

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

IN THE MATTER OF:

BRETT N. FEUERHELM,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Brett N. Feuerhelm ("Feuerhelm") filed his application for an accidental disability pension on or about April 3, 2003. On July 15, 2003, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Feuerhelm's disability. An initial decision awarding an ordinary disability pension was made by the System on July 29, 2003. Feuerhelm 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 Mary Bilden, chair, Duane Pitcher, and Judy Bradshaw) on November 20, 2003 at the offices of the System. Feuerhelm appeared, and was represented by attorney Pamela Walker. Attorney Robert Laden appeared for the City of Urbandale. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Feuerhelm, Gene Deisinger, Charles Soderquist and Chief David Hamlin. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Feuerhelm commenced service as a police officer for the City of Urbandale on or about February 12, 1990.
2. Feuerhelm began experiencing a decrease in his mood and difficulties with anxiety, irritability, anger, nightmares and flashbacks around 1997.
3. He was initially evaluated by a psychiatrist, Dr. Koithan, in June, 2000 and diagnosed with "mixed anxiety and depressed mood" at that time. Diagnosed with post-traumatic stress disorder (PTSD) by his treating psychologist, Dr. Lelwica, in the summer of 2002 and Paxil and counseling were prescribed at that time.

4. At Feuerhelm's request, he was taken off patrol duty and put on light duty in March, 2003.
5. In a report dated July 15, 2003, the System's medical board noted Feuerhelm's diagnoses of post-traumatic stress disorder, anxiety and major depression, and opined that he is unable to perform the full duties as a police officer as a consequence of his PTSD. The medical board also commented that Feuerhelm's condition may not be permanent, and noted that a re-evaluation in 12 months may be appropriate.
6. Feuerhelm testified that he attributes his impairment to several events that occurred on the job, including: (1) an attempt by a mentally ill suspect to stab him; (2) an attempt by a suspect to remove his gun from his belt; (3) approaching a house when a suicidal suspect began firing shots inside; and (4) finding a suicide victim who had shot himself in the head. When he inadvertently kicked the decedent's head, brain matter sprayed on his boots.
7. Gene Deisinger testified on behalf of Feuerhelm. He is a licensed psychologist with a practice in Ames, and is also a certified law enforcement officer currently serving as an investigator on the Iowa State University ISU police force. He testified that incidents such as those described by Feuerhelm occur, but by no means on a daily basis.
8. Charles Soderquist, a retired Des Moines police officer, also testified on behalf of Feuerhelm. He testified that he would not consider the traumatic incidents described by Feuerhelm to be routine or day-to-day.
9. Chief David Hamlin of the Urbandale Police Department testified for the City. He testified that he has been with the Urbandale Police Department for 30 years, and has been the chief for the last 23 years. He testified to several traumatic incidents he was involved in during his four years as a patrol officer, and further testified that he didn't consider the incidents that Feuerhelm described as being "all that significant" or unusually stressful for police work. He testified that it was Feuerhelm's response to the incidents that he considered unusual, not the incidents themselves. He also commented that he wanted to make clear that he had "no objection to Feuerhelm's appeal or his disability" and that Feuerhelm had no discipline issues.

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. Feuerhelm is mentally incapacitated from the performance of duty, and the incapacity is likely to be permanent (ie, is likely to be of at least 12 months duration, in accordance with the System's administrative rules). He is therefore entitled to a

disability pension from the System. The issue is whether an ordinary or accidental disability pension is payable.

4. An accidental disability pension is payable under chapter 411 for a mental injury only if the traumatic incident or incidents that caused the injury are unusually stressful for the occupation. *See Moon v. MFPRSI*, 548 N.W. 2nd 565 (Iowa 1996).
5. Feuerhelm has failed to establish that the cited incidents are unusually stressful for police work. He is therefore entitled to an ordinary, rather than accidental, disability pension.

DECISION

The application for accidental disability retirement benefits on behalf of Brett N. Feuerhelm under chapter 411 is hereby denied. The System's award of an ordinary disability pension under chapter 411 is hereby affirmed.

Dated this 21 day of November, 2003.

Mary Belden, 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 24th day of November, 2003

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

Signature Dennis Jacobs

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