

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

CONFIDENTIAL

IN THE MATTER OF:

Gerald D. Ketelsen

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, Gerald D. Ketelsen, ("Ketelsen") filed his application for accidental disability benefits with the System on or about April 13, 1995. On June 6, 1995, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Ketelsen's disability. An initial decision denying Ketelsen disability benefits was made by the System on June 15, 1995. Upon timely appeal by Ketelsen, a hearing was held before the appeals committee of the board (comprised of Dean Johnson, chair; Mary Bilden and Lynn Manhart) on November 29, 1995 at the offices of the System. Ketelsen appeared and was represented by attorney Patrick Kelly. Mary Thee, City Attorney, appeared for the City of Davenport. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle of Des Moines, Iowa, was present as counsel to the Committee. Gerald D. Ketelsen and Davenport Fire Chief Tom Ryan testified before the Committee. Dr. Charles Bruyntjens, Jr. and Dr. Akshay Mahadevia 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. Ketelsen began working for the Davenport Fire Department in July of 1966. He resigned in May of 1974, but was rehired and returned to service with the Department on or about February 1, 1975.
2. Approximately two years prior to the hearing in this matter, Ketelsen began feeling claustrophobic when wearing a self-contained breathing apparatus ("SCBA"). He was referred to a psychologist through the City's Employee Assistance Program, but it was ultimately determined that the claustrophobic feelings were caused by an inability to get

enough air, rather than by a psychological problem. Ketelsen did not seek treatment for breathing problems at the time.

3. Ketelsen became ill with the flu in about March of 1995. He went to his family doctor, Dr. Fesenmeyer, who referred him to a pulmonologist, Dr. Hansen. Dr. Hansen noted symptoms "consistent with mild emphysema" and prescribed inhalers.

4. The Medical Board noted in its June 2, 1995 report that Ketelsen had an "abnormal diffusing capacity" following a viral illness in March, but that it had returned to normal. The Medical Board also noted a 30 year history of smoking 2 1/2 packs of cigarettes per day, and a history of treatment for on-the-job smoke inhalation. The Medical Board opined that Ketelsen is capable of performing as a firefighter.

5. Following the System's denial of disability benefits, the City sent Ketelsen to Dr. Mahadevia, a pulmonologist, for a "back to work order." Following a September 12, 1995 examination, Dr. Mahadevia opined that Ketelsen has a "varying degree of chronic obstructive lung disease" and that he could return to work, but only if he avoided extreme temperature variations, heavy exercise and high humidity.

6. Chief Ryan testified that a person could not function as a firefighter in the City of Davenport under such restrictions.

7. In their depositions (conducted in October and November, respectively) Drs. Bruyntjens and Mahadevia both testified that it is possible that a person could perform well in a pulmonary function test under ideal conditions (such as the one administered by the Medical Board) and still be unable to perform under fire conditions. Both opined that Ketelsen is unable to perform as a firefighter, that his condition is likely to be permanent, and that it would potentially endanger himself and others to put him in that situation.

8. There is no conclusive evidence regarding the causation of his lung condition, and both Ketelsen and the City argue that an accidental disability benefit should be granted based on the statutory presumption.

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. Ketelsen is permanently incapacitated from performing as a firefighter by a disease of the lung.

DECISION

The application for accidental disability retirement benefits on behalf of Gerald D. Ketelsen under Chapter 411 is hereby approved.

Dated this 30 day of November, 1995.

Mary Beldin for Dean Johnson
Dean Johnson, 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 1st day of December, 1995.

Lamba Wells