

JAN 16 2004

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

IN THE MATTER OF:

LARRY J. MILLER,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

The Chief of the Des Moines Fire Department, Phillip Vorlander ("Chief") filed an application for an ordinary disability pension on behalf of Larry J. Miller ("Miller") on or about January 14, 2003. On August 22, 2003, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Miller's disability. An initial decision awarding an ordinary disability pension was made by the System on September 17, 2003. Miller filed a timely appeal challenging the award of disability. Miller asserts that he is capable of performing the essential functions of a firefighter and seeks reinstatement to the Des Moines Fire Department. A hearing was held before the Disability Appeals Committee of the Board (comprised of June Ann Gaeta, Jody E. Smith and Mary Bilden, chair) on January 8, 2004 at the offices of the System. Miller appeared, and was represented by attorney Kent Balduchi. The Chief appeared for the City of Des Moines, which was represented by Assistant City Attorney Carol Moser. Dennis L. Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Miller and the Chief. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Miller commenced service as a firefighter for the City of Des Moines on or about December 17, 1984.
2. Miller's last day on the job was October 10, 2002. On that day, he suffered a seizure at work and was taken to Iowa Methodist Medical Center, where he remained overnight. He reported cessation of heavy alcohol consumption 24 – 30 hours prior to the seizure.

3. By letter to the Chief dated December 20, 2002 (marked as MFPRSI Exhibit 3, p. 3-1) Maurice a. Minervini, D.O. opined that Miller was unable to perform the essential functions of a firefighter for the City of Des Moines at that time. The Chief subsequently filed the application for an ordinary disability pension for Miller.
4. Medical histories in the record indicate that Miller had 3 seizures over a period of about eight years, with the previous seizures occurring in approximately 1995 and June of 2002. Miller testified in response to a question from the City regarding the status of his drivers' license that his last seizure was in about September of 2003. This is not reflected in the medical records, however, and Miller had difficulty recalling dates during his testimony.
5. Miller was initially evaluated by the System's Medical Board on April 16 and 17, 2003. The Medical Board, in a letter to the System dated April 28, 2003 (marked as MFPRSI Exhibit 5, p. 5-7) noted Miller's history of three generalized seizures, "which by history appear to be related to alcohol withdrawal." The Medical Board noted that work-ups for other causes of the seizures have been negative. The Medical Board then opined that further evaluation was necessary, including a neuropsychological exam regarding Miller's cognitive performance.
6. Miller was reevaluated at the University of Iowa Hospital and Clinics by the Medical Board on June 9 and 10, 2003 for psychiatric evaluation and neuropsychological testing. The Medical Board concluded in a letter dated August 22, 2003 (marked as MFPRSI Exhibit 5, p. 5-1) that Miller "has significant impairments of immediate and delayed memory, in addition to impaired visual spatial ability and divided attention." The Medical Board noted that these deficits are likely to impair his driving ability and "executive functions" such as decision-making and judgment, and that Miller has little insight into his cognitive impairment. The Medical Board further noted: "It is likely that the impairment seen represents mild to moderate alcohol-related dementia." Finally, the Medical Board opined that Miller is mentally impaired from the performance of his duties as a firefighter, and that the impairment is likely to be of at least one year's duration.
7. The record and Miller's testimony reflect a long history of alcohol abuse. He testified that he has been through alcoholism treatment three times, most recently in about September of 2003. He currently attends Alcoholics Anonymous meetings weekly.
8. Miller argued in a letter commenting on the Medical Board's findings, which was received by the System on September 15, 2003 (marked as MFPRSI Exhibit 6) that he has no "mental, visual or decision making problems." He attributed the deficits noted on the neuropsychology testing to the fact that he was very anxious and nervous when he went to Iowa City for the tests, so "took several stiff drinks to steady [his] nerves before meeting with the doctors." He requested further evaluation in an effort to establish that he is able to perform his duties as a firefighter.
9. The Chief testified that, to his knowledge, there had been no deficiencies in Miller's job performance as a firefighter, apart from his seizures.

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. Rule 9.2(3)(a) of the System's administrative rules states:

A "permanent" disability is a 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.

3. Both Dr. Minervi and the doctors of the System's Medical Board have opined that Miller is unable to perform the duties of a firefighter. Miller offered no expert medical testimony supporting his assertion that he is currently able to do so.
4. While Miller's desire to return to work is commendable, the medical evidence in this record indicates that he is currently unable to safely perform the duties of a firefighter, and that his incapacity is likely to be permanent (i.e.: it will last more than 12 months).

DECISION

The System's award of an ordinary disability retirement pension to Larry J. Miller under chapter 411 is hereby affirmed.

Dated this 15 day of January, 2004.

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 _____ day of _____, 2004.

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

Signature _____