

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

IN THE MATTER OF:

NICOLE BOK,

Applicant.

DECISION

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

STATEMENT OF THE CASE

Nicole Bok ("Bok") filed her application for an accidental disability pension on or about April 23, 2003. On June 18, 2003, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Bok's disability. The Medical Board opined that Bok is incapacitated from the performance of her duties as a police officer as a result of a right shoulder impairment. An initial decision denying a disability pension was made by the System on July 10, 2003, based on the pre-existing condition exclusion of Iowa Code §§ 411.6(3) and (5). Bok filed a timely appeal challenging the denial. A hearing was held before the Disability Appeals Committee of the Board (comprised of Marty Pottebaum, Allen McKinley, and Mary Bilden, chair) on November 19, 2003 at the offices of the System. Bok appeared, and was represented by attorney Bob Rush. Attorney Sarah Holacek appeared for the City of Iowa City. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Nicole Bok, her husband, Chris Bok, and Dale Helling, Assistant City Manager for the City of Iowa City. Both parties filed proposed findings of fact and conclusions of law subsequent to the hearing.

FINDINGS OF FACT

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

1. Bok commenced employment with the City of Iowa City as a police officer on March 14, 1997, and became a member of the Municipal Fire and Police Retirement System of Iowa under chapter 411 on that date. She worked in law enforcement for the University of Iowa Department of Public Safety from approximately 1993 to 1996, and served as a police officer for the City of Coralville from 1996 until she joined the Iowa City department in 1997. Those positions were not covered by chapter 411.

2. On October 16, 2002, Bok's treating surgeon, Dr. James Nepola performed a right shoulder "anterior capsulorrhaphy" for purposes of treating instability of the shoulder. Dr. Nepola released Bok to typing duties with no shoulder movement on October 29, 2002. Bok was never able to return to full duty, and Dr. Nepola assigned permanent restrictions on April 1, 2003. Her last working day in the Iowa City Police Department (light duty) was March 29, 2003.
3. It is undisputed that Bok is unable to perform the duties of a police officer.
4. The record reflects that Bok has a history of shoulder problems dating back to at least 1994. On or about April 14, 1994, Bok suffered a shoulder injury during a training exercise at the Iowa Law Enforcement Academy. She experienced pain in her shoulder when another trainee struck the "strike bag" she was holding. She completed an injury report but sought no treatment. She later reported to various medical providers that she recalled an injury to her right shoulder during the training exercise at the ILEA. In October, 2003, she provided the injury reports from the ILEA, which indicate that the injury was to her left shoulder, not to her right shoulder as she had recalled in providing her medical history. Those reports were admitted into evidence and are in the record at pages 15-3 to 15-5.
5. Records from the Steindler Orthopedic Clinic, P.C. and Progressive Physical Therapy and Sport Clinic of Iowa (in the record at pages 3-178 to 3-179 and at Tab 9 as City Exhibit A) reflect that Bok was diagnosed with "subluxation with secondary impingement, right shoulder" on March 4, 1996, and had physical therapy for that condition on March 14, 1996 and on April 9, 1996.
6. Bok testified that, following the commencement of her employment with the City of Iowa City in 1997, she suffered work injuries to her right shoulder on three occasions, as follows: (a) On October 14, 1998, she experienced pain in her right shoulder while shooting a shotgun during range qualification training. She completed an OSHA injury report, but sought no medical treatment at that time. (b) On January 26, 1999, she injured her right shoulder during defensive tactics training. This reportedly was caused by holding the strike bag while larger officers hit it, and from repetitive swinging of her baton. She reported this injury and sought medical treatment. (c) On May 15, 2000, Bok suffered right shoulder pain after range qualification training with a shotgun.
7. By letter dated September 30, 2003, Dr. Hartley of the System's Medical Board opined that "Ms. Bok's shoulder instability existed at the time her membership commenced (April 1997)." Dr. Hartley referenced the March 1996 medical records from the Steindler Orthopedic Clinic and the diagnosis therein of "subluxation with secondary impingement, right shoulder" and Bok's medical history and subsequent clinical course in reaching that conclusion. In a November 17, 2003 deposition, Dr. Hartley confirmed that it is possible for a person to have "a preexisting condition that manifests neither disability nor impairment, but yet have the underlying condition." He further confirmed that it is his opinion that Bok had an underlying condition of her

right shoulder at the time she joined the Iowa City Police Department, even though she was reportedly asymptomatic at that time.

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.

3. As noted, it is undisputed that Bok is unable to perform the duties of a police officer. The issue is whether her disability would not exist but for a medical condition that was known to exist on the date that membership commenced (i.e., March 14, 1997).
4. Bok's disabling medical condition is a right shoulder impairment.
5. There is some question whether the 1994 shoulder injury suffered by Bok was to her right shoulder or her left shoulder. Even assuming that the incident reports are correct, and the injury was actually to her left shoulder, there is evidence in the record of right shoulder instability prior to March 14, 1997.
6. The record supports a finding that Bok's disability would not exist but for a medical condition that was known to exist on the date of hire. Since she became a member of the retirement system after July 1, 1992, she is therefore ineligible for a disability pension under either § 411.6(3) or § 411.6(5).

DECISION

The application for disability retirement benefits on behalf of Nicole Bok under chapter 411 is hereby denied.

Dated this 8 day of January, 2004.

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 9th day of January, 2004.

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

Signature Jul Hagge

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