

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

IN THE MATTER OF:

JAMES F. LINN,

Applicant.

DECISION

Iowa Code § 411.6(3) (1999) and
Iowa Code § 411.6(5) (1999)

STATEMENT OF THE CASE

The applicant, James F. Linn ("Linn"), filed an application for accidental disability benefits with the System on or about June 11, 1999. On August 13, 1999, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Linn's disability. An initial decision awarding Linn an ordinary (rather than accidental) disability pension was made by the System on September 7, 1999.

Upon timely appeal by Linn, a hearing was held before the Appeals Committee of the Board (comprised of Marty Pottebaum, chair, Debbie Neels, and Mary Bilden) on February 16 at the offices of the System. Linn appeared and was represented by attorney William H. Roerman. Sarah E. Holacek, Assistant City Attorney, appeared for the City of Iowa City. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle of Des Moines, Iowa was present as counsel to the Committee. Linn testified before the Committee, as did Chief R. J. Winkelhake. Drs. Patrick Hartley, Margaret Browning and Jay Rubinstein testified by deposition. The parties waived briefs.

FINDINGS OF FACT

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

1. Linn commenced employment with the City of Iowa City, Iowa as a police officer on or about April 16, 1971.
2. The Medical Board found that Linn is physically incapacitated from performing as a police officer as a result of a noise induced sensorineural hearing loss, and that the incapacity is likely to be permanent.

3. Linn testified that for the first few years of his employment with the police department, he and the other officers regularly used an indoor shooting range that was in the basement of the police department, and did so without hearing protection. He further testified that the department mandated hearing protection in 1976, and that he purchased his own hearing protection sometime before that. The indoor range was eventually closed, reportedly due to OSHA requirements. He also testified that after that range was closed, the department sometimes used a facility in Cedar Rapids. The department also regularly used a farm that was outside the city limits of Iowa City for outdoor shooting practice.
4. In their depositions, Drs. Patrick Hartley, Margaret Browning and Jay Rubinstein of the System's Medical Board all opined that Linn's hearing loss was caused by his occupational exposure to noise from firearms during the course of his employment as a police officer.

CONCLUSIONS OF LAW

1. Iowa Code § 411.6(3) states:

3. 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. 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. A member who is denied a benefit under this subsection, by reason of a finding by the medical board that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same position held immediately prior to the application for disability benefits.

2. Iowa Code section 411.6(5) states (in relevant part) as follows:

5. Accidental disability benefit.

a. 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. A member who is denied a benefit under this subsection, by reason of a finding by the medical board that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same position held immediately prior to the application for disability benefits.

* * * * *

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. It is undisputed that Linn is incapacitated from performing as a police officer due to his hearing loss. The issue is whether he is entitled to an "ordinary" or "accidental" disability pension.
4. Linn argues that his disability was caused by repeated exposure to excessive noise from gunfire on the job, and cites the opinions of Drs. Hartley, Browning and Rubinstein. He argues that the "definite time and place" requirement of § 411.6(5) was met on the theory that the first time that he fired in the indoor range the damage was done, and the subsequent exposures don't matter.
5. Linn also argues that the "excessive noise exposure" chart found in Iowa Code § 85B.5 creates a presumption that his hearing loss was caused by the noise of gunfire to which he was exposed on the job.
6. Finally, Linn argues that the "definite time and place" requirement of the statute "falls out" when the "or while acting pursuant to order, outside of the city by which the member is regularly employed" language of § 411.6(5) becomes applicable. He thus argues that since he sometimes shot outside Iowa City without ear protection while acting pursuant to order, the definite time and place requirement is not applicable.
7. Linn's argument that the "definite time and place" requirement of § 411.6(5) was met the first time that he fired in the indoor range must fail, because there is no medical evidence of when the damage was actually done. In fact, Dr. Rubenstein testified that

the discharge of a .38 caliber short-barreled firearm would not cause hearing loss after a single exposure, even if the user wore no ear protection. Furthermore, the unprotected exposures occurred during the early 70s, but Linn's hearing loss did not manifest itself until a few years ago. Instead, the injury in question appears to be one of a cumulative nature. As the Iowa Supreme Court noted in *Branson v. MFPRSI*, 591 N.W. 2d 193 (Iowa 1999) cumulative trauma, while sufficient for entitlement to workers' compensation, is insufficient to meet the "definite time and place" requirement of § 411.6(5). As the Court further noted, the plain language of that section requires that a member's incapacitating disability be attributed to a specific event or incident in order to qualify for an accidental disability pension.

8. Chapter 85B of the Iowa Code relates to occupational hearing loss. By its terms, it applies to employers and employees covered by chapter 85 (workers' compensation). § 85.1(4) excludes persons entitled to benefits under chapter 411 from coverage under chapter 85, however. It follows that chapter 85B is also inapplicable to members of the 411 system.
9. Finally, the "outside the city" language of § 411.6(5) cannot be read to negate the "definite time and place requirement of the statute. Even assuming, however, that Linn's interpretation is correct, this argument fails due to the lack of evidence that his hearing impairment was caused by the shooting he did outside the City of Iowa City.
10. Linn is required to prove that his disability was caused by the actual performance of duty at a definite time and place in order to establish entitlement to an accidental disability pension. He has failed to do so.

DECISION

The appeal for accidental disability retirement benefits on behalf of James F. Linn under chapter 411 is hereby denied. He will continue to receive ordinary disability benefits, as awarded by the System on August 13, 1999.

Dated this 17 day of February, 2000.

 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 18th day of February, 2000.

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

Signature *Sandra Wells*