

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

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December 2, 1994

Mr. James H. Flitz
Assistant City Attorney
City Hall - 7th Floor
Cedar Rapids, IA 52401

RE: Leslie H. Young - Appeal Decision

Dear Mr. Flitz:

The Board of Trustees of the Municipal Fire and Police Retirement System of Iowa has acted to ratify the proposed finding of facts and conclusion of law of the Appeals Committee in the referenced case. Said action was taken by the Board of Trustees in a regularly scheduled meeting, dated December 2, 1994.

Said action denies the appeal of the City of Cedar Rapids for denial of "accidental/ordinary disability" benefits for Leslie H. Young in the case. Therefore, Mr. Young will continue to receive "accidental/ordinary disability" benefits.

Sincerely,



Dennis L. Jacobs
Executive Director

DLJ:ssw

Enclosures

cc: Leslie H. Young
Charles Gribble
Alice Helle

BOARD OF TRUSTEES
OF THE
MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

The Board of Trustees of the Municipal Fire and Police Retirement System of Iowa, based on an appeal from the decisions of or determinations by the Director of the Municipal Fire and Police Retirement System of Iowa, and having reviewed the proposed decision of law of the Appeals Committee hereby ratifies the proposed findings of fact and conclusions of law of the Appeals Committee in the following cases:

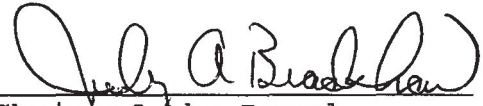
LESLIE H. YOUNG

474-40-1523

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the proposed Decision be accepted, and is the final decision of the System.

Dated this 2 day of DECEMBER, 1994.


Chair of the Board

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

IN THE MATTER OF:	)	
	)	
LESLIE H. YOUNG,	)	DECISION
	)	
Applicant	)	

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

STATEMENT OF THE CASE

The Applicant, Leslie H. Young, filed his application for accidental disability benefits from the System with the City of Cedar Rapids on or about August 26, 1992. The application was forwarded by the City to the System on or about September 30, 1992. On November 25, 1992, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Young's disability. An initial decision approving Young for accidental disability benefits was made by the System on December 3, 1992. Upon a timely appeal by the City of Cedar Rapids, a hearing was held before the Appeals Committee of the Board (comprised of Harold Fryman, chair; Lynn Manhart, and Deborah Neels) on May 11, 1994 in West Des Moines, Iowa. The hearing was continued and was reconvened on September 1, 1994. Young appeared and was represented by attorneys Charles Gribble and Diana Richeson. Attorney James Flitz appeared for the City. Dennis Jacobs, Executive Director, appeared on behalf of the System. James Gilliam and Alice Helle were present as counsel to the Committee. Both parties waived the right to file post-hearing briefs and arguments.

PROCEDURAL ISSUES

A number of procedural motions and objections raised by the parties are pending, as follows:

1. Young renewed his objection to certain medical reports obtained and introduced by the City based on alleged defects in the medical release. (The Committee had previously overruled this objection.) The City also renewed its resistance to the objection.

- The objection is overruled for the reasons stated in the Committee's initial ruling on this matter.
2. The City moved to strike expert witnesses McGrail and Ravreby based on alleged defects in Young's responses to the City's discovery requests, and Young resisted.
- The City withdrew this motion as to Dr. Ravreby. Young supplemented his answers as to Dr. McGrail prior to the reconvening of the hearing. The supplemental answers cured any defects, and the City's motion is thereby overruled.
3. The City posed several objections during the May 11 hearing to questions by both the Committee and the Member's counsel regarding "overhaul," based on the questions being "leading" and/or "testifying" and also based on a lack of foundation that Young was able or competent to give that type of testimony.
- The objections are overruled, based on relevance and the relaxed evidentiary standards applicable to administrative hearings.
4. The City objected during the May 11 hearing to a question to witness Scofield (the union representative) regarding the number in the bargaining unit - relevance.
- The objection is overruled for the same reasons as stated in 3 above.
5. The City lodged a standing objection to Young's questions to Scofield re SCBAs as being beyond the scope of discovery.
- This objection is overruled for the same reasons as stated in 3 above.
6. The City lodged a standing objection to questions to Scofield re "overhaul" as beyond the scope of discovery, and also objected to such questions as calling for an expert opinion.
- This objection is overruled for the same reasons as stated in 3 above.
7. The City objected to a question to Dr. McGrail regarding an article in a medical journal - document not in evidence.
- This objection is overruled. Young subsequently offered the article as an exhibit.

8. The City objected to the offer of the article as an exhibit - expert testimony with no opportunity to cross-examine the author.
 - This objection is overruled based on the relevance of the article in question and the relaxed evidentiary standards applicable to administrative hearings.
9. The City objected to Young's question to Dr. McGrail regarding what he learned from Young as beyond the scope of discovery.
 - The May 11 hearing was continued as a result of this objection to give the City the opportunity to depose Dr. McGrail and the Member the opportunity to supplement his discovery answers.

September 1 - Reconvened Hearing

10. The City objected to a question to Dr. Moseley re whether he could determine causation by non-work factors as "leading and suggestive."
 - This objection is overruled based on relevance and the relaxed evidentiary standards applicable to administrative hearings.
11. The Member renewed his motion to strike certain medical records obtained by the City based on alleged defects in the City's procedures. The Committee had previously denied the motion without prejudice due to the existence of factual issues which could only be resolved upon hearing.
 - This motion is overruled and the medical reports in question (the reports of doctors Rater, Basler, and Payvandi) are admitted, since the City ultimately could have obtained the same information in the course of discovery. The committee finds, however, that the procedures utilized by the City in having the member seen by three local physicians, soliciting opinions from those physicians regarding the extent and causation of the member's disability and obtaining reports of the physicians in question prior to forwarding the Member's application for disability benefits to the System impermissibly interferes both with the Member's right to pursue his application for benefits from the System and with the System's responsibility for processing such applications. Any evidence obtained by the City through this procedure in future cases is therefore likely to be excluded from evidence.

12. The City objected to certain medical studies offered by the Member which were not referenced by Dr. McGrail - lack of foundation.
 - This objection is overruled based on relevance and the relaxed evidentiary standards, provided, however, any reliance by the Committee on such studies will be specifically noted.
13. The City objected to the offer of a letter from Dr. McGrail as an exhibit - needlessly cumulative.
 - This objection is overruled based on relevance and the relaxed evidentiary standard applicable to administrative hearings.

FINDINGS OF FACT

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

1. Young suffered a heart attack on or about April 6, 1992. He subsequently underwent bypass surgery and has not returned to his job with the Cedar Rapids Fire Department.
2. It is undisputed that Young is 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. Moseley of the Medical Board testified that it is not possible to determine what caused Young's heart attack, but that the "most likely cause" of the coronary artery disease which led up to the heart attack was his cigarette smoking and positive family history. Dr. Moseley further testified that he could not state with a reasonable degree of medical certainty that Young's impairment was caused exclusively by non-work related factors.
4. Doctor Payvandi stated in his letter dated October 6, 1992, "I do not believe that his ischemic heart disease and myocardial infarction were the result of his employment as a firefighter." Doctor Rater stated in his letter to Mr. Flitz dated January 18, 1993, "It's my impression that his myocardial infarction does not arise out of his employment and that his heart attack occurred as part of the natural history of atherosclerotic coronary artery disease." Doctor Basler, in his letter dated September 21, 1992 listed "cause factors" as "#1 - Heavy smoker of cigarettes, #2 -

Heredity, #3 - Stress from occupation as a firefighter." (Emphasis added).

5. Dr. McGrail testified that, in his opinion, it is very likely that Young's activities as a firefighter contributed to the development of his coronary artery disease. Dr. McGrail further testified that Young's cigarette smoking also likely played a role in Young's coronary artery disease.
6. Young had smoked up to 1 1/2 packs of cigarettes per day for approximately thirty-three years prior to his heart attack.
7. The record does not establish a family history of heart disease.

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 Young's disability may have been caused by factors other than his job. The actual cause has not been established, however.
4. The Iowa Supreme Court noted in Larson v. Board of Trustees of Police Retirement System of Sioux City, that even if the presumption of § 411.6(5) is rebuttable, the medical evidence at most indicated that no one knew what caused the disease in question. 401 N.W. 2d 860 (Iowa 1987). The court then stated, "Lack of such knowledge is the very reason a presumption is needed." Id. The court held that the member was entitled to accidental disability benefits. Likewise, in this case, even if the presumption is rebuttable, there is insufficient evidence to rebut it.

DECISION

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

Dated this 2nd day of December, 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 2nd day of December, 1994.