

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

IN THE MATTER OF:

Virgil D. Fowles, Jr.,

Applicant.

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DECISION

Iowa Code § 411.6(3) (2001) and
Iowa Code § 411.6(5) (2001)

STATEMENT OF THE CASE

Virgil D. Fowles, Jr. ("Fowles") filed his application for an accidental disability pension on or about March 12, 2002. On May 13, 2002, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding his disability. An initial decision awarding an ordinary disability pension was made by the System on June 10, 2002. Fowles filed a timely appeal challenging the award of an ordinary rather than accidental disability pension. Based on a request of Fowles and the concurrence of John Klaus, attorney for the City of Ames, no hearing was held before the Disability Appeals Committee; this appeal was instead considered by means of a file review.

FINDINGS OF FACT

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

1. Fowles commenced employment with the City of Ames as a police officer on or about September 16, 1973. His last working day was February 13, 2002.
2. On or about October 21, 2001, Fowles strained muscles in his back while restraining a combative mental patient. He was subsequently diagnosed with thoracic strain and sprain and treated with medication and physical therapy. He also received chiropractic treatment.
3. On February 13, 2002, Fowles sought treatment for left-side weakness and limping. He was found to have suffered a stroke two or three days prior to the assessment.

4. Fowles also has a history of diabetes, hypertension, hypercholesterolemia, hyperlipidemia, allergic rhinitis and asthma, and the aforementioned chronic low back pain.
5. The Medical Board opined that Fowles is incapacitated from the performance of duty as a police officer as a result of his stroke, "with contributions from his hypertension, hyperlipidemia and diabetes." The Medical Board further opined that neither Fowles' back condition or his asthma contributed to his disability.

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. Fowles is permanently incapacitated from the performance of his duties as a police officer, and is thus entitled to at least the ordinary disability pension that he was initially awarded by the System.
4. The issue is whether his disability is 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," and would thus entitle him to an accidental disability pension.
5. The term "disease" is exclusively defined under the statute to mean "heart disease or any disease of the lungs or respiratory tract."
6. Fowles argues that his hypertension is a heart disease, and should thus entitle him to an accidental disability pension. The Iowa Supreme Court has held that hypertension is not a disease of the heart, lungs or respiratory tract, however, and therefore cannot be the basis for an award of an accidental disability pension under chapter 411. *See Benson v. Fort Dodge Police Pension Board of Trustees*, 312 N.W. 2d 548, 551 (Iowa 1981).
7. A stroke is also not a disease of the heart, lungs or respiratory tract. *See City of Carroll v. Municipal Fire & Police Retirement System of Iowa*, 554 N.W. 2d 286 (Iowa App. 1996).

8. Fowles does not meet the statutory requirements for entitlement to an accidental disability pension.

DECISION

The application for an accidental disability pension on behalf of Virgil D. Fowles, Jr. under chapter 411 is hereby denied; the award of ordinary disability pension is hereby affirmed.

Dated this 29th day of August, 2002.

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 30th day of August, 2002.

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

Signature *Sandra L. Wells*