

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

IN THE MATTER OF:	)	
	)	
KEVIN B. BENSON	)	DECISION
	)	
Member	)	

Iowa Code § 411.6(3) (1997) and
Iowa Code § 411.6(5) (1997)

STATEMENT OF THE CASE

Kevin B. Benson ("Benson") filed an application for accidental disability with the System on or about July 16, 1997. On September 15, 1997, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Benson's disability. An initial determination approving Benson for an ordinary disability pension was made by the System on October 7, 1997. Upon a timely appeal by Benson, a hearing was scheduled before the Appeals Committee of the Board (comprised of Marty Pottebaum, Sherry Meier, and Mary Bilden, Chair) for February 19, 1998, at the offices of the System. By means of a fax dated February 13, 1998, Benson withdrew his request for a hearing and indicated that he would not appear. The appeal was therefore conducted by means of a file review. Attorney Alice Helle of Des Moines was present as counsel to the Committee.

FINDINGS OF FACT

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

1. Benson is currently age 49, and commenced employment with the Fort Dodge Police Department in August of 1972.
2. In May of 1995, Benson was involved in an on-the-job motor vehicle accident. A radiology report dated May 9, 1995 noted that Benson complained of pain in the right shoulder and right elbow following of the accident. The report noted "no evidence of acute osseous or articular abnormality involving the right shoulder or right elbow joint" but noted degenerative changes in both joints. The report further noted that there was a "large bone spur" in the shoulder joint, "which may predispose the patient to shoulder impingement syndrome."

3. In March of 1997, after responding to a 911 call, Benson lifted an injured child and her bicycle over a guardrail. He subsequently experienced pain in his right shoulder, and has been off work since April 2, 1997.

4. The Medical Board found that Benson is incapacitated from performing as a police officer as a result of "arthritis of the acromioclavicular joint and glenohumeral joint, as well as impingement syndrome of the right shoulder."

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 Benson is incapacitated for the further performance of duty and that the incapacity is likely to be permanent. The medical evidence does not establish that this

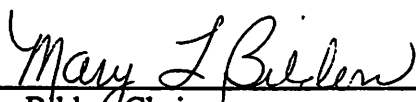
incapacity is the result of the performance of duty, however. Rather, the medical evidence indicates that Benson suffered from a degenerative condition and was predisposed to impingement syndrome of the right shoulder.

4. Benson has failed to prove that his condition was caused or aggravated by the actual performance of duty at a definite time and place.

DECISION

The application for accidental disability retirement benefits on behalf of Kevin B. Benson under Chapter 411 is hereby denied, and the award of an ordinary disability retirement pension is hereby affirmed.

Dated this 19 day of February, 1998.



Mary Bilden/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 such attorney's address as disclosed by the pleadings of record herein on the 20th day of February, 1998.

By: ☒ U.S. Mail ☐ Facsimile
☐ Hand Delivered ☐ Overnight Courier
☐ Federal Express ☐ Other

Signature 