

**MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA**

950 Office Park Road, Suite 321
West Des Moines, Iowa 50265

IN THE MATTER OF:

CHARLES E. COX,

Applicant.

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DECISION

Iowa Code § 411.6(5) (1991)

STATEMENT OF THE CASE

Applicant Charles E. Cox ("Cox") filed his application with the Municipal Fire and Police Retirement System of Iowa ("System") on April 6, 1992, and was examined at the University of Iowa Hospitals and Clinics (UIHC) on June 1, 1992. Cox's application for accidental disability benefits was approved by the Executive Director on June 3, 1992. Upon the timely appeal by the City of Des Moines ("City"), a hearing was held on August 27, 1992, at the offices of the System in West Des Moines, Iowa. Mary Taylor (Chair), Judy Bradshaw and Vern Cook comprised the Disability Appeals Committee. Cox was represented by Attorney Charles Gribble; the City was represented by Attorney Nelda Mickle. Executive Director Dennis Jacobs appeared on behalf of the System. Attorney James Gilliam represented the Committee. The record remained open after hearing for entry of the curriculum vitae of the UIHC medical board physicians. Briefs were filed by the City and Cox.

PROCEDURAL ISSUES

Prior to hearing, the City raised three procedural objections to the proceedings. The first concerns the City's objection to the delegation by the Board of Trustees of the System to the Appeals Committee to determine Cox's entitlement to statutory benefits. More specifically, the City objects that such a delegation does not comport with the requirements of the Iowa Administrative Procedures Act, Chapter 17A of the Iowa Code.

Because the procedure envisioned by the Board requires the Committee to propose a decision, and that that decision by the Board is ultimately the decision of the entire Board, the City's objection to the delegation to the Committee is misplaced. Furthermore, based on the statute which formed the Retirement System, it is clear that the Retirement System is not a State agency required to follow the procedural requirements of the Iowa Administra-

tive Procedures Act. Accordingly, the City's procedural objections on delegation grounds is overruled.

The City's second objection is made to the failure of the System to provide the member and the City with notice and opportunity to be heard before benefits were awarded and the employee was separated from employment. More specifically, the City's objection is a practical one that the awarding of accidental disability benefits by the Executive Director severed Cox's employment with the City. The City's objection is that the applicant's employment relationship was severed by a staff decision of the System without any input by the City or the member.

For policy reasons the Board has instituted a policy and procedure whereby benefit decisions are made in an informal and efficient manner by the Executive Director based on the medical evidence and factual evidence placed before the System without requiring the parties to go through a full evidentiary hearing. Such a process provides the parties a preliminary determination of entitlement to benefits without incurring substantial administrative or litigation costs, and in some cases, will provide members a determination before temporary benefits run out. No final decision is rendered by the Board until either party has the opportunity for a full evidentiary hearing. Accordingly, the City's objection based on due process grounds is overruled.

The City's third objection was to being required to present its evidence first and to any possible placement of the burden of proof upon the City as appellant. Procedurally, the applicant can be a member or a representative of the City. In either case, the party asking for a decision from the System placing the member on retirement status and awarding the member benefits should have the burden of proving such a change when going before the System. The question in this case involves whether that burden shifts somehow due to the decision by the Executive Director. Because the Executive Director does not hold a hearing and the parties are entitled to present new evidence to the Disability Appeals Committee, the applicant, whether it be the member or the City, must carry the burden of proof throughout the initial appeals process. In any event, it matters little which party presents its evidence first before the Committee. In this case, the member is the applicant, and he thus has the burden of proof, even though the city presented its evidence first.

The fourth procedural issue raised prior to the hearing in this matter came upon the application for intervention filed by the Des Moines Association of Professional Firefighters. The Union argues that, as the representative for collective bargaining purposes on behalf of Des Moines firefighters, that it has interest in the Board's proceedings and should be allowed to participate as a party in the proceedings.

The Union itself is not a party in the sense that its rights or obligations will be determined by the Disability Appeals Committee or the full Board of Trustees. Inclusion of the Union

as a party giving them the full rights to present testimony and evidence, cross examine witnesses, in addition to presenting briefs and argument, will unduly complicate and lengthen the hearings. Of course, if the Union is concerned about any policy decisions that the Board might be making in any hearing, the Union has the opportunity to present its argument to the Board by way of a brief without intervening as a full party. Accordingly, the Union's petition for intervention is overruled. To the extent the Union has joined in Cox's brief, the Union's arguments are deemed the equivalent of an amicus curiae brief and are considered by the Committee accordingly.

FINDINGS OF FACT

The Committee, having heard the testimony and reviewed the evidence of record, finds as follows:

1. Applicant Charles Cox is a 49 year old firefighter with 27 years of service in the Des Moines Fire Department. On May 20, 1990, Cox slipped and twisted his right knee while descending the stairs at the fire station leading from the locker room. Such injury occurred while Cox was on duty. On October 11, 1990, Cox was examined by orthopaedic specialist, Dr. Kirk Green, with a diagnosis of probable torn medial meniscus.

2. On December 6, 1990, in pulling aluminum skirting from a trailer to gain access, Cox slipped and injured both shoulders and his right elbow. Such injury occurred while Cox was on duty. On December 12, 1990, Cox was diagnosed at the Employee Health Clinic as having a supra spinatous strain of the right shoulder and an MRI was ordered to rule out a tear. The MRI showed a rotator cuff impingement with no evident tear.

3. On December 18, 1990, arthroscopic surgery followed in which some right knee cartilage was removed. On March 18, 1991, Cox saw orthopaedic specialist, Daniel J. McGuire, for a second opinion concerning surgery on his right shoulder. Dr. McGuire concurred that some type of surgical intervention was in order. On March 22, 1991, Cox had impingement release surgery on his right shoulder. A convalescence period followed. On January 30, 1992, Dr. Green concluded that Cox had reached his point of maximum medical healing. At that time, Dr. Green rated Cox's permanent impairment at 10% - 12% of the upper extremity (shoulder) and 10% of the lower extremity (knee). Dr. Green stated that it was his opinion that it would be unlikely that Cox would be able to return to full firefighter duty.

4. After his application for benefits, Cox was seen by the physicians at the University of Iowa. Although none of the physicians were orthopaedic specialists, they concurred in Dr. Green's assessment that Cox was unable to clinically function as a firefighter, or that he would be able to do so in the future.

CONCLUSIONS OF LAW

1. Iowa Code Section 411.6(5) states (in relevant part) as follows:

Accidental disability benefit. Upon application to the system, if a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city by which the member is regularly employed, shall be retired by the system, if the medical board certifies that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired.

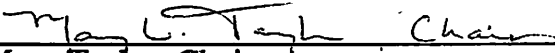
2. It is the conclusion of the Committee that Cox meets the requirements of Section 411.6(5) for accidental disability benefits.

3. The City's primary objection to Cox's application, is that it believes the evidence supporting a conclusion of permanent incapacity is not supported by adequate medical testimony. More specifically, the City objects that the physicians who observed and tested Cox in Iowa City were not orthopaedic specialists. It is quite clear from the evidence in the record that Cox was injured while in the performance of duty, that he received surgery to treat such injuries, and, as a result, his own orthopaedic specialist opined that he had reached his maximum medical healing and that he was fully incapacitated for further duty as a firefighter. Performing similar tests in Iowa City, although the physicians were not orthopaedic specialists, the Iowa City physicians ratified the determination of Cox's own physicians. Based on all the evidence in the record, the Disability Committee concurs in the Executive Director's recommendation to award accidental disability benefits.

DECISION

Charles E. Cox is hereby awarded accidental disability benefits under Chapter 411 of the Iowa Code.

Dated this 30 day of October, 1992.


Mary Taylor, Chair
Disability Appeals Committee

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