

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

IN THE MATTER OF:	)	
	)	
ARMAND D. FULLER	)	DECISION
	)	
Applicant	)	

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

STATEMENT OF THE CASE

The Applicant, Armand D. Fuller ("Fuller") filed his application for accidental disability benefits with the System on or about October 6, 1992. On January 27, 1993, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Fuller's disability. An initial decision approving Fuller for accidental disability was made by the System on February 8, 1993. Upon a timely appeal by the City of Cedar Rapids, a hearing was held before the appeals committee of the Board (comprised of Judy Bradshaw, Chair; Deborah Neels and Dean Johnson) on June 17, 1993, at the offices of the System. Fuller appeared and was represented by attorney, Franklin York. James H. Flitz, Assistant City Attorney, 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. Following the close of the evidence, post-hearing briefs were filed by both parties. A decision was postponed pending the receipt of an opinion from the

Attorney General regarding the level of the heart/lung presumption. The Attorney General has declined to opine on that issue, however.

FINDINGS OF FACT

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

1. Fuller suffered a heart attack while at home on vacation on or about September 7, 1992. He underwent bypass surgery on September 14, 1992.

2. It is undisputed that Fuller is permanently incapacitated for the further performance of duty. The issue is whether his disability is job-related, so as to entitle him to accidental disability benefits under § 411.6(5).

3. Dr. Atay testified by deposition that he did not know the cause of Fuller's heart attack, but stated in a letter dated October 30, 1992, that he suspects that Fuller's "significant smoking history" was a factor.

4. Dr. Rater opined in a letter dated November 17, 1992, that "it is my opinion that his disability does not arise out of his employment as a police officer, but his heart attack is the result of the natural history of atherosclerotic coronary artery disease." Dr. Rater does not offer an opinion as to the cause of the coronary artery disease.

5. Dr. Basler opined in a letter dated October 28, 1992, that Fuller's disability is related to smoking and family history.

6. In the summary of the evaluations at University Hospitals, Dr. Moseley opined that Fuller is physically incapacitated for the performance of duty, and that his incapacity is likely to be permanent. Following an inquiry on behalf of the Committee regarding

causation, Dr. Moseley stated, in a letter dated May 25, 1993, that the medical board "did not fully evaluate whether his job caused his heart disease," but that "given the nature of his heart attack and other cardiovascular risks, it is unlikely that his job contributed significantly to his myocardial infarction." The "risk factors" mentioned in the letter were a history of hypertension and a family history of heart disease. It was also noted that Fuller is "a long term pipe smoker," but that "the direct correlative link between tobacco use and heart disease has been established through studies of cigarette smoking."

7. Fuller testified that he had a history of pipe smoking, but did not inhale, and that he had not smoked since the heart attack. He also testified that he had reported a family history of heart disease to the various doctors, but later learned that this was not correct. The Committee finds that Fuller has no family history of heart disease.

8. In light of the elimination of family history as a "risk factor," the Committee re-contacted Dr. Moseley for clarification regarding causation. In a letter dated November 8, 1993, Dr. Moseley stated that he was unable to state with a reasonable degree of medical certainty that Fuller's pipe smoking was the only likely cause of his impairment, and also stated that further medical examination would not reveal with a reasonable degree of medical certainty whether Fuller's incapacity was caused exclusively by a non-work-related factor.

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:

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.

3. The medical evidence indicates that Fuller's disability may have been caused by factors other than his job. The actual cause has not been established, however.
4. The Iowa Supreme Court noted in Larson v. Board of Trustees of Police Retirement System of Sioux City, that even if the presumption of § 411.6(5) is rebuttable, the medical evidence at most indicated that no one knew what caused the disease in question. 401 N.W.2d 860 (Iowa 1987). The court then stated, "Lack of such knowledge is the very reason a presumption is needed." Id. The court held that the member was entitled to accidental disability benefits. Likewise, in this case, even if the presumption is rebuttable, there is insufficient evidence to rebut it.

DECISION

The application for accidental disability retirement benefits on behalf of Armand D. Fuller under Chapter 411 is hereby approved.

Dated this 19 day of NOVEMBER, 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 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 22 day of November, 1993.


