

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA
950 Office Park Road, Suite 321
West Des Moines, Iowa 50265

IN THE MATTER OF:

Bruce J. Barker

Applicant

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DECISION

Iowa Code § 411.6(3) (1995) and
Iowa Code § 411.6(5) (1995)

STATEMENT OF THE CASE

The applicant, Bruce J. Barker ("Barker") filed his application for accidental disability benefits with the System on or about December 27, 1994. On March 10, 1995, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Barker's disability. An initial decision approving Barker for ordinary (rather than accidental) disability benefits was made by the System on April 12, 1995. Upon timely appeal by Barker a hearing was held before the appeals committee of the board (comprised of Frank Gray, chair; Mary Bilden and Martin Pottebaum) on August 31, 1995 at the offices of the System. Barker appeared and was represented by attorney Jay Roberts. Attorney, Ronald Van Veldheizen appeared for the City of Oelwein. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle of Des Moines, Iowa, was present as counsel to the Committee. Bruce Barker and his wife, Debbie Barker, testified before the Committee. Donald Marrah, Roxann Marrah and Douglas R. LaBrecque, M.D. testified by means of deposition. Both parties waived the filing of post-hearing briefs.

FINDINGS OF FACT

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

1. Barker began working for the Oelwein Police Department on or about March 16, 1979.
2. On or about June 23, 1991, Barker answered a call regarding a domestic dispute at the Marrah residence in Oelwein. When he arrived on the scene, another officer had placed Donald Marrah under arrest but needed help in restraining him. Donald had broken windows out of his wife's car with his fists and was bleeding from the knuckles.

Barker and the other officer succeeded in restraining Marrah, and some of Marrah's blood was smeared on Barker's hands in the process.

3. Barker has cuts and abrasions on the ends of his fingers at all times from biting his fingernails.

4. Barker began suffering from fatigue and frequent colds, etc. in about the fall of 1991. In October of 1991, he was hospitalized for severe abdominal pains. He tested negative for hepatitis A and B at that time. He was not tested for hepatitis C.

5. In May of 1994, Barker attempted to donate blood to the Red Cross. His blood was rejected because the Red Cross testing determined that he had hepatitis C.

6. Roxann Marrah was diagnosed with hepatitis C sometime after her 1991 divorce from Donald Marrah.

7. Donald Marrah has not been tested for hepatitis C. He is an admitted IV drug user, and testified that he became an IV drug user prior to 1991.

8. Dr. LaBrecque testified that the two main risk factors for acquiring hepatitis C are blood transfusions and IV drug abuse. Approximately two-thirds of the IV drug users in the United States have hepatitis C. The disease is less commonly transmitted by sexual activity, but the fact that Roxann Marrah tested positive for hepatitis C would make Donnie Marrah's chances of having the disease something more than 67%.

9. Roxann Marrah had no other established risk factor for the disease. Barker has no known risk factor for the disease other than his contact with Donald Marrah's blood. Debbie Barker does not have hepatitis C.

10. Dr. LaBrecque opined "to a high likelihood" that Barker contracted hepatitis C in the altercation with Donnie Marrah.

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. It is undisputed that Barker is disabled as long as he is on interferon treatment for his hepatitis C.

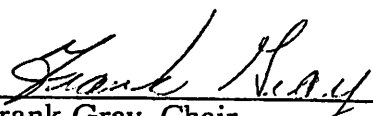
4. Barker has the burden to establish that his disability was caused by the performance of duty at a particular time and place.

5. The medical evidence indicates that the most likely cause of his hepatitis C is the on-the-job altercation with Donnie Marrah.

DECISION

The application for accidental disability retirement benefits on behalf of Bruce J. Barker under Chapter 411 is hereby approved.

Dated this 10th day of September, 1995.



Frank Gray, 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 _____, 1995.