

**MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA
950 Office Park Road, Suite 321
West Des Moines, Iowa 50265**

IN THE MATTER OF:

HAROLD R. POWELL,

Applicant.

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DECISION

Iowa Code § 411.6(3) (1993) and
Iowa Code § 411.6(5) (1993)

STATEMENT OF THE CASE

The Applicant, Harold R. Powell ("Powell") filed his application for accidental disability benefits with the System on April 8, 1993. On May 12, 1993, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Powell's disability. An initial decision approving Powell for accidental disability was made by the System on May 5, 1993. Upon a timely appeal by the City of Des Moines, a hearing was held before the appeals committee of the Board (comprised of Judy Bradshaw, Chair; Sherry Meier and Lynn Manhart) on August 30, 1993 at the offices of the System. Powell appeared on his own behalf. Gene Phillips, assistant Fire Chief and Nelda Mickle, City Solicitor, appeared for the City. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle of Des Moines, Iowa was present as counsel to the Committee. No further witnesses or exhibits were presented by any party. Both the City and Powell

waived the right to file post-hearing briefs, but the City requested that no decision be rendered until the receipt of the transcript of the hearing.

FINDINGS OF FACT

The Committee, having reviewed the evidence of record and the briefs and arguments submitted by the parties, finds as follows:

1. On April 5, 1993, Steven Zorn, M.D. opined that Powell did not meet the oxygen uptake requirements for safe performance of active firefighting, and that he was unlikely to meet that requirement in the future.

2. The medical board referred to Powell's history of chronic obstructive pulmonary disease. In the initial summary of the evaluations at the University of Hospitals, Dr. Schwartz noted "I have strongly recommended that he consider stop smoking cigarettes and be placed on two pulmonary medications . . ." Dr. Schwartz went on to comment that "if the patient follows our advice, I believe that he should be reevaluated in a year to assess whether he is capable of working as a firefighter at that point." Dr. Schwartz concluded the summary by stating that the medical board "certifies that it is the opinion of the board that the member is physically incapacitated from performance of the functional demands of his position, as described to the board by the System. This incapacity is likely to be permanent."

3. There was no disagreement between the parties as to the relevant facts. The sole issue relates to the City's request that the award of accidental disability benefits to Powell be conditioned on his compliance with the medical board's recommendations regarding smoking and medication, and that he be reevaluated in one year.

4. The Committee finds that Powell is currently disabled from performing his duties as a firefighter.

CONCLUSIONS OF LAW

1. Iowa Code Section 411.6(3) states:

Ordinary disability retirement benefit. Upon application to the system, 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 the 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:

a. Accidental disability benefit. Upon application to the system, of 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. However, if a person's membership in the system first commenced on or after July 1, 1992, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced.

* * * * *

c. Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases. However, if a person's membership in the system first commenced on or after July 1, 1992, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that membership commenced, the presumption established in this paragraph shall not apply.

* * * * *

7. Re-examination of beneficiaries retired on account of disability. Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the system may, and upon the member's application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. The examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. If any disability beneficiary who has not attained the age of fifty-five refuses to submit to the medical examination, the member's allowance may be discontinued until withdrawal of such refusal, and if the refusal continues for one year all rights in and to the member's pension may be revoked by the system.

3. The statute provides that disability benefits shall be paid if the medical board certifies that the member is incapacitated for further performance of duty and that the incapacity is likely to be permanent. It further provides that the system may require a disability beneficiary who is under the age of 55 to undergo a medical re-examination.

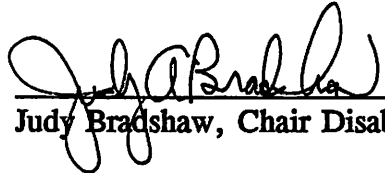
4. Nothing in the statute permits or requires the System to award disability benefits on a conditional basis.

5. It is the conclusion of the Committee that Powell meets the statutory requirements for accidental disability benefits, and that those benefits must be awarded on an unconditional basis.

DECISION

The application for accidental disability retirement benefits on behalf of Harold R. Powell under Chapter 411 is hereby approved, without conditions.

Dated this 27th day of October, 1993.


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/her 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 5th day of November, 1993.

