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MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

IN THE MATTER OF:

GEORGE N. CLOSE,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Applicant George N. Close ("Close") filed his application with the Municipal Fire and Police Retirement System of Iowa ("System") on or about August 12, 1992, and was examined by the University of Iowa Hospitals and Clinics (UIHC) on September 29, 1992. Close's application for accidental disability benefits was approved by the Executive Director on October 28, 1992. Upon the timely appeal by the City of Des Moines ("City"), a hearing was held on March 25, 1993, at the offices of the System in West Des Moines, Iowa. Sherry Meier (Chair), Harold Fryman and Lynn Manhart comprised the Disability Appeals Committee. Close 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 Close.

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 Close'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 Close 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 Close'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. Close has been employed by the City as a firefighter for 31 years, the last 20 years in the rank of fire engineer.

2. On October 27, 1989, Close stepped off of a pumper at a fire scene into a hole, injuring his right hip and knee. Medical records compiled by the City reflect on-the-job injuries to his right hip on August 18, 1990, April 9, 1991, and May 11, 1991.

3. Dr. Blessman, the City physician, concluded Close's accidents had aggravated a degenerative arthritic condition in his right hip. He first predicted Close might be a candidate for hip replacement surgery on September 5, 1990. On October 18, 1991, Blessman referred Close to a specialist for consultation on a potential hip replacement. The specialist, Dr. Johnston, performed hip replacement surgery on December 5, 1991. The City accepted the work related nature of these injuries and paid for the costs of the surgery.

4. Until his surgery, Close missed no work and remained on duty after each injury. Blessman released Close to return to work, limiting his duties to driving the pumper truck.

5. Upon his application, Close was examined by four physicians at UIHC. The physicians found, and the City does not dispute, that Close is incapacitated for further performance of duty as a firefighter.

6. The Committee finds that Close suffered a series of injuries in the line of duty, on October 27, 1989, August 18, 1990, April 9, 1991, and May 11, 1991, 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:

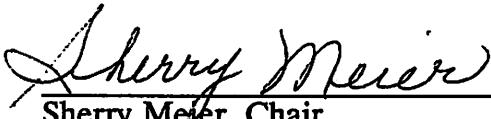
Accidental disability benefit. Upon application to the system, if a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated 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 Close meets the requirements of Section 411.6(5) for accidental disability benefits. Despite the City's argument that Close suffers from degenerative arthritis, a disease not incurred in the performance of duty under the statute, the evidence clearly indicates his condition was aggravated by the performance of his duties. The City does not dispute that he has been rendered incapacitated for further duties as a firefighter.

DECISION

George N. Close is hereby awarded accidental disability benefits under Chapter 411 of the Iowa Code.

Dated this 19 day of April, 1993.



Sherry Meier, Chair
Disability Appeals Committee

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