

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

IN THE MATTER OF:

GARY MOON

Applicant

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DECISION

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

STATEMENT OF THE CASE

The Appellee, Gary Moon ("Moon") filed his application for accidental disability benefits from the System on or about June 25, 1993. The Appellant City of Des Moines filed a comment with the employer's portion of the application stating that it was the City's position that Moon was entitled only to ordinary disability benefits. On September 30, 1993, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Moon's disability. An initial determination approving Moon for accidental disability benefits was made by the System on October 7, 1993. Upon a timely appeal by the City, a hearing was held before the Appeals Committee of the Board (comprised of Lynn Manhart, Chair, Frank Gray and Sherry Meier) on March 10, 1994, at the offices of the System. Moon appeared and was represented by attorney Phillip Vonderhaar of Des Moines. Nelda Mickle, City Solicitor, appeared for the City of Des Moines. Dennis Jacobs, Executive Director, appeared on behalf of the System. Attorney Alice Helle of Des Moines was present as counsel to the Committee. Post-hearing briefs were filed by both Moon and the City.

PROCEDURAL ISSUES

Subsequent to the hearing, the City filed a Motion for Notice and Opportunity to be Heard Upon Disability Appeals committees Proposed Decision, and Moon filed a resistance thereto. In its motion, the City requests that it be provided a copy of the decision of the Committee and be allowed to file written exceptions and briefs prior to consideration of this case by the full Board. As noted by Moon in his resistance, the City cites no legal authority for its position, and there is no provision in the System's rules for such a procedure, which would essentially build in a second round of briefs at the administrative level. This would necessarily delay the Board's decision by at least one month and would be unduly burdensome to both the

parties and the Board. The City's motion is hereby overruled, and Moon's resistance is sustained.

FINDINGS OF FACT

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

1. In April of 1980, Moon was involved in an armed robbery incident while on duty in which he failed to shoot at a suspect for fear of hitting his partner.

2. In March of 1985, Moon was called to the scene of the suicide of an officer under his command that he had recently disciplined.

3. Moon began suffering from nightmares, migraine headaches and blurred vision shortly after the 1980 incident, and felt that these and related symptoms were intensified by the 1985 incident. Moon initially sought medical treatment for the headaches, and initially sought psychiatric help in about 1987, after his doctor began to suspect a psychological cause for his symptoms.

4. Both the treating physician and the medical board have stated a diagnosis of panic disorder with agoraphobia and opined that the panic attacks are related to the above referenced 1980 and 1985 incidents, and that Moon is permanently incapacitated from performing the duties of a police officer.

5. The Committee finds that Moon is permanently disabled from performing his duties as a police officer.

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. "Disease" under the statute is exclusively defined to mean heart disease or any disease of the lungs or respiratory tract. Moon does not suffer from a "disease" as that term is defined by the statute, and therefore must establish that he is disabled as a result of an injury in order to establish entitlement to accidental disability benefits.

4. The statute provides that accidental disability benefits may be payable under the statute for a mental incapacity. This would clearly be appropriate, for example, in the case of a head injury with a resulting mental impairment. The Board ruled in the case

of Douglas E. Boal that section 411.6(5) is best construed to provide for accidental disability benefits for a mental impairment only if that impairment is the result of a physical injury. The District Court subsequently upheld the Board's ~~decision~~ ^{denial} of accidental disability benefits in the Boal case, but on the basis that the impairment was not caused by anything more than the day-to-day emotional stress commonly associated with police departments.

5. It is the conclusion of the Committee that Moon has not established a compensable "injury" under either standard and thus is not entitled to accidental disability benefits under the statute. Moon is hereby denied accidental disability retirement benefits and awarded ordinary disability retirement benefits.

DECISION

The application for accidental disability retirement benefits by Gary Moon under Chapter 411 is hereby denied. He is hereby awarded ordinary disability benefits. The vote on this decision was 2-0, with Lynn Manhart abstaining.

Dated this 31 day of March, 1994.


Lynn Manhart, 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 1st day of April, 1994.

Sandra Back