

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

IN THE MATTER OF:

JAMES B. BUSH,

Applicant.

)
)
)
)
)

DECISION

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

STATEMENT OF THE CASE

The Appellant, James B. Bush, signed an application for disability benefits on March 16, 1992. In his original application, Bush requested ordinary disability, and later amended his application to request accidental disability benefits. On May 11, 1992, the University of Iowa physicians reported to the System its conclusion regarding his disability. On June 10, 1992, the Executive Director of the Municipal Fire and Police Retirement System of Iowa ("System") denied his application. Upon Bush's timely request for an appeal, a hearing was held on August 26, 1992, in the System's offices in West Des Moines, Iowa. Frank Gray (Chair), Debbie Neels and Vern Cook comprised the Disability Appeals Committee. Bush was represented by attorney James Walseth; the City of Marshalltown ("City") did not appear. Executive Director Dennis Jacobs appeared on behalf of the System. Attorney James Gilliam represented the Committee. No briefs were filed.

FINDINGS OF FACT

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

1. On March 17, 1992, the City terminated Bush's employment as a firefighter because of his failure to pursue prescribed treatment and counseling for drug abuse, as determined by medical authorities. Bush submitted his application for disability benefits a day earlier, on March 16, 1992.

2. Pertinent medical evidence indicates Bush has had a history of dependence on illegal drugs, primarily cocaine and marijuana. His medical history also indicates abuse of alcohol.

3. The pertinent medical evidence also indicates that Bush has had a history of depression and treatment by psychiatrists and psychologists for depression. The depressive episodes have primarily related to suicidal gestures or threats resulting from incidents in his personal life away from his employment.

4. Bush's testimony at hearing, and oral complaints made to his treating professionals, indicate that he has had nightmares and insomnia for a period of time. He relates these problems to his work as an emergency medical technician for the City in that he often sees a young fire victim about the same age as his son.

5. Although Bush claims he suffers from Post Traumatic Stress Disorder (PTSD) as a result of his work, upon review of Bush's records and examination by Dr. Spencer Brown, M.D., a resident in psychiatry and Dr. Bruce Pfohl, M.D., a staff psychiatrist, both of the University of Iowa Hospitals and Clinics (UIHC), neither was able to make a clear diagnosis of PTSD due to his chronic alcohol and substance abuse.

6. In his clinical summary dated May 11, 1992, Dr. Laurence Fuortes, M.D., of the UIHC, opined that Bush was "physically fit and would be best served by continuing to work and undergoing continuing psychiatric or psychologic support."

7. While the Committee is certainly empathetic to Bush's condition and prognosis for recovery, the Committee is unable to find any mental or physical incapacity for further performance of duty.

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:

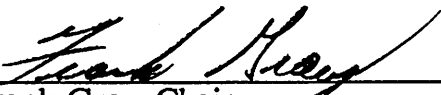
Accidental disability benefit. Upon application to the system, if a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated 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 Bush fails to meet the requirements of either Section 411.6(3) or 411.6(5) benefits. Despite his claims of PTSD, which he believes to be work related, the physicians and psychiatrists of UIHC were unable to conclude he was incapacitated for further performance of duty as a firefighter. Without action by the medical board certifying mental or physical incapacity for further performance of duty, the application must be denied.

DECISION

The application for disability benefits by James B. Bush, submitted under Chapter 411 of the Iowa Code, is hereby DENIED.

Dated this 30th day of October, 1992.



Frank Gray, Chair
Disability Appeals Committee

Copies to:

James B. Bush
520 Johnston Street
Gladbook, IA 50635

James Walseth
Attorney at Law
Legal Services Corp.
Suite 400 Paramount Bldg.
305 Second Street S.E.
Cedar Rapids, IA 52401

City of Marshalltown Fire Department
107 S. First Avenue
Marshalltown, IA 50158

Alice E. Helle
Brown, Winick, Graves, Donnelly,
Baskerville and Schoenebaum
1100 Two Ruan Center
601 Locust Street
Des Moines, IA 50309

Dennis Jacobs
Municipal Fire and Police
Retirement System of Iowa
950 Office Park Road, Ste. 321
West Des Moines, IA 50265