

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

IN THE MATTER OF:

Larry J. Melcher

Applicant

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PROPOSED DECISION

Iowa Code § 411.6(5) (1993)

STATEMENT OF THE CASE

The applicant, Larry J. Melcher ("Melcher") filed his application for disability benefits on or about September 26, 1994. On November 17, 1994 the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Melcher's disability. An initial decision denying disability benefits of any type was made by the system on November 28, 1994. Melcher filed a timely appeal on December 15, 1994. A hearing was held before the appeals committee of the board (Composed of Judy Bradshaw, Chair; Sherri Meier and Dean Johnson) on February 3, 1995 at the offices of the System. Melcher appeared and was represented by his attorney Michael J. Winter. Richard Wade, City Attorney, appeared for the City of Council Bluffs. Dennis Jacobs, Executive Director appeared on behalf of the System. James H. Gilliam was present as counsel to the Committee. Testimony was received from Melcher, and by deposition, from Dr. Mark D. Pilley. 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. Melcher commenced employment with the City of Council Bluffs as a police officer on or about January 24, 1983.

2. On February 24, 1989, while in the performance of duty as a police officer, a rented truck slammed into the rear of Melcher's police cruiser. The force of the impact caused the seat to break loose and push Melcher into the cage separating the front and rear seats. Melcher was transported to a local emergency room, treated and released.

3. Melcher was off work for a few days and began subjective complaints of numbness in his leg and headaches upon his return to work. Melcher was prescribed physical therapy, which provided no subjective relief. Melcher began medication with various painkillers and was placed on light duty. Except for brief periods where Melcher was restored to full duty, he has been on light duty since.

4. Despite Melcher's chronic complaints of pain, neither his personal physician, Dr. Pilley, nor the UIHC medical board of physicians are able to make objective findings that Melcher is incapacitated from the further performance of duty as a police officer or that any perceived incapacity is permanent.¹

¹ After the conclusion of the hearing, Melcher presented, contemporaneously with his brief, a letter from Dr. Wampler. The City objected to the consideration of this evidence due to the untimely nature of its introduction. The City's objection is sustained. However, even if the Committee were to consider the letter, it fails to overcome the greater weight of the evidence in the record that there are no objective findings that Melcher is incapacitated from the further performance of duty as a police officer or that any perceived incapacity is permanent.

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. Melcher is not incapacitated for the further performance of duty.

DECISION

The application for disability retirement benefits on behalf of Larry J. Melcher under Chapter 411 is hereby denied.

Dated this 28th day of April, 1995.



~~Judy Bradshaw~~ Sherry M. Meier
Disability Appeals Committee