

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

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MFPRSI

IN THE MATTER OF:

KENNEITH R. SIMONS,

Applicant.

DECISION

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

STATEMENT OF THE CASE

Kenneth R. Simons filed his application for an accidental disability pension on or about March 15, 1999. On May 25, 1999, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Simons' disability. An initial decision awarding an ordinary disability pension was made by the System on June 14, 1999. Simons filed a timely appeal challenging the award of an "ordinary" rather than "accidental" disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of Marty Pottebaum, Kevin Riper and Mary Bilden, chair) on November 18, 1999 at the offices of the System. The hearing was adjourned due to time constraints on that date, and was reconvened on March 29, 2000. Simons appeared and was represented by attorney Thomas M. Walter. Attorney John A. Morrissey appeared for the City of Fairfield. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Kenneth Simon, Chief Thomas Baker, Randy Cooksey and Terry Patton. Scott P. Stuart, M.D. and Terry W. Cochran M.D. testified by deposition. Both parties filed post-hearing briefs.

FINDINGS OF FACT

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

1. Simons commenced employment with the City of Fairfield, Iowa as a police officer on March 15, 1985.
2. Simons' last day on the job was February 11, 1999. On that day, he was taken home by Officer Terry Patton after suffering from hallucinations while on the job.

3. The Medical Board found the Simons is incapacitated from the performance of duty as a police officer as a result of post-traumatic stress disorder (PTSD).
4. Simons testified about more than 25 incidents over the course of his career with the police department that he believes are related to his symptoms. He discussed two events in particular: the 1987 suicide of an individual to whom he had recently issued a traffic citation, and the discovery of the body of a woman he had known all of his life (Vivian Cook) who had committed suicide by "blowing her head off." The Cook suicide was the subject of his hallucinations on February 11, 1999.
5. Dr. Stuart, a psychiatrist on the System's Medical Board, testified by deposition that Simons' PTSD was most likely caused by an accumulation of the referenced events.

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 Simons is incapacitated for the further performance of duty, and that this incapacity is likely to be permanent. The issue is whether he is entitled to an ordinary or accidental disability pension from the System.
 4. In Moon v. MFPRSI, 548 N.W.2d 565 (Iowa 1996), the Iowa Supreme Court held that a member is entitled to an accidental disability pension from the System based on a so-called "mental-mental" injury only if the member establishes that the mental injury was caused by mental stimuli in the work environment and workplace stress of greater magnitude than the day-to-day stress experienced by other workers in his line of work.
 5. The focus of the "unusual stress" standard is necessarily the objective nature of the incident in question, rather than its subjective effect on the member.
 6. Furthermore, whether or not the stress is unusual must be considered in the context of police work in general, rather than the particular department in which the member was employed. See Moon and City of Cedar Rapids v. MFPRSI, 572 N.W. 2d 919 (Iowa 1998).

7. Simons has failed to prove that his PTSD was caused or aggravated by the performance of duty at a definite time and place. Instead, it appears that his disability was caused by cumulative stress.
8. Even assuming that Simons PTSD was caused or aggravated by the performance of duty at some definite time and place, however, the Committee finds that none of the referenced incidents were unusually stressful for police work.

DECISION

The application for accidental disability retirement benefits on behalf of Kenneth R. Simons under chapter 411 is hereby denied. Simons will continue to receive an ordinary disability pension.

Dated this 11 day of May, 2000.

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 15th day of May, 2000.

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

Signature Lanisha Wells

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