

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

CONFIDENTIAL

IN THE MATTER OF:)
)
John D. LeMar) DECISION
)
Applicant)

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

STATEMENT OF THE CASE

The applicant, John D. LeMar ("LeMar") filed his application for accidental disability benefits with the System on or about April 17, 1995. On July 27, 1995, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding LeMar's disability. An initial decision awarding LeMar ordinary (rather than accidental) disability benefits was made by the System on August 4, 1995. Upon timely appeal by LeMar, a hearing was held before the appeals committee of the board (comprised of Sherry Meier, chair; Mary Bilden and Martin Pottebaum) on November 30, 1995 at the offices of the System. LeMar appeared and was represented by attorney Neva Rettig Baker. The City of Muscatine did not appear. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle of Des Moines, Iowa, was present as counsel to the Committee. LeMar testified before the Committee.

FINDINGS OF FACT

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

1. LeMar commenced employment with the City of Muscatine, Iowa as a police officer on or about April 28, 1975.
2. The Medical Board found that LeMar is incapacitated from performing as a police officer as a result of a major depressive disorder and alcoholism, and that the incapacity is likely to be permanent.

3. LeMar has a long history of alcohol, tobacco and caffeine abuse and of problems with gambling. Specifically, he admitted (in a 04/20/95 consultation at Genesis Medical Center) to smoking 4 packs of cigarettes per day and drinking a 12 pack of beer a day for the last 20 years or so, and also to drinking 6 shots of whiskey a day for the past year.

4. In a June 29, 1995 letter to LeMar's attorney, Ms. Baker, his treating psychologist, Ira Sherman, opined that the onset of LeMar's depression was related to the loss of his two-week old infant son in 1986 as a result of a premature C-section which was necessitated by the mother's attempted suicide. The mother recovered but left town, so LeMar lost both his son and his girlfriend. Dr. Sherman further opined that his depression was exacerbated by his involvement approximately two years later in the investigation of the murder and dismemberment of an infant girl, the subsequent acquittal of the perpetrator, and a subsequent (unrelated) internal investigation of LeMar's alleged illicit drug use and/or dealing. The investigation was ultimately dropped, but LeMar felt his reputation was tarnished and suffered a loss of respect for his fellow officers and himself.

5. LeMar testified that it was not until after the 1988 infant murder investigation that he began drinking daily. He also testified that he believes that incident and the internal affairs investigation, rather than his personal problems, caused his depression and alcoholism.

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. LeMar would be entitled to accidental disability benefits under the statute only if it is determined that his major depressive disorder was proximately caused by the cited on-the-job incidents, and that those incidents constitute something more than the day-to-day emotional stress commonly associated with police work.

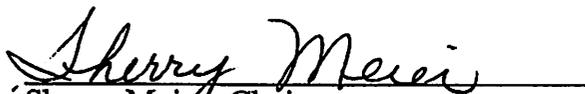
4. Even if it is established that his major depressive disorder was caused or aggravated by the investigation and related occurrences, this could not be the basis for an accidental disability benefit. Cooperating with the investigation, while required as a personnel matter, did not constitute the performance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

5. LeMar has failed to prove that his major depressive disorder was caused by the 1988 infant murder case.

DECISION

The application for accidental disability retirement benefits on behalf of John D. LeMar under chapter 411 is hereby denied. He will continue to receive ordinary disability benefits, as awarded by the System on August 4, 1995.

Dated this 30th day of November, 1995.


Sherry Meier, 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.

Sandra Wells