

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

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

IN THE MATTER OF:

Kim S. Walter

Applicant

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DECISION

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

STATEMENT OF THE CASE

The applicant, Kim S. Walter ("Walter") filed his application for accidental disability benefits with the City of Council Bluffs on or about June 9, 1993. On or about June 30, 1993, Walter purportedly withdrew his application for disability benefits, which had never been forwarded to the System. On or about June 30, 1994, the Board determined that the purported withdrawal of the application was not effective, and the Walter's application was effective and should be processed.

On September 15, 1994, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Walter's disability. An initial decision awarding ordinary disability benefits was made by the System on September 19, 1994. Pursuant to the administrative rules of the System, the award provided that benefits were to be effective on September 19, 1994, the date of the award. Walter filed a timely appeal challenging both the effective date of the award and the award of ordinary, rather than accidental disability benefits.

A hearing was held before the appeals committee of the board (comprised of Deborah Neels, chair; Vernon Cook and Dean Johnson) on December 16, 1994 at the offices of the System. Walter appeared and was represented by attorney Bruce Green. Richard Wade, City Attorney, 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. Post-hearing briefs were filed by both Walter and the City.

EFFECTIVE DATE ISSUE

The parties stipulated that Walter was last on the payroll June 14, 1993. The Executive Director testified that Walter's application was received by the System on July 19, 1994, and that Walter was seen by the Medical Board on August 17 and 18 of 1994.

Rule 9.2(2)(j) of the System's administrative rules provides: "Disability benefits awarded under this Chapter shall be payable effective with the date of staff approval, or as otherwise specified by the Board." Due to the unusual circumstances of this case, and the resulting delay in the processing of Walter's application, it is determined that the award of benefits is effective retroactive to September 7, 1993 (the date 90 days following the date of application).

FINDINGS OF FACT

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

1. Walter commenced employment with the City of Council Bluffs, Iowa as a police officer on or about June 17, 1974.
2. On February 25, 1985, Walter was involved in an on-the-job automobile accident in which he suffered back and neck injuries. He was released to return to work after about five months, but continued to experience pain, for which he took anxia, a prescribed pain medication.
3. Walter developed a tolerance to the pain killers over time and eventually became addicted to them.
4. On or about December 9, 1992, Walter was suspended with pay pending an investigation into his activities regarding the acquisition of prescription drugs. On or about June 14, 1993, he was terminated as a result of said investigation. He was subsequently allowed to resign in lieu of the termination.
5. Walter developed a "major depressive disorder" and is incapacitated 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.

3. Walter would be entitled to accidental disability benefits under the statute only if it is determined that his major depressive disorder was proximately caused by his injuries in the 1985 traffic accident.

4. Even if it is established that his major depressive disorder was caused or aggravated by the investigation and related occurrences, this could not be the basis for an accidental disability benefit. Cooperating with the investigation, while required as a personnel matter, did not constitute the performance of duty as a police officer.

5. Walter has failed to prove that his major depressive disorder was caused by the 1985 traffic accident.

DECISION

The application for accidental disability retirement benefits on behalf of Kim S. Walter under chapter 411 is hereby denied. Walter is awarded ordinary disability benefits under chapter 411, effective September 7, 1993.

Dated this 11 day of January, 1995.



Dean Johnson
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 11 day of January, 1995.

Alice E. Helle