

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

IN THE MATTER OF:

JAMES L. DUTCH,

Member.

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DECISION

Iowa Code § 411.6(5) (1993)

STATEMENT OF THE CASE

Applicant, the City of Davenport, filed an application for accidental disability benefits on behalf of James L. Dutch on or about December 7, 1993. On February 2, 1994, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Dutch's disability. An initial decision denying disability benefits was made on February 4, 1994. Upon a timely appeal by the City, a hearing was held before the Appeal Committee of the Board (comprised of Dean Johnson, Chair, Vernon Cook and Sherry Meier) on May 20, 1994, at the offices of the System. Dutch appeared on his own behalf. Mary Thee, City Attorney, appeared for the City of Davenport and Dennis Jacobs, Executive Director, appeared on behalf of the System. Attorney Alice Helle of Des Moines was present as counsel to the Committee. Testimony was received from Dutch and from Fire Chief Thomas Ryan. Both parties waived the right to file post-hearing briefs.

FINDINGS OF FACT

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

1. Dutch is currently age 48. His employment with the Davenport Fire Department commenced in September of 1980.

2. Dutch injured his back on the job in December 1989, and has since had four surgeries on that area of his spine. The surgeries were in March of 1990, December of 1992, April of 1993, and August of 1993. It is undisputed that Dutch's back surgeries were necessitated by an injury or injuries suffered on the job.

3. Dutch last worked as a firefighter on June 12, 1993.
4. While he initially expected to return to work for the Department, now believes that he is unable to fully function as a firefighter due to his back injury.
5. Following the Medical Board's evaluation at University Hospitals, Dr. Found, of the Department of Orthopaedic Surgery, expressed concern about the "ultimate outcome" of Dutch's back, but stated, "I would not withhold him from being allowed to function as a firefighter at this time."
6. In deposition testimony introduced by the City, Richard A. Roski, M.D. opined that Dutch is currently unable to perform as a firefighter and that his condition is unlikely to improve. Dr. Roski is Dutch's treating neurological surgeon.
7. In a letter introduced by the City as Exhibit B, Loren Arp, Dutch's treating physical therapist detailed Dutch's limitations and opined that Dutch should not return to work as a firefighter.

CONCLUSIONS OF LAW

1. 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.
2. Dutch is incapacitated for duty as the result of a job-related injury.
3. Dutch's incapacity is likely to remain permanent.

DECISION

The application for accidental disability retirement benefits on behalf of James L. Dutch under Chapter 411 is hereby approved.

Dated this 26th day of May, 1994.



Dean Johnson, 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 30th day of June, 1994.

