

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

IN THE MATTER OF:

William Jay Lee

Appellant

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DECISION

Iowa Code § 411.6(3) (1995) and
Iowa Code § 411.6(5) (1995)

STATEMENT OF THE CASE

Chief Jack E. Schlieper of the Mason City Police Department filed an application for ordinary disability benefits on behalf of William Jay Lee ("Lee") with the System on or about October 9, 1996. On November 21, 1996, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Lee's disability. An initial decision awarding Lee ordinary disability benefits was made by the System on December 11, 1996. Upon timely appeal by Lee, a hearing was held before the appeals committee of the board (comprised of Frank Gray, chair; Mary Bilden and Martin Pottebaum) on April 3, 1997 at the offices of the System. Lee appeared and was represented by attorney David M. Nelson. The City of Mason City was represented by attorney Herman "Chip" Folkers. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Officer Lee testified before the Committee, as did Mason City police officers David Hepperly and Al Haubrich. Both parties waived the right to file post-hearing briefs.

FINDINGS OF FACT

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

1. Lee commenced employment with the Mason City Police Department on or about June 16, 1971.
2. Lee began experiencing symptoms in December of 1995 which he attributes to interpersonal difficulties with then-Chief Schlieper which may have been related to Lee's position as a union steward. Specifically, on December 22, 1995, the Chief threatened to fire Lee and told Lee that

he "wouldn't see his retirement." These threats were repeated many times over the next few months, but no suspension or termination actions were ever commenced.

3. It was undisputed that the Chief, who came to the department early in 1995, was not popular with the officers in the department. The Chief came under considerable criticism and apparently thought that Lee was the instigator. Lee denies this. No other officers (including the other union stewards) were subjected to the type of threats that were directed at Lee by the Chief.

4. Lee first sought medical treatment for symptoms of anxiety and depression on or about January 11, 1996, and treatment with medication and counseling was commenced. He was initially put on medical leave for three days. He was ultimately diagnosed with a major depressive disorder, and last worked on April 15, 1996.

6. The Medical Board found that Lee is incapacitated from performing as a police officer as a result of his major depressive disorder, and that the incapacity is likely to be permanent. It is undisputed that he is incapacitated from performing as a police officer.

7. Lee testified about numerous confrontations with the Chief which he believes caused his major depressive disorder, beginning with the December 22, 1995 incident.

8. Lee's treating psychiatrist, Mark E. Lissise, MD, testified by deposition that the incidents in question "created chronic and significant stressors. . . which would make [Lee] vulnerable to a depressive episode."

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. A "mental injury" may be the basis for accidental disability benefits under the statute. "Major depressive disorder" may constitute a mental injury rather than a disease for purposes of the statute.

4. The incidents Lee complains of constitute personnel matters, rather than the performance of duty as a police officer.

5. Lee has failed to establish his entitlement to an accidental disability pension.

DECISION

The application for accidental disability retirement benefits on behalf of William J. Lee under Chapter 411 is hereby denied, and the award of an ordinary disability retirement pension is hereby affirmed. The vote was 2-1 with Martin Pottebaum voting for accidental.

Dated this 4th day of April, 1997.

 _____, 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 _____ day of _____, 1997.