

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA
2836 104th Street
Des Moines, Iowa 50322

CONFIDENTIAL

IN THE MATTER OF:

Steven G. Branson

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, Steven G. Branson ("Branson") filed an application for disability benefits with the System on or about September 11, 1995. On November 17, 1995, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Branson's disability. An initial decision awarding Branson ordinary disability benefits was made by the System on November 30, 1995. Upon timely appeal by Branson, a hearing was held before the appeals committee of the board (comprised of Judy Bradshaw, chair; Mary Bilden and Dean Johnson) on April 23, 1996 at the offices of the System. Branson appeared and was represented by attorney Dennis McElwain. Richard Wade, City Attorney, appeared for the City of Council Bluffs. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle of Des Moines, Iowa, was present as counsel to the Committee. Branson testified before the Committee. Daniel LaRose, M.D. testified by deposition. The parties waived briefs.

FINDINGS OF FACT

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

1. Branson commenced employment with the City of Council Bluffs, Iowa as a firefighter on or about January 14, 1980.
2. The Medical Board found that Branson is physically incapacitated from performing as a firefighter as a result of osteoarthritis of the left knee, and that the incapacity is likely to be permanent.

3. Branson testified that he had no knee problems prior to commencing employment as a firefighter.

4. After several years of problems with the knee, Branson had surgery (a "left high tibial osteotomy") in March of 1995. He returned to work for a short period of time in August, 1995, but was unable to continue working due to pain and swelling in the knee.

5. Dr. LaRose testified that Branson would be able to perform most jobs, but that he was unable to continue as a firefighter despite an excellent result from surgery due to the strenuous nature of the job. He further testified that osteoarthritis is a "wear and tear" type of arthritis, and that, while he did not believe that the job caused the osteoarthritis, he felt it was an aggravating factor and that it "did accelerate the wear in his knee." No specific injury was cited; Dr. LaRose's testimony related to the general nature of firefighter duties as related to him in a hypothetical.

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 Branson is incapacitated from performing as a firefighter due to his osteoarthritis. The issue is whether he is entitled to an accidental rather than ordinary disability pension.

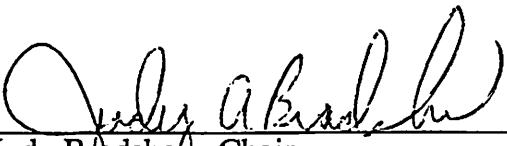
4. Branson argues that his disability was caused by cumulative trauma on-the-job and an accidental disability pension is payable on that basis. He cites to Butler v. Pension Board, 147 N.W.2d 27 (Iowa 1966) for the proposition that it is not necessary to pinpoint a specific event as causing the disability in a cumulative trauma case. The Butler case dealt with the heart-lung presumption under § 411.6(5), however. Absent the presumption, the member must establish that his disability was caused or aggravated by the actual performance of duty at a definite time and place. It is undisputed that Branson does not suffer from a disease of the heart, lungs or respiratory tract.

5. Branson has failed to prove that his disability was caused by the actual performance of duty at a definite time and place.

DECISION

The appeal for accidental disability retirement benefits on behalf of Steven G. Branson under chapter 411 is hereby denied. He will continue to receive ordinary disability benefits, as awarded by the System on November 30, 1995.

Dated this 9 day of May, 1996.



Judy Bradshaw, 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 10th day of May, 1996.

Andrea Wells