

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

CONFIDENTIAL

IN THE MATTER OF:	)	
	)	
Steven F. Gorman,	)	DECISION
	)	
Appellant	)	
	)	

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

STATEMENT OF THE CASE

Alan Byers, the Chief of the Council Bluffs Fire Department filed an application for an accidental disability pension for Steven F. Gorman with the System on or about September 18, 1998. On December 18, 1998, the medical board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Gorman's disability. An initial decision awarding ordinary disability benefits was made by the System on January 11, 1999. Gorman filed a timely appeal challenging the award of "ordinary" disability retirement benefits. A hearing was held before the appeals committee of the board (comprised of Mary Bilden, chair, Vernon Cook and Don Yucius) on March 31, 1999 at the offices of the System. Gorman appeared and was represented by attorney MacDonald Smith. Richard Wade, City Attorney, appeared for the City of Council Bluffs. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Steven Gorman, Michael Sullivan, Donald Williams and Chris Gorman. Chief Alan Byers testified by means of an affidavit. Gorman argued that he was able to return to work. He argued in the alternative that, if the Board found that he was disabled, he was entitled to an accidental, rather than ordinary, disability pension. The parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Gorman commenced employment with the City of Council Bluffs as a firefighter on November 4, 1991.
2. In May of 1995, Gorman and another firefighter entered a burning house. Gorman located and rescued a young child who was severely burned. The child survived, but was horribly disfigured, and was first released from the hospital in December of 1995. The

child lost his nose, lips, ears, one eye and some fingers as a result of the fire. He now comes to the fire station several times per year to visit, resulting in repeated interactions with Gorman, who reports feeling responsible for the child and his current condition. Gorman also reports hearing repeated comments from coworkers and others in the community to the effect that the child would have been better off dead.

3. Gorman reportedly first mentioned his emotional difficulties to the chief in 1996. He was referred to the Employee Assistance Program (EAP) in March of 1997. He attended EAP until November of 1997, but felt it was not helpful and eventually sought psychiatric treatment.

4. Gorman began seeing John C. Hunziker, Ph.D., a clinical psychologist, and Michael R. Goodman, M.D., a psychiatrist in approximately November of 1997. He was diagnosed with post-traumatic stress disorder ("PTSD") resulting from the rescue of the child and related ensuing events. He continues to see both Dr. Hunziker and Dr. Goodman, and is being treated with counseling and medication (Paxil).

5. Gorman was hospitalized from 08/22/98 to 08/27/98 with diagnoses of "major depression, single episode" and PTSD. He was hospitalized after expressing suicidal ideation and was placed on suicide precautions.

6. The medical board opined that Gorman suffers from post-traumatic stress disorder and major depressive disorder (single episode) and opined that he is currently unable to perform as a firefighter as a result, but that with further treatment he might be able to work as a firefighter in the future. The medical board further opined that Gorman is incapacitated from the performance of the functional demands of his position as a firefighter, and that the impairment is likely to be permanent (i.e., is likely to last at least 12 months).

7. Gorman introduced a March 11, 1999 letter from Dr. Goodman to MacDonald Smith, Gorman's attorney. Dr. Goodman opined in the letter that Gorman is not currently (and was not in the past) disabled from performing as a firefighter.

8. Gorman also introduced a March 17, 1999 letter from Dr. Hunziker to MacDonald Smith. Dr. Hunziker stated that "I would think that there is some reasonable possibility that Mr. Gorman could be employable in the not too distant future."

9. Fire Captain Michael Sullivan, a 25-year veteran of the Council Bluffs Fire Department, testified that the rescue incident in question, while undoubtedly very stressful, would probably not be considered unusual in isolation. He further testified that this is the only incident he is aware of in which a victim was burned this badly and survived to make regular visits to the department.

10. Fire Captain Donald Williams, a 20-year veteran of the department, similarly testified that the incident in question is the only one he recalls of this nature.

11. Chief Alan Byers testified by means of affidavit that he would characterize the 1995 rescue incident as "abnormal" and that it probably constituted "more than the day-to-day emotional stress commonly associated with being a firefighter." He further stated, however, that "I do not consider the incident exceptionally stressful for a professional firefighter."

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.

* * * * *

c. Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases. However if a person's membership in the system first commenced on or after July 1, 1992, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that membership commenced, the presumption established in this paragraph shall not apply.

3. On the issue of Gorman's ability to perform as a firefighter, the Committee finds that, while Gorman is showing medical improvement, he is not currently capable of fully performing the duties of a firefighter, and that this inability is expected to be of at least 12 months' duration.

4. It is undisputed that Gorman does not suffer from a "disease" as that term is defined by the statute. He must therefore establish that he is disabled as a result of an injury in order to establish entitlement to accidental disability benefits.

5. Gorman has the burden of proving that his mental injury was caused or aggravated by the performance of duty at some definite time and place, and that his mental injury was caused by something more than the day-to-day emotional stress commonly associated with being a firefighter. See City of Cedar Rapids v. MFPRSI, 572 N.W.2d 919 (Iowa 1998) and Moon v. MFPRSI, 548 N.W.2d 565 (Iowa 1996).

6. The Committee finds that Gorman's mental injury was caused by the rescue and subsequent related events that were detailed at the hearing.

7. The Committee further finds that the rescue event, combined with the subsequent related events including the rescued child's repeated visits, constituted more than the day-to-day emotional stresses commonly associated with being a firefighter.

DECISION

Steven F. Gorman is hereby awarded an accidental disability pension under Chapter 411 of the Iowa Code.

Dated this 1 day of April, 1999.

Mary Bilden
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 2nd day of April, 1999.

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

Signature Richard Wade