

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

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

IN THE MATTER OF:

FRANK D. GARDNER

Applicant

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DECISION

Iowa Code § 411.6(3) (1991) and
Iowa Code § 411.6(5) (1991)

STATEMENT OF THE CASE

The Appellant, Frank D. Gardner ("Gardner") filed an application for accidental disability benefits with the System on January 17, 1992. On March 17, 1992, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Gardner's disability. An initial determination approving Gardner for accidental disability benefits was made by the System on April 1, 1992. Upon a timely appeal by the City of Cedar Rapids, a hearing was held before the appeals committee of the Board (comprised of Judy Bradshaw, Chair; Deborah Neels and Vernon Cook) on August 28, 1992 at the offices of the System. Gardner appeared and was represented by attorney Robert Wilson of Cedar Rapids. James Flitz, Assistant City Attorney for the City of Cedar Rapids, appeared on behalf of the City. Dennis Jacobs, Executive Director, appeared on behalf of the System. Attorney Alice Helle of Des Moines, Iowa was present as counsel to the Committee. The record remained open after the hearing to allow for the transcription and filing of depositions. Post-hearing briefs were filed by the extended deadline by both Gardner and the City.

PROCEDURAL ISSUES

Prior to hearing, the City raised several procedural objections to the proceedings. The first concerned the procedure of the Board by which the Executive Director makes an initial determination on applications for disability benefits, without the opportunity for a hearing prior to that decision. For policy reasons, the Board has instituted a procedure whereby initial benefit decisions are made in an informal and efficient manner by the Executive Director, without requiring the parties to go through a full evidentiary hearing. To do otherwise would be an undue burden to both the System and the parties. The parties' due

process rights are protected by the opportunity to obtain an evidentiary hearing by appealing the initial decision of the System. Accordingly, the City's objection is overruled.

The City also objected 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.

Finally, the City objected to the delegation by the Board of Trustees of the System to the Appeals Committee to determine Gardner's entitlement to statutory benefits. Because the Board's procedure requires the Committee to propose a decision and that decision must be ratified by the full Board, the final decision is ultimately that of the Board, and the City's objection is misplaced. The City's objection on delegation grounds is therefore overruled.

FINDINGS OF FACT

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

1. Gardner had been employed by the City as a firefighter since June of 1964 and was 50 years old at the time of the hearing.

2. Gardner injured his back on February 3, 1978 in a fall at a fire scene. He again injured his back on September 14, 1980, while pulling a hose off a fire truck. He suffered a third injury to his back on October 22, 1980, while pulling a 2 1/2 inch hose up a drill tower. He was off work for about five months as a result of the October injury. Finally, on August 21, 1984, Gardner injured his back again while lifting a person on a backboard during a training exercise.

3. Gardner was treated by chiropractors in 1984 and 1988. He sought treatment from Dr. Hart, an orthopedic surgeon, in the fall of 1991. Dr. Hart prescribed pain medication, including two epidural steroid injections in the spine, physical therapy and a brace, but the pain continued to get worse.

4. Gardner's last day on the job was December 4, 1991. He quit work due to the continued problems with his back.

5. In his clinical summary of the evaluation at University Hospitals, Dr. Hunninghake concluded that Gardner is disabled from performing as a firefighter, based on his diagnosis of (1) degenerative disc disease with a narrow disc space at L5-S1 and increased sclerosis at the L5-S1 facets and (2) possible herniated disc. Drs. Schwartz and Aksamit of the medical board also stated in their clinic summaries that Gardner is disabled from his job as a firefighter.

6. Dr. Hunninghake stated in his deposition that Gardner's history and medical condition were consistent with an acute sudden injury in 1984 and frequent exacerbations of that injury subsequent to that.

7. The Committee finds that Gardner has suffered injuries in the line of duty that have rendered him incapacitated for further performance of duty as a firefighter.

CONCLUSIONS OF LAW

1. Iowa Code Section 411.6(3) states:

Ordinary disability retirement benefit. Upon application to the system, of a member in service or of the chief of the police or fire departments, respectively, any member shall be retired by the system, not less than thirty and not more than ninety days next following the date of filing the application, on an ordinary disability retirement allowance, if the medical board after a medical examination of the member 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. 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

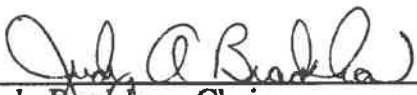
by the system, if the medical board certifies that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired.

3. It is the conclusion of the Committee that Gardner has established that he meets the requirements of section 411.6(5) for accidental disability benefits. Despite the City's argument that Gardner suffers from degenerative disc disease, there is substantial evidence that his condition was precipitated by the documented on the job injuries. The fact that his complete inability to perform did not immediately follow the injuries in question does not preclude entitlement under the statute.

DECISION

Frank E. Gardner is hereby awarded accidental disability benefits under Chapter 411 of the Iowa Code.

Dated this 30 day of OCTOBER, 1992.



Judy Bradshaw, Chair
Disability Appeals Committee

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Des Moines, Iowa, on the 2 day of November, 1992.

Sandra Poock