

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

IN THE MATTER OF:

GARY M. GADIENT,

Applicant.

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DISABILITY DECISION

Iowa Code § 411.6(3) (1999)

Iowa Code § 411.6(5) (1999)

STATEMENT OF THE CASE

The applicant, Gary M. Gadiant ("Gadiant") filed an application for accidental disability benefits with the System on or about May 13, 1999 (The City of Davenport challenged Gadiant's application, on the basis that he was not a member of the System at the time of filing. This Board previously determined, however, that Gadiant's application was effectively filed.)

Upon timely appeal by the City of Davenport, a hearing was held before the Appeal Committee of the Board (consisting of Mary Bilden, chair, William Kinney and Lynn Manhart) on July 7, 2000 at the offices of the System. Gadiant appeared, and was represented by attorney Randy Hohenadel. City Attorney Tom Warner appeared for the City of Davenport. Testimony was received from Gary Gadiant and Connie Pintar for the member, and from Jeff Dolan, Chief Tom Ryan and Mary Thee for the City. The City also offered into evidence a 28 minute video which was recorded over a two-day period in August of 1999. The Committee, the parties and the witnesses viewed the video during the hearing. The parties waived the right to file post-hearing briefs.

FINDINGS OF FACT

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

1. Gadiant commenced employment with the City of Davenport as a firefighter on or about October 1, 1970.
2. Gadiant injured his back on or about February 5, 1999, while responding to an alarm, when the fire truck in which he was riding went over railroad tracks, causing him to bounce inside the cab. He was subsequently treated at the Work Fitness Center in a work-hardening program, based on the City's referral.

3. Gadiant has not worked since the February 5, 1999 injury.
4. The Medical Board opined that Gadiant is physically incapacitated from the performance of duty as a firefighter based on low back pain that is not amenable to surgical correction. The Medical Board further opined that this incapacity is likely to be permanent.
5. Thomas J. Hughes, M.D., of the Work Fitness Center in Bettendorf, Iowa stated in a June 14, 1999 letter to Chief Ryan that Gadiant's progress in the Work Hardening Program was not substantial, and that a functional capacity evaluation indicated that he "does not have the capacity to resume the occupational activities as a fire fighter."
6. The surveillance video offered by the City showed Gadiant putting gasoline in his lawnmower and mowing his front yard.

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.

3. While the video offered by the City proved that Gadiant was able to mow his lawn on the dates of the surveillance, nothing in the video evidences the ability to perform all of the duties of a firefighter.
4. The City offered no expert medical testimony or other medical evidence that Gadiant is able to perform all of the duties of a firefighter.
5. The correspondence in file from both the Medical Board and Dr. Hughes of the Work Fitness Center establishes that Gadiant is unable to perform all of the duties of a firefighter.
6. Gadiant's inability to perform all of the duties of a firefighter results from the back injury he sustained on February 5, 1999 while on duty.

DECISION

The award of an accidental disability pension to Gary M. Gadiant under Chapter 411 of the Iowa Code is hereby affirmed.

Dated this 24 day of August, 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 25th day of August, 2000.

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

Signature Sandra Wells