

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

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

CONFIDENTIAL

IN THE MATTER OF:

PATRICK J. SWEENEY

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, Patrick J. Sweeney ("Sweeney") filed his application for accidental disability benefits with the System on or about April 5, 1995. On June 2, 1995, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Sweeney's disability. An initial decision approving Sweeney for accidental disability was made by the System on June 15, 1995. Upon a timely appeal by the City of Fort Dodge, a hearing was held before the appeals committee of the Board (comprised of Lynn Manhart, Chair; Mary Bilden, and Dean Johnson) on September 29, 1995 at the offices of the System. Sweeney appeared and was represented by attorney, MacDonald Smith. Attorney Maurice Breen appeared for the City. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Following the close of the evidence, 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. Sweeney commenced employment with the City of Fort Dodge, Iowa as a firefighter on or about July 1, 1971. He last worked on March 11, 1995.
2. The medical board opined that Sweeney suffers from chronic obstructive pulmonary disease and that he is permanently incapacitated from performing as a firefighter as a result.

3. It is undisputed that Sweeney is permanently incapacitated for the further performance of duty. The issue is whether his disability is job-related, so as to entitle him to accidental disability benefits under § 411.6(5).

4. Sweeney testified that he smoked a pack or more of cigarettes a day for more than thirty years. The medical records also reference his smoking history.

5. Sweeney was treated for smoke inhalation following the "Disco" fire on July 14, 1979.

6. There is no medical evidence in the record regarding the cause of Sweeney's chronic obstructive pulmonary disease.

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. The actual cause of Sweeney's disabling lung disease has not been established.
4. The Iowa Supreme Court noted in Larson v. Board of Trustees of Police Retirement System of Sioux City, that even if the presumption of § 411.6(5) is rebuttable, the medical evidence at most indicated that no one knew what caused the disease in question. 401 N.W.2d 860 (Iowa 1987). The court then stated, "Lack of such knowledge is the very reason a presumption is needed." Id. The court held that the member was entitled to accidental disability benefits. Likewise, in this case, even if the presumption is rebuttable, there is insufficient evidence in the record to rebut it.

DECISION

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

Dated this 30 day of November, 1995.

Mary Belden for Lynn Manhart
Lynn Manhart, 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.


