

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

IN THE MATTER OF:

Harry E. Tate

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, Harry E. Tate ("Tate") filed his application for accidental disability benefits with the System on or about October 23, 1995. On December 6, 1995, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Tate's disability. An initial decision awarding Tate ordinary (rather than accidental) disability benefits was made by the System on January 5, 1996. Upon timely appeal by Tate, a hearing was held before the appeals committee of the board (comprised of Frank Gray, chair; Deborah Neels and Marty Pottebaum) on April 17, 1996 at the offices of the System. Tate appeared and was not represented by counsel. The City of Marion 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. Tate testified before the Committee. There was no other testimony offered. A post-hearing brief was filed by Tate.

FINDINGS OF FACT

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

1. Tate commenced employment with the City of Marion, Iowa as a police officer on or about October 30, 1966.
2. The Medical Board found that Tate is physically and mentally incapacitated from performing as a police officer as a result of fibromyalgia and depression, and that the incapacity is likely to be permanent.

3. Dr. Krieg of the Medical Board commented that it has been his clinical impression in treating fibromyalgia patients that stress contributes to disease severity and that "an important part of caring for fibromyalgia is to minimize stress."

4. Tate testified that his former chief was vindictive and removed him from a narcotics task force in 1993, and that, rather than putting Tate back on the task force, the chief gave up a federal grant for the position. The employment of the chief was ultimately terminated.

5. Tate further testified that he believes his disability was brought on by that incident and related incidents involving his working relationship with the chief.

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. Tate would be entitled to accidental disability benefits under the statute only if it is determined that his fibromyalgia and depression were proximately caused by the performance of duty at a definite time and place. In addition, if the "mental injury" (depression) is the basis for the award, it must be determined and that the cited incident constituted something more than the day-to-day emotional stress commonly associated with police work.

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

DECISION

The application for accidental disability retirement benefits on behalf of Harry E. Tate under chapter 411 is hereby denied. He will continue to receive ordinary disability benefits, as awarded by the System on January 5, 1996.

Dated this 10th day of May, 1996.



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 10th day of May, 1996.


