prior mental health history; the exposure to a traumatic event (the riot); the dramatic change in mood and personality after the trauma; and the short duration in time between the trauma and death.

Finally, the Petitioner would point out the following:

- There is no evidence that Officer Smith had a pre-existing psychological condition or prior treatment. Thus, unlike prior Board precedents, this case does not raise the question as to whether there had been an aggravation of a pre-existing condition.
- Officer Smith's depression arose from an unprecedented violent civil insurrection, frequently referred to as domestic terrorism, where several people lost their lives and

accident, and that there has not intervened, between the accident and the result, any other efficient cause." *Id.* at 67, 163 A. at 867.

¹³ The Board has previously denied "performance of duty" benefits to claimants who were injured or killed by the actions of a criminal encountered *outside* of working hours. *Rife v District of Columbia*, 940 A.2d 965 (2007) and *Smallwood v District of Columbia*, 956 A.2d 705 (2008)

were injured, and where he was directly exposed to gunfire, and knowledge of gunfire in close proximity to him, coupled with serious physical assault perpetrated upon him. This is not a case where the psychological injury resulted from a minor injury or from job conflicts that were wholly unrelated to the incident.¹⁴

- It does not matter that some people are more vulnerable to psychological injury than others. Rather, what matters is whether there is evidence of a causal relationship between the incident and the psychological injury.¹⁵
- Officer Smith did not act with the intention to bring about his own death. Rather, the psychological trauma of the January 6, 2021 Capitol Riot caused his death. (Dr. Sheehan's Report, p. 16).

¹⁴ The facts of this case are in contrast to Board precedents:

Morgan v District of Columbia, 370 A.2d 1322 (1977) (performance of duty benefits denied where officer involved in a minor incident and had significant pre-existing psychological problems);

Allen v District of Columbia, 528 A.2d 1225 (1987) (claim for performance of duty benefits denied where the claimant's issues resulted from anger with police department about returning to work); and
Croskey v District of Columbia, 596 A.2d 988 (1991) (claim for performance of duty benefits denied where officer had pre-existing psychological history).

¹⁵ *Stoner v District of Columbia*, 368 A.2d 524 (1977).

Conclusion

In light of the foregoing, the Petitioner has established that Officer Smith's death is causally related to the performance of his duties as a police officer, and Petitioner requests that she be awarded benefits under DC Code §5-716(a). Officer Smith's heroism during the Capitol Insurrection should be honored and acknowledged. Our nation and the District of Columbia owes him and his widow the thanks of a grateful nation, which has not yet been acknowledged.

By Counsel,



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