

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

IN THE MATTER OF:

Michael L. Whitmer

Applicant

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DECISION

Iowa Code § 411.6(7) (1993)

STATEMENT OF THE CASE

The Applicant, Michael L. Whitmer ("Whitmer"), is currently entitled to ordinary disability benefits. In May of 1993, he contacted the Muscatine Fire Department requesting reinstatement. He was referred by the Department to the System, and on June 23, 1993, wrote to the System requesting a re-examination by the Medical Board. On September 20, 1993, the Medical Board reported its findings to the System regarding Whitmer's request for reinstatement. An initial decision denying the application for reinstatement was made by the System on September 27, 1993. Upon a timely appeal by Whitmer, a hearing was held before the appeals committee of the Board (comprised of Sherry Meier, Chair; Dean Johnson and Vernon Cook) on October 28, 1993 at the offices of the System. Whitmer appeared on his own behalf. Steven Dalbey, Fire Chief, and A. J. Johnson, City Administrator, appeared on behalf of the City of Muscatine ("City"). Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Whitmer and the City presented evidence and testified. Both Whitmer and the City waived the opportunity to file post-hearing briefs.

FINDINGS OF FACT

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

1. Whitmer was injured in a motorcycle accident in 1979, resulting in the amputation of his left leg below the knee in October of 1980. He was retired from the Muscatine Fire Department on ordinary disability as a result of his injuries.

2. Whitmer wears a prosthesis and is currently employed as a safety technician in a grain processing plant. His job entails considerable walking, climbing ladders up to 2 or 3 stories high, crawling in confined spaces and performing EMT duties. He has no difficulty in performing those duties.

3. The Medical Board certified that Whitmer is physically incapacitated from the performance of the physical demands of his position, and that the incapacity was likely to be permanent. The reports of the Medical Board noted that Whitmer had no limiting condition other than the amputation, that he walked with a normal gait, and was able to hop on the prosthetic leg with only minor difficulty. The report of Dr. Cooper, an orthopedic surgeon, however, noted that "we think he would have difficulty with proprioception" [a lack of sensation] in the left leg, and that "This would be an added risk for him and the Fire Department. . . . The final decision will have to be made by the Fire Department."

4. The City offered evidence that Whitmer recently applied for an opening on the Fire Department and had passed the Fire Department's physical agility test. The test he passed was a practice test, which is offered to all applicants. It is identical to the actual test, except that it is administered by Fire Department personnel rather than Civil

Service personnel. Whitmer is scheduled to take the actual test with the other current applicants for the Department on October 30, 1993.

5. Whitmer testified that he is able to perform the essential job functions of a Muscatine firefighter and is requesting no accommodations. Chief Dalbey testified that he has no concerns regarding Whitmer's ability to perform the essential job functions.

CONCLUSIONS OF LAW

1. Iowa Code Section 411.6(7) states (in relevant part) as follows:

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 the age of fifty-five to undergo a medical examination at a place designated by the medical board.

* * * * *

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than the disability beneficiary's average final compensation, the disability beneficiary's retirement allowance shall cease, the disability beneficiary shall again become a member and shall contribute thereafter at the same rate paid prior to disability, and former service on the basis of which the disability beneficiary's service was computed at the time of retirement shall be restored to full force and effect and upon subsequent retirement the disability beneficiary shall be credited with all serviced as a member and also with the period of disability retirement.

2. The recommendation of the Medical Board is not binding on the System.
3. Under the Americans With Disabilities Act (ADA), employment opportunities may not be denied to a qualified individual with a disability on the basis of the disability.

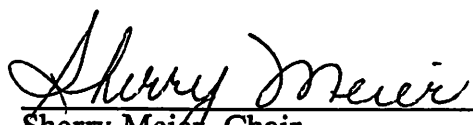
Whitmer is a qualified individual, since he has demonstrated an ability to perform the essential functions of the job in question.

4. It is the conclusion of the Committee that Whitmer is capable of performing the essential duties of a firefighter and should therefore be reinstated to the Muscatine Fire Department.

DECISION

Whitmer's application for reinstatement to active service under Chapter 411 is hereby approved.

Dated this 29 day of October, 1993.



Sherry Meier, Chair
Disability Appeals Committee

Copies to:

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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 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 1 day of November, 1993.

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