

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

IN THE MATTER OF:	)	
	)	
GUY M. THOMAS, JR.	)	DECISION
	)	
Applicant	)	

Iowa Code § 411.6(5) (1993)

STATEMENT OF THE CASE

The Applicant, Guy M. Thomas, Jr. ("Thomas"), filed his application for accidental disability benefits with the System on or about June 13, 1994. On August 8, 1994, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Thomas' disability. An initial decision denying Thomas' application for disability benefits was made by the System on August 10, 1994.

Upon timely appeal by Thomas, a hearing was held before the Appeals Committee of the Board (comprised of Deborah Neels, Chair; Vernon Cook and Frank Gray) on November 15, 1994, at the offices of the System. Thomas appeared and was represented by attorney Pamela Prager. Richard Wade, City Attorney, appeared for the City of Council Bluffs. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Thomas testified in person before the Committee and Patrick W. Bowman, M.D., testified for the applicant by telephone. The parties waived the right to file post-hearing briefs.

PROCEDURAL ISSUES

Thomas objected based on relevance to a question by the City relating to whether there was any nondisability reason that he might be unable to perform the duties of a firefighter in the near future. The objection is overruled, but the question and answer may be considered only as they may relate to credibility. They have no relevance to the issue of entitlement to disability benefits under chapter 411.

FINDINGS OF FACT

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

1. There was some question about the year in which Thomas started working for the Council Bluffs Fire Department. The System's records indicate a start date of November 7, 1988, however.
2. Thomas was first injured while pulling hose in 1990. He returned to duty about three weeks after that incident. On or about December 27, 1993, he injured his back as a result of tripping over a bed and falling while on duty at the fire station. He has not returned to work since that incident.
3. Dr. Bowman, Thomas' treating physician, diagnosed Thomas' condition as a "chronic L5 radiculopathy," an irritation of the nerve root causing inflammation and swelling. Dr. Bowman stated that Thomas does not have a herniated disc. He opined that Thomas' condition is caused by encroachment on the nerve root due to a narrowing of the disc space. Objective x-ray and discogram results were normal, but there was a positive EMG at the L5 level. Dr. Bowman stated, however, on cross-examination, that such an objective finding alone would not necessarily disable an individual from performing as a firefighter. The patient's perception of his pain and physical limitations are important factors.
4. The Medical Board found no evidence of neuropathology and concluded that Thomas was not disabled from performing the duties of a firefighter.
5. Thomas' pain and his perceived inability to perform as a firefighter are not supported by the medical evidence of record.

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

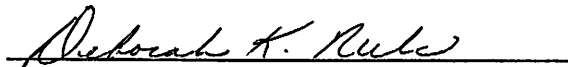
physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. However, if a person's membership in the system first commenced on or after July 1, 1992, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced.

2. Thomas is not incapacitated for the further performance of duty.

DECISION

The application for disability retirement benefits on behalf of Guy M. Thomas, Jr. under Chapter 411 is hereby denied.

Dated this 2nd day of Decmeber, 1994.


Debra Neels, 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 2nd day of December, 1994.

Barbara Wells