

**MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA**

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

IN THE MATTER OF:

EUGENE J. WISSINK,

Applicant

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DECISION

STATEMENT OF THE CASE

Applicant Eugene J. Wissink ("Wissink") first applied for accidental disability benefits to the Iowa City Board of Fire Trustees in 1991. That Board denied his application, but granted ordinary benefits based upon its conclusion that Wissink was totally and permanently disabled from further duties as a firefighter based upon a finding that he suffered the effects of a vascular loop of the pontine angle of the brain.

Wissink appealed by petition for a writ of certiorari to the Iowa District Court for Johnson County, alleging procedural errors. On November 5, 1992, the court upheld the writ and remanded the application. Because the Iowa City Board had ceased to exist by operation of law by that time, Wissink's application was refiled with this Board in July 1993. Upon examination by the Medical Board of the University of Iowa Hospitals and Clinics dated November 24, 1993, the Executive Director of this Board denied Wissink's application for accidental disability benefits, but granted ordinary disability benefits on December 17, 1993. Upon timely appeal by Wissink, a hearing was held before the Appeals Committee of the board (comprised of Dean Johnson, chair; Frank Gray and Lynn Manhart) on May 6, 1994, at the office of the System. Wissink appeared and was represented by his attorney,

Jay Honohan. First Assistant City Attorney Anne Burnside appeared on behalf of Iowa City. Dennis Jacobs, Executive Director, appeared on behalf of the System; James Gilliam was present as counsel for the Committee. Post hearing briefs were filed by both parties.

FINDINGS OF FACT

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

1. After reporting dizziness at work in January 1991, his fire chief placed Wissink on sick leave and ordered that he undergo medical examination. After examination by physicians at the University of Iowa, Wissink was diagnosed with a vascular loop of the cerebellopontine angle of the brain.

2. The City does not dispute, and the medical evidence of record supports, the conclusion that the vascular loop medical condition totally and permanently incapacitates Wissink from further performance of duty as a firefighter in that it prevents him from performing the critical functions of driving a fire truck and safely climbing.

3. The medical evidence of record further supports the conclusion that the vascular loop medical condition was neither caused nor aggravated by the performance of duty.

4. The issue in this case is Wissink's claim for accidental benefits based on his belief that he suffers from a "disease of the lungs or respiratory tract," Iowa Code Section 411.6(5)c.

5. In his examination at UIHC, the three physicians concluded, in turn, "... no objective evidence of pulmonary or other medical illness ...", "... no evidence ... that Mr.

Wissink has chronic pulmonary or cardiac disease ...", and "I do not believe his symptoms are related to cardiac or pulmonary disease."

6. Although Wissink's physician, Dr. Morris, concluded that Wissink suffered from a "chemical sensitivity" that showed some affect on his respiratory tract, those conclusions were largely based on "sublingual challenge" testing which has no support in the medical community.

7. To the extent such testing has a reliable scientific basis, Dr. Morris fails to opine that such sensitivity constitutes a "disease of the lung or respiratory tract." Instead, Morris concluded his affliction merely affected the respiratory tract.

8. Finally, Dr. Morris did not conclude that Wissink was permanently incapacitated from his duties as a firefighter by virtue of his chemical sensitivity.

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 Wissink's disability is as a result of the vascular loop and was not caused or aggravated by the performance of his duties as a firefighter.

4. The evidence of record fails to support Wissink's claim that he suffers from chemical sensitivity caused or aggravated by his duties as a firefighter or that such disability is permanent and total.

DECISION

The application on behalf of Eugene J. Wissink under Chapter 411 is denied as to accidental disability retirement benefits, and is approved as to ^{ordinary}~~normal~~ disability retirement benefits.

Dated this 2nd day of June, 1994.



Dean Johnson, Chair
Disability Appeals Committee