

**MUNICIPAL FIRE & POLICE
RETIREMENT SYSTEM OF IOWA**

2836 104th Street, Des Moines, IA 50322

phone: (515) 254-9200
fax: (515) 254-9300
toll free: (888) 254-9200
e-mail: pensions@mfprsi.org

January 12, 2001

R. Bradley Skinner
204 Eighth Street SE
Altoona, IA 50009

RE: Edward P. Kirkman – Disability Appeal Decision

Dear Mr. Skinner:

The Board of Trustees of the Municipal Fire and Police Retirement System of Iowa has acted to ratify the proposed finding of facts and conclusion of law of the Appeals Committee in the referenced case. Said action was taken by the Board of Trustees in a regularly scheduled meeting, dated January 11, 2001.

Said action denied the appeal of the referenced individual for approval of "accidental disability" benefits and grants "ordinary disability" benefits in the case. Therefore, Mr. Kirkman will continue to receive "ordinary disability" benefits.

Sincerely,


Dennis L. Jacobs
Executive Director

DLJ:ssw

Enclosures

cc: Carol J. Moser
James Gilliam
Edward P. Kirkman

BOARD OF TRUSTEES
OF THE
MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

The Board of Trustees of the Municipal Fire and Police Retirement System of Iowa, based on an appeal from the decisions of or determinations by the Director of the Municipal Fire and Police Retirement System of Iowa, and having reviewed the proposed decision of law of the Appeals Committee hereby ratifies the proposed findings of fact and conclusions of law of the Appeals Committee in the following cases:

EDWARD P. KIRKMAN

SS #479-08-5130

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the proposed Decision be accepted, and is the final decision of the System.

Dated this 11th day of January 2001



Vice-Chair of the Board

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

IN THE MATTER OF:

EDWARD P. KIRKMAN,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Edward P. Kirkman ("Kirkman") filed his application for an accidental disability pension on or about February 23, 2000. On March 30, 2000, the Medical Board at the University of Iowa Hospitals and Clinics reported its findings to the System regarding Kirkman's disability. An initial decision awarding an ordinary disability pension was made by the System on April 26, 2000. Kirkman 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, Bill Kinney, and Marty Pottebaum, chair) on November 29, 2000 at the offices of the System. Kirkman appeared and was represented by attorney Bradley Skinner. Attorney Carol Moser appeared on behalf of the City of Des Moines. Dennis Jacobs, Executive Director, appeared on behalf of the System. James Gilliam was present as counsel to the Committee. Testimony was received from Edward P. Kirkman and Amy Kirkman on behalf of the Applicant. The City presented testimony from police officers Tieszen, Patch and Hickie. Both parties filed post-hearing briefs.

FINDINGS OF FACT

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

1. Kirkman commenced employment with the City of Des Moines as a police officer on December 5, 1994.
2. Kirkman's last working day was December 25, 1999.
3. The Medical Board found that Kirkman is incapacitated from the performance of

duty as a police officer, based on diagnoses of post-traumatic stress disorder (PTSD) and major depression.

5. On December 10, 1996, Kirkman and his spouse, Amy (also a Des Moines police officer), entered a residence located near Drake University in Des Moines, Iowa. Their purpose for entering the home was to search for a suspect who was wanted on an outstanding warrant and for suspicion of kidnapping. While Kirkman was attempting to handcuff the individual, both officers became involved in a struggle with the suspect. During the ensuing struggle and in the presence and full view of Kirkman and while Kirkman was attempting to subdue the suspect, the suspect did tackle, strike and injure Amy. The suspect also successfully un-holstered Amy's weapon and removed Kirkman's clip from his weapon. Fortunately, the suspect was not able to gain complete possession of the same before the suspect fled the home.
6. The Medical Board concluded that its diagnoses of PTSD and major depression were precipitated by Kirkman's involvement in and reaction to the December 10, 1996 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 Kirkman is incapacitated for the further performance of duty as a police officer, and that this incapacity is likely to be permanent. The issue is whether he is entitled to an ordinary or accidental disability pension.
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. The December 10, 1996 event precipitating Kirkman's incapacity was not unusual in terms of the environmental exposures a police officer is trained for or expected to be subjected to in the performance of duty. While the fact that Kirkman was involved in an incident involving his co-worker spouse is certainly an unusual factual circumstance, the incident does not meet the legal requirement for accidental disability benefits of an unusually stressful incident occurring at some definitive time and place.

DECISION

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

Dated this 11 day of January, 2001.

 Chair
Disability Appeals Committee

Copies to:

Dennis Jacobs, Executive Director
Municipal Fire and Police Retirement
System of Iowa
2836 104th Street
Des Moines, IA 50322

James H. Gilliam
Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.
Suite 1100, Two Ruan Center
601 Locust Street
Des Moines, IA 50309

R. Bradley Skinner
Skinner Law Office, P.C.
204 8th Street SE
P.O. Box 367
Altoona, IA 50009

Carol Moser
Assistant City Attorney
City of Des Moines
400 East 1st Street
Des Moines, IA 50309

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 16TH day of January, 2001.

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

Signature Sandra J. Walsh