

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

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

IN THE MATTER OF:

ROBERT H. BROWN,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Applicant Robert H. Brown ("Brown") filed his application with the Municipal Fire and Police Retirement System of Iowa ("System") on or about April 14, 1992, and was examined by the University of Iowa Hospitals and Clinics (UIHC) on August 4-5, 1992. Brown's application for accidental disability benefits was approved by the Executive Director on September 11, 1992. Upon the timely appeal by the City of Des Moines ("City"), a hearing was held on November 20, 1992, at the offices of the System in West Des Moines, Iowa. Harold Fryman (Chair), Sherry Meier and Lynn Manhart comprised the Disability Appeals Committee. Brown 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. Briefs were filed by the City and by Brown.

PROCEDURAL ISSUES

The City raises several procedural objections to the proceedings. The City complains first that it was not provided any notice and opportunity to be heard prior to the Executive Director's approval of Brown's application for benefits. The City further complains that the Board's delegation of its decisionmaking authority to this three-member disability appeals committee is improper. The City further complains that it is not allowed any opportunity to be heard prior to the Board's consideration of the Committee's proposed decision. The City further complains the Board has failed to conduct its proceedings in accordance with Chapter 17A, Iowa Code. The City first raised these arguments in two previous cases; In the Matter of Donald M. Fite (Board Decision, 10/30/92) and In the Matter of Charles Cox

(Board Decision, 10/30/92). For the reasons expressed by the Board in those cases, the City's objections are overruled.

The City and Brown both object to any placement of the burden of proof upon themselves. For the reasons explained in Fite and Cox, the applicant carries that burden.

The final procedural issue concerns the application for intervention filed by the Des Moines Association of Professional Firefighters ("Union"). For the reasons explained in the Fite and Cox cases, the application is overruled. To the extent the Union has joined in Brown's arguments, the Committee will consider the Union's arguments as an amicus curiae.

FINDINGS OF FACT

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

1. Brown has been employed by the City as a firefighter for 32 years. On August 18, 1990, while on duty at a fire scene, Brown fell backwards off a pumper truck and injured his back. After treatment, Brown was diagnosed as having suffered a compressed fracture of the first lumbar vertebrae.

2. Brown was examined and treated by three physicians: Dr. Blessman, the City physician, Dr. Straubinger and Dr. Bolden. Brown was off full duty until October 29, 1990, although he did perform light duty work during his convalescence.

3. Brown continued to work until his examination in Iowa City pursuant to his application for disability retirement on August 4, 1992. He sustained an injury to his back while twisting and pulling a charged hose line on February 24, 1992, and received restrictions on full duty for one week, but was technically on full duty throughout the remainder of the period from October 29, 1990, to August 4, 1992.

4. Despite being on full duty status, Brown testified, without contradiction, that he was unable to perform many duties required of a firefighter and that other members of his crew performed duties he could not. Brown testified that he filed his disability application based on his belief that his condition posed a threat to the safety of the public, his crew and himself.

5. Upon his application, Brown was examined by three physicians at UIHC. Ultimately, the report by Dr. Moseley found Brown unable to continue in the position of firefighter due to "the nature of Mr. Brown's injury and residual discomfort."

6. The Committee finds that Brown has suffered an injury in the line of duty on August 18, 1990, which has 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 Brown meets the requirements of Section 411.6(5) for accidental disability benefits. Despite the City's argument that Brown had been released to full duty and continued to work in that capacity with only brief interruptions, the UIHC examination notes, in comparison of contemporary x-rays with those that were taken at the time of his injury, "a slight progression of compression" of the vertebrae. The UIHC concluded that "the nature of Mr. Brown's injury and residual discomfort" makes him unable to perform the duties of a firefighter.

DECISION

Robert H. Brown is hereby awarded accidental disability benefits under Chapter 411 of the Iowa Code.

Dated this 28th day of January, 1992.


Harold Fryman, Chair
Disability Appeals Committee

Copies to:

Robert H. Brown
2324 York Street
Des Moines, IA 50316

Nelda Barrow Mickle
City Solicitor
City Hall
400 East 1st Street
Des Moines, IA 50309

Charles E. Gribble
The Plaza, Suite 295
300 Walnut 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

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