

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

IN THE MATTER OF:

Steven A. Verre

Applicant

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DECISION

Iowa Code § 411.3 (1995) and
Iowa Code § 411.6 (1995)

STATEMENT OF THE CASE

The applicant, Steven A. Verre ("Verre") filed his application for disability benefits with the System on or about February 14, 1996. An initial decision denying Verre disability benefits was made by the System on April 12, 1996. The basis for the denial was that Verre was not a "member in service" at the time he filed his application. Upon timely appeal by Verre, a hearing was held before the appeals committee of the board (comprised of Judy Bradshaw, chair; Mary Bilden and Frank Gray) on July 2, 1996 at the offices of the System for purposes of receiving arguments relating to Verre's membership status. Attorney Randy Hohenadel appeared for Verre. Mary Thee, City Attorney, and Fire Chief Tom Ryan appeared for the City of Davenport. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle of Des Moines, Iowa, was present as counsel to the Committee. Both parties waived the filing of post-hearing briefs.

FINDINGS OF FACT

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

1. Verre began working for the Davenport Fire Department on or about March 22, 1978.
2. On or about September 30, 1995, Verre was discharged for misconduct related to substance abuse.
3. Verre appealed the discharge to the Davenport Civil Service Commission. The hearing before the Civil Service Commission was delayed several times due to scheduling problems. No Civil Service hearing was ever held, since the parties ultimately reached a settlement agreement regarding Verre's discharge.

4. The "Separation Agreement and Release" signed by Verre and the City on February 14, 1996 provided, in relevant part, that the City would "re-codify" Verre's termination as a resignation, and that Verre would confirm his voluntary resignation effective February 15, 1996. The parties agreed that Verre was on suspension without pay between September 28, 1995 through February 15, 1996. The Agreement further provided (in paragraph 8) that "Verre may make application to the Municipal Fire and Police Retirement System of Iowa for a disability pension. Verre understands that the City will contest his application. Neither party shall be barred from pursuing any appeal rights under the provisions of Chapter 411 of the Iowa Code."

5. Verre's application for disability retirement was received by the System on February 14, 1996.

CONCLUSIONS OF LAW

6. Iowa Code Section 411.3 states (in relevant part) as follows:

All persons who become police officers or fire fighters after the date the city is required to come under the retirement system, shall become members of the retirement system as a condition of their employment. . . .

7. 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.

8. 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.

9. Membership in the System is a condition of employment as a firefighter.
10. Current membership in the System is also a prerequisite for the filing of an application for both accidental and ordinary disability benefits.
11. Membership in the System terminates upon the termination of covered employment. See House v. Moulder, 469 N.W.2d 265 (Iowa App. 1991).
12. Verre's covered employment was terminated on or about September 30, 1995, as was his membership in the System. The parties' subsequent agreement attempting to recast the termination as a suspension and voluntary resignation has no effect on the date of termination of Verre's membership status.

DECISION

The application for disability retirement benefits on behalf of Steven A. Verre under Chapter 411 is hereby denied.

Dated this ____ day of August, 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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