

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

IN THE MATTER OF:

DAVID G. DISBURG

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, David G. Disburg, filed his application for accidental disability benefits with the System on or about May 19, 1993. On July 15, 1993, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Disburg's disability. An initial decision approving Disburg for accidental disability was made by the System on July 19, 1993. Upon a timely appeal by the City of Carroll, a hearing was held before the appeals committee of the Board (comprised of Judy Bradshaw, Chair; Dean Johnson and Lynn Manhart) on January 26, 1994 at the offices of the System. Disburg appeared on his own behalf. Attorney William J. Sueppel 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. Post-hearing arguments were filed by both parties. The hearing was reconvened on April 1, 1994 at the request of Mr. Sueppel in order to give the parties the opportunity to question Dr. David Schwartz, the coordinating physician for the medical board.

PROCEDURAL ISSUES

During the hearing, the City objected to MFPRSI Exhibit 2 (which consists of various medical records relating to Disburg) except as it directly pertained to Disburg's stroke in January 1993. Specifically, the City moved to strike the medical records which related to Disburg's heart condition. The records in question are relevant to the issue of Disburg's ability to perform as a police officer. The City's objection is hereby 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. Disburg suffered heart attacks in 1986 and 1989. He eventually returned to work with no restrictions following both heart attacks. On or about January 11, 1993, Disburg suffered a stroke. He has not returned to work since.

2. It is undisputed that Disburg is permanently incapacitated for the further performance of duty. The issue is whether his disability entitles him to accidental disability benefits under § 411.6(5).

3. Dr. Schwartz, in his clinical findings dated July 6, 1993, referenced Disburg's stroke and opined: "Given the patient's neurologic condition, it is clear that he cannot function as a police officer." In a letter to the System dated July 15, 1993, Dr. Schwartz again referred to the stroke and certified the opinion of the medical board that Disburg is physically incapacitated from performing as a police officer, and that the incapacity is likely to be permanent.

4. On November 10, 1993 and December 8, 1993, Dr. Schwartz responded to several questions posed by the City through the System, and stated that Disburg's stroke was the cause of his disability and that a stroke is not a heart condition.

5. On February 17, 1994, Dr. Schwartz responded to questions raised by the disability appeals committee. In that letter, he opined that absent the stroke, Disburg's "history of coronary artery disease with two prior myocardioinfarctions would be sufficient grounds for disability."

6. During the April 1 re-convened hearing, Dr. Schwartz testified that, given his medical history, it was very likely that Disburg would suffer another heart attack. He further testified that Disburg put himself and others at risk by returning to the police force following the heart attacks, and that he would have been unable to fully respond in emergency situations as a result of his heart disease.

7. Chief Caylor of the Carroll Police Department testified during the April 1 re-convened hearing that Disburg returned to work with no restrictions following both heart attacks, and that he adequately performed as a police officer up to the time of his stroke.

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.

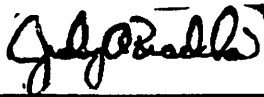
3. The medical evidence indicates that Disburg had a stroke in January of 1993, and that he had previously suffered two heart attacks. Dr. Schwartz opined that a stroke is not a heart disease, but that Disburg's heart disease alone was severe enough to render him incapable of performing all of the essential duties of a police officer. He further testified that in Disburg's case, the same mechanism caused both the stroke and the heart attacks.

4. The City's primary objections to the award of accidental disability benefits to Disburg is that Disburg's stroke was the cause of his disability and is not a "disease of the heart, lungs or respiratory system" under Iowa Code § 411.6(5), and that Disburg had proven by his work following the two heart attacks that his heart disease was not disabling under the statute. There is substantial evidence in the record to support the award of accidental disability benefits, however.

DECISION

The application for accidental disability retirement benefits on behalf of David G. Disburg under Chapter 411 is hereby approved.

Dated this 5th day of May, 1994.



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 _____ day of _____, 1994.
