

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

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

IN THE MATTER OF:	)	
	)	
WILLIAM H. DIEATRICK	)	DECISION
	)	
Applicant	)	

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

STATEMENT OF THE CASE

The Applicant, William H. Dieatrick, filed his application for accidental disability benefits with the System on or about January 3, 1994. On February 21, 1994, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Dieatrick's disability. An initial decision approving Dieatrick for accidental disability was made by the System on February 28, 1994. Upon a timely appeal by the City of Council Bluffs, a hearing was held before the appeals committee of the Board (comprised of Harold Fryman, Chair; Sherry Meier and Vernon Cook) on June 21, 1994 at the offices of the System. Dieatrick appeared and was represented by attorney Dennis Marks. City Attorney Richard Wade appeared for the City of Council Bluffs. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle of Des Moines, Iowa, was present as counsel to the Committee. Both parties waived the right to file post-hearing briefs. Drs. David Schwartz and Pope Moseley, the coordinating physicians for the medical board were contacted by mail by the committee for clarification of certain medical issues following the hearing. Both parties waived the right to respond to the replies from Drs. Schwartz and Moseley.

FINDINGS OF FACT

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

1. Dieatrick's diagnoses include the following: (1) ulcerative colitis, (2) hypertension, (3) hernia requiring surgical repair, (4) diabetes (insulin dependant) and (5) coronary artery disease. He suffered a myocardial infarction in about 1984, after which he eventually returned to the police force.

2. It is undisputed that Dieatrick is permanently incapacitated for the further performance of duty, and the parties have stipulated to that fact. The issue is whether his disability entitles him to accidental disability benefits under § 411.6(5).

3. Dieatrick's treating physician, James L. Whalen, M.D., in a letter to the Police Department dated January 13, 1994, listed the various medical problems noted in paragraph 1, above, and stated: "With the combination of all the patient's medical problems, all of which are requiring a fairly significant amount of medical attention together with his difficulty in controlling both the diabetes and the ulcerative colitis, I feel this patient is disabled from being able to be gainfully employed." Dr. Whalen further opined that the disability is permanent.

4. The medical board, in its certification, stated: "Based upon these two illnesses, [ulcerative colitis and coronary artery disease] it is the opinion of this Board that Mr. Dieatrick is unable to perform the duties of a police officer." The medical board also opined that the disability is permanent.

5. On June 23, 1994, both Dr. Schwartz and Dr. Moseley responded to an inquiry by the disability appeals committee. Both opined that Dieatrick's coronary artery disease alone is sufficient to prevent him from performing 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. The medical evidence indicates that Dieatrick suffers from a variety of impairments and is no longer able to perform the duties of a police officer. The medical evidence further indicates that Dieatrick's heart disease alone was severe enough to render him incapable of performing all of the essential duties of a police officer.

4. The City argued that Dieatrick's ulcerative colitis, rather than his heart disease, is the cause of his disability, and that Dieatrick has proven by his work following the heart attack that his heart disease is not currently disabling under the statute. Ulcerative colitis clearly is not a "disease of the heart, lungs or respiratory system" under Iowa Code § 411.6(5). There is substantial evidence in the record to support the award of accidental disability benefits based on Dieatrick's heart disease, however.

DECISION

The application for accidental disability retirement benefits on behalf of William H. Dieatrick under Chapter 411 is hereby approved.

Dated this 29th day of June, 1994.


Harold Fryman, 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.
