

BOARD OF TRUSTEES
OF THE
MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

The Board of Trustees of the Municipal Fire and Police Retirement System of Iowa, based on an appeal from the decisions of or determinations by the Director of the Municipal Fire and Police Retirement System of Iowa, and having reviewed the proposed decision of law of the Appeals Committee hereby ratifies the proposed findings of fact and conclusions of law of the Appeals Committee in the following cases:

JERRY O. SMITH
482-40-4162

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the proposed Decision be accepted, and is the final decision of the System.

Dated this 29th day of October, 1993.


Chair of the Board

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

IN THE MATTER OF:	)	
	)	
THE APPLICATION OF THE CITY	)	
OF DES MOINES FOR ORDINARY	)	
DISABILITY BENEFITS FOR	)	
JERRY O. SMITH	)	DECISION
	)	
	)	

Iowa Code § 411.5 (1993) and
Iowa Code § 411.6(3) (1993)

STATEMENT OF THE CASE

The Applicant, City of Des Moines ("City") filed its application for ordinary disability benefits on behalf of Jerry O. Smith ("Smith") with the System on March 31, 1993. On May 20, 1993, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Smith's disability. An initial decision denying the application for disability retirement was made by the System on May 25, 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. Smith was represented by attorney Charles Gribble. Charles Morgan, Fire Chief; 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. The City called Charles Morgan, Gene

Phillips, and Dr. Steven Zorn as witnesses. Smith testified on his own behalf and also called Dr. David Schwartz and Dr. Mark Raverby as witnesses. Both the City and Smith filed post-hearing briefs following the receipt of the transcript of the hearing.

PROCEDURAL AND EVIDENCE ISSUES

Prior to hearing, the City raised several procedural objections, which it expands on in its brief. These are essentially the same objections which were raised by the City in the case of City of Des Moines v. Municipal Fire and Police Retirement System of Iowa and Board of Trustees of the Municipal Fire and Police Retirement System of Iowa. In that case, the Board overruled the City's procedural objections, and the ruling of the Board was subsequently affirmed by the District Court. Accordingly, the City's procedural objections are overruled.

In the course of the hearing, Smith objected to certain testimony on the basis of hearsay and also objected to a portion of Dr. Zorn's testimony on the basis that Dr. Zorn could not speak for the general public or for the firefighters. The Board has consistently applied a relaxed standard of evidence whereby evidence is generally admissible unless it is irrelevant, immaterial, or unduly repetitious. Smith's objections properly go to the weight to be accorded the evidence, not to its admissibility. Smith's evidentiary objections are overruled.

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 September 11, 1992, Steven Zorn, M.D. opined that Smith did not meet the oxygen uptake requirements for safe performance of active firefighting. Dr. Zorn retested Smith on January 29, 1993, and opined that he still did not meet that requirement.

2. In the summary of the evaluations at the University of Hospitals, Dr. Schwartz stated as follows: "The patient was found to have normal lung function and normal exercise capacity. He does not have any limitation which would preclude him from working as a firefighter. The patient was informed of this and in our opinion he should be reinstated fully to work as a firefighter."

3. The parties are agreed that Smith suffers from no injury or disease and that his work performance was satisfactory. The sole issue is whether the Board, in adjudicating the disability application for Smith, is bound by the City's oxygen uptake standard.

4. The Committee finds that Smith is not currently disabled from performing his duties as a firefighter.

CONCLUSIONS OF LAW

1. Iowa Code Section 411.5 states (in relevant part) as follows:

1. Board. The general responsibility for the establishment and proper operation of the retirement system is vested in the board of trustees created by section 411.36. The system shall be administered under the direction of the board.

* * * * *

8. Medical board. The system shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this chapter, except that for examinations required because of disability three physicians from the University of Iowa hospitals and clinics who shall pass upon the medical examinations required for disability retirements, and shall report to the system in writing its conclusions and recommendations upon all matters referred to it. Each report of a medical examination under section 411.6, subsections 3 and 5, shall include the medical board's rating as to the extent of the member's physical impairment.

2. 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.

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. While the recommendation of the Medical Board is not binding on the System, there is competent evidence to support the Medical Board's findings in this case, and the Board is entitled to rely on those findings.

4. Nothing in the statute permits or requires the System to award disability benefits where no medical impairment exists.

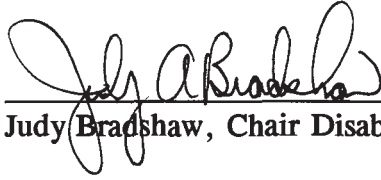
5. The responsibility for determining appropriate standards for entitlement benefits under Chapter 411 rests with the Board, not the City.

6. It is the conclusion of the Committee that Smith does not meet the statutory requirements for disability benefits.

DECISION

The application for ordinary disability retirement benefits on behalf of Jerry O. Smith under Chapter 411 is hereby denied.

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 27 day of November, 1993.

