

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

IN THE MATTER OF:

Robert D. Chiafos

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, Robert D. Chiafos ("Chiafos") filed an application for disability benefits with the System on or about October 27, 1995. On January 9, 1996, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Chiafos's disability. An initial decision awarding Chiafos ordinary disability benefits was made by the System on January 30, 1996. Upon timely appeal by Chiafos, a hearing was held before the appeals committee of the board (comprised of Judy Bradshaw, chair; Debbie Neels and Marty Pottebaum) on June 20, 1996 at the offices of the System. Chiafos appeared and was represented by attorney Charles Gribble. The City of Marion did not appear. James Gilliam of Des Moines, Iowa was present as counsel to the Committee.

Chiafos, Gordon Dolley and William Long testified before the Committee. Loren J. Mouw, M.D., testified by deposition. Chiafos filed a brief on or about June 27, 1996.

FINDINGS OF FACT

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

1. Chiafos commenced employment with the City of Marion, Iowa as a patrol officer in December of 1968.

2. The Medical Board found that Chiafos is physically incapacitated from performing as a police officer as a result of cervical stenosis and post operative status with a subsequent decompressive foraminotomy. The Board further found that Chiafos' physical incapacity is likely to be permanent.

3. Chiafos testified that he had no cervical problems prior to commencing employment as a police officer.

4. After several years of problems with bilateral shoulder and arm pain, Chiafos had surgery in March of 1995. After achieving maximum medical improvement after the surgery, Chiafos' neurosurgeon, Dr. Mouw, refused to return him to full duty as a police officer citing the likelihood of future injury if he performed the physical requirements of a police officer.

5. Dr. Mouw was unable to cite a specific injury as the cause of Chiafos's condition. Dr. Mouw testified that Chiafos's condition was unusual in a person who had not received "years of mild to moderate injuries and abuse of the cervical spine." Dr. Mouw further testified that the types of on-duty incidents Chiafos was able to relate in his testimony were consistent with types of mild to moderate injuries that could lead to that condition.

6. The last incident which Chiafos testified as a potential cause of his incapacitating condition occurred in May, 1985, when he was injured in a volleyball game while at the FBI Academy in Quantico, Virginia.

CONCLUSIONS OF LAW

i. 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.

ii. 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.

iii. It is undisputed that Chiafos is incapacitated from performing as a police officer due to his cervical stenosis and condition post-operative to decompressive foraminotomy. The issue is whether he is entitled to an accidental rather than ordinary disability pension.

iv. Chiafos argues that his disability was caused by cumulative trauma on-the-job and an accidental disability pension is payable on that basis. Absent the presumption under Section 411.6(5), however, the member must establish that his disability was caused or aggravated by the actual performance of duty at a definite time or place. It is undisputed that Chiafos does not suffer from a disease of the heart, lungs or respiratory tract entitling him to the presumption.

v. Chiafos 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 Robert D. Chiafos under chapter 411 is hereby denied. He will continue to receive ordinary disability benefits, as awarded by the System on January 30, 1996.

Dated this 23rd day of ~~July~~, 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 26 day of August, 1996.

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