

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

IN THE MATTER OF:

TONY E. JORGENSEN,

Applicant.

DECISION

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

STATEMENT OF THE CASE

Tony E. Jorgensen ("Jorgensen") filed his application for an accidental disability pension on or about April 4, 2000. The same application form included the application of the City of Fort Dodge, Jorgensen's employer, for an ordinary disability pension for Jorgensen. On June 9, 2000, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Jorgensen's disability. An initial decision awarding an ordinary disability pension was made by the System on July 2, 2000. Jorgensen 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 Pauline Joyce, Lynn Manhart and Mary Bilden, chair) on October 4, 2000 at the offices of the System. Jorgensen appeared and was represented by attorney MacDonald Smith. Attorney Maurice Breen appeared for the City of Fort Dodge. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Tony Jorgensen and his father, Gerald Jorgensen. Both parties filed post-hearing briefs.

FINDINGS OF FACT

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

1. Jorgensen commenced employment with the City of Fort Dodge as a firefighter on July 29, 1984.
2. Jorgensen's last working day was March 6, 2000. His rank was Master Firefighter.

3. The Medical Board found that Jorgensen is incapacitated from the performance of duty as a firefighter, based on diagnoses of both multiple sclerosis and post-traumatic stress disorder (PTSD).
4. Jorgensen testified about a traffic accident that occurred on April 3, 1999. On that date, he was called as an EMT to an accident scene where 5 teenagers were involved in a collision with another vehicle. One of the teenagers was obviously dead. Another was alive, but was severely injured and was trapped in the vehicle. Jorgensen crawled into what remained of the car to try to provide medical assistance to that victim. Jorgensen testified that he was probably at the scene for 45 minutes to an hour, and was likely in the vehicle with the victim for 15 minutes, although it seemed much longer. He further testified that he was trying to get a cervical collar on the victim, and that he thinks he hurt the victim in doing so. He also testified that he began experiencing symptoms, including nightmares, insomnia and mood changes, shortly after the incident. He testified that he had probably seen worse accidents "as far as physical carnage" but that this incident was different because it became a political issue involving a continued controversy over the perceived dangerous nature of the intersection where the accident occurred. There was frequent and extended media coverage of the accident and the related controversy over the intersection. He testified that at least 20 articles and editorials appeared in the local newspaper in the year or so after the accident. Copies of these were submitted as Member's Exhibit 5.
5. Jorgensen submitted a Psychiatric Evaluation Report authored by Bok Chung, M.D. and dated July 26, 2000 as Member's Exhibit 3. In that report, Dr. Chung's assessment included diagnoses of post-traumatic stress disorder, depressive disorder secondary to medical condition, and multiple sclerosis. Dr. Chung indicated that Jorgensen's PTSD resulted from the cited April 3, 1999 incident.

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 Jorgensen is incapacitated for the further performance of duty as a firefighter, and that this incapacity is likely to be permanent. The issue is whether he is entitled to an ordinary or accidental disability pension.
4. Jorgensen is incapacitated for duty by both multiple sclerosis and post-traumatic stress disorder. It appears from the medical evidence that either condition would likely be disabling absent the other. It is undisputed that multiple sclerosis is not a basis for an accidental disability pension, since it is not a "disease" as that term is defined under the statute.
5. In Moon v. MFPRS, 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.
6. 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.
7. Jorgensen himself testified that the April 3, 1999 traffic accident was not unusual in terms of emergency responses in which he had participated in the past. While the publicity following the accident may have been unusual in the community, this incident and its aftermath do not meet the legal requirement for accidental disability benefits of an unusually stressful incident occurring at some definite time and place.

DECISION

The application for accidental disability retirement benefits on behalf of Tony E. Jorgensen under chapter 411 is hereby denied. He will continue to receive an ordinary disability pension.

Dated this 30 day of November, 2000.

Mary Belden, Chair
Disability Appeals Committee