

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

IN THE MATTER OF:

LARRY STOUGARD

Applicant

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DECISION

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

STATEMENT OF THE CASE

Larry Stougard ("Stougard") filed an application for accidental disability benefits with the System on or about January 23, 1998, by means of a letter from his attorney, David S. Wiggins. An initial decision denying Stougard's disability application was made by the System on January 29, 1998. Upon timely appeal by Stougard, a hearing was held before the appeals committee of the board (comprised of Mary Bilden, chair, Sherry Meier and Martin Pottebaum) on May 28, 1998 at the offices of the System. Stougard appeared and was represented by attorney David S. Wiggins. The City of Des Moines was represented by attorney Carol Moser. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Officer Stougard testified before the Committee, as did Chief William Moulder of the Des Moines Police Department. Both parties filed post-hearing briefs.

FINDINGS OF FACT

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

1. At the time of his application for disability benefits, Stougard was receiving a service retirement pension from the System, based on his Service Retirement Application filed June 3, 1996.
2. Mr. Stougard continues to receive a service retirement pension.
3. Mr. Stougard was employed as a police officer by the City of Des Moines from approximately February 16, 1962 to June 14, 1996.

4. Mr. Stougaard has not been employed as a police officer since becoming entitled to a service retirement pension from the System.

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.

3. Iowa Code Section 411.3(2) states:

Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, *or should the member become a beneficiary* or die, the member shall thereupon cease to be a member of the system.

4. Upon becoming a service retirement beneficiary, Stougaard ceased being a member in service.

5. Since Stougard was not a member in service when he filed his application for a disability pension, his application must be denied.

6. Stougard argues that his application should be processed by the System because of the discovery rule. There is no precedent under Iowa law for applying the discovery rule under chapter 411, however.

DECISION

The application for an accidental disability retirement pension on behalf of Larry Stougard under Chapter 411 is hereby denied.

Dated this 19 day of June, 1998.

Mary Bilden, Chair
Disability Appeals Committee

Copies to:

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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 25th day of June, 1998.

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

Signature AW

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