

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

IN THE MATTER OF:

JEFFREY D. NYREN

Applicant.

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DECISION

Iowa Code § 411.6(3) (2003) and
Iowa Code § 411.6(5) (2003)

STATEMENT OF THE CASE

Jeffrey D. Nyren ("Nyren") filed his application for an accidental disability pension on or about November 6, 2002. On December 19, 2002, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Nyren's disability. An initial decision denying a disability pension, pending review after nine months, was made by the System on January 23, 2003. Nyren filed a timely appeal, in which the City of Storm Lake joined, challenging the denial. A hearing was held before the Disability Appeals Committee of the Board (comprised of Sheri Mertz, Marty Pottebaum, and Mary Bilden, chair) on May 14, 2003 at the offices of the System. Nyren appeared, and was represented by attorney Ted Brown. Attorney Paul D. Havens appeared for the City of Storm Lake. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Jeffrey Nyren, Heather Nyren and Chief Mark Prosser. Kirk S. Hutton, M.D., testified by means of deposition. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Nyren commenced employment with the City of Storm Lake as a police officer on or about October 26, 1998. Prior to that, he was employed as a police officer with the City of Perry.
2. Nyren has a history of recurrent shoulder subluxations dating back to 1989, when he was in the Army. He reports an average of five subluxations a year, with approximately 50 shoulder dislocations since becoming a police officer. He has had one repair surgery on the right shoulder, and five on the left, with the most recent surgery performed on November 21, 2002.

3. The Medical Board stated in its December 19, 2002 findings that it was "too soon after his recent surgery to make an assessment of the stability or range-of-motion of [Nyren's] left shoulder." In a letter dated January 22, 2003, Laurence Fuortes, M.D. of the Medical Board recommended reevaluation after nine months of rehabilitation.
4. One of Nyren's treating physicians, Mark Schultz, D.O., stated in a January 29, 2003 letter that Nyren "has recurrent and ongoing shoulder problems and absolutely should not be doing police work." Dr. Schultz further stated that Nyren is a danger to himself and other officers due to his recurrent shoulder problems.
5. His treating orthopedic surgeon, Kirk S. Hutton, M.D., opined in a January 28, 2003 letter to EMC Insurance that Nyren had reached maximum medical improvement. Dr. Hutton further opined, in his deposition on April 30, 2003, that Nyren would be a danger to himself, other officers and the public if he returned to duty as a police officer. He also stated that if Nyren injured his shoulder again, it would probably be at the point where it could not be surgically stabilized.
6. Nyren and Chief Prosser both testified that Nyren is unable to safely perform the duties of a police officer due to his shoulder condition.

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.

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- 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. Rule 9.2(3)(a) of the System's Administrative Rules provides that "a 'permanent' disability, as defined in the statute, which is expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than twelve months."
4. Although the Medical Board stated in December that it was too early to assess the stability or range-of-motion of Nyren's left shoulder and recommended a reassessment after nine months of rehabilitation, both Dr. Schultz, a treating physician, and Dr. Hutton, his treating orthopedic surgeon, have opined that, given Nyren's medical history, he will not improve to the point of being able to safely perform the duties of a police officer.
5. Nyren's shoulder injuries were incurred in or aggravated by the actual performance of duty at some definite time and place.

DECISION

The application for accidental disability retirement benefits on behalf of Jeffrey D. Nyren under chapter 411 is hereby approved.

Dated this ____ day of May, 2003.

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 16th day of May, 2003.

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

Signature Lawrence L. Wells