

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

IN THE MATTER OF:

JEFFREY W. ZASADA,

Applicant.

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DECISION

Iowa Code § 411.6(3) (2005) and
Iowa Code § 411.6(5) (2005)

STATEMENT OF THE CASE

The City of Dubuque ("City") filed an application for an accidental disability pension on behalf of Jeffrey W. Zasada ("Zasada") on or about November 10, 2004. On January 11, 2005, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Zasada's disability. An initial decision awarding an accidental disability pension was made by the System on February 7, 2005. Zasada filed a timely appeal challenging the award of a disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of Mary Bilden, Tom Ryan, and Allen McKinley, chair) on March 16, 2005 at the offices of the System. Zasada appeared, and was represented by attorney Ted Huinker. Sheila Zasada, Jeffrey Zasada's wife, was present but did not testify. Zasada's treating cardiac surgeon, Dr. Warren Gall and his treating cardiologist, Dr. Karin Loukinen, both testified by deposition. Chief Brown of the Dubuque Fire Department joined the hearing by telephone, but did not actively participate. No attorney appeared for the City. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Jeffrey Zasada. Post-hearing briefs were waived.

FINDINGS OF FACT

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

1. Zasada commenced employment with the Dubuque Fire Department ("Department") on or about August 10, 1986.
2. Zasada's last day on the job was August 13, 2004. He was placed on temporary disability by the City on August 15, 2004.
3. Zasada's current rank is Assistant Fire Marshall.

4. In August, 2004, Zasada suffered an "acute coronary syndrome." A cardiac catheterization was performed, and showed evidence of severe 3-vessel coronary artery disease. He subsequently underwent 4 vessel coronary artery bypass surgery on August 17, 2004. He has completed cardiac rehab, and continues to do well. He had no cardiac symptoms prior to August, 2004.
5. Dr. Warren Gall, Zasada's treating cardiac surgeon, released him to return to work on October 25, 2004.
6. The medical board physicians at the University of Iowa Hospitals and Clinics disagreed as to whether Zasada is capable of resuming his full duties. Dr. Fredric Gerr, of the Division of Pulmonary, Critical Care and Occupational Medicine, opined that Zasada was able to fully perform all of the duties of his job. Dr. Neal Weintraub, of the Division of Cardiovascular Diseases, opined that Zasada is capable of performing his usual duties as fire marshal without difficulty, but expressed concern that Zasada would be at increased risk in performing firefighting activities, due to his diagnosis of coronary artery disease. In its report dated January 11, 2005, the medical board noted that the physicians are not unanimous in their opinion, and that re-examination in one-year is recommended if the System determines that Zasada is not currently capable of returning to duty.
7. Zasada testified that he has had asthma all of his life, but since his heart surgery, he has been able to discontinue his asthma medication. He testified that his capacity for physical activity has more than doubled, and that he can do 45 minutes on a treadmill and recover almost immediately. He further testified that, as assistant fire marshal, he doesn't regularly engage in firefighting activities, but can be called in for larger fires. He said that had happened once in his last two years. He testified that he wants to return to duty, and that he believes he is capable of performing all firefighting duties.
8. Drs. Gall and Loukinen both opined in their depositions that Zasada is capable of performing all firefighting duties.
9. Since the depositions of Drs. Gall and Loukinen were subsequent to the medical board's findings, the Committee submitted them to the medical board for review and comment. Dr. Gerr responded by letter dated April 1 that the depositions did not change his opinion that Zasada is fully performing the duties of his job. Dr. Weintraub responded by letter dated March 30 that the depositions did not change his opinion that Zasada's test results, while admirable, do not indicate that it is safe for him to engage in fire suppression. He further noted that bypass surgery is not a cure for coronary artery disease and provided a copy of a study regarding cardiovascular events in firefighters.
10. Attorney Huinker, by letter dated April 15, 2005, argued that Dr. Weintraub's opinion is based on uncertainties regarding the level of cardiovascular stress associated with firefighting, and that the Committee should rely on the opinions of Drs. Gall, Loukinen and Gerr and find that Zasada is capable of the further performance of his duties as a firefighter.

11. The Committee recognizes Mr. Zasada's cardiac rehabilitation efforts and commends his desire to return to his duties. The Committee finds, however, that Zasada is not capable of safely resuming all firefighting duties, based on the opinions of Dr. Weintraub. Dr. Weintraub is a member of the Systems medical board, and is a cardiologist familiar with the cardiovascular stresses associated with firefighting. As such, the Committee gives the most weight to his opinion in this matter.

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

3. 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.

4. Jeffrey Zasada is presently incapacitated from the further performance of duty as a result of heart disease. His incapacity has already lasted more than twelve months, and is thus "permanent" as that term is defined under the System's rules.

DECISION

The award of an accidental disability pension to Jeffrey W. Zasada under chapter 411 is hereby affirmed. His appeal is thus denied.

Dated this 29 day of April, 2005.

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 _____ day of _____, 2005.

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

Signature _____