

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

IN THE MATTER OF:

ALAN D. DOBERT,

Applicant.

:
:
:
:
:
:
:

DECISION

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

STATEMENT OF THE CASE

Alan D. Dobert ("Dobert") filed his application for an accidental disability pension on or about March 9, 2005. On April 20, 2005, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Dobert's disability. An initial decision awarding an ordinary disability pension was made by the System on May 11, 2005. Dobert filed a timely appeal challenging the award of an ordinary disability pension rather than an accidental disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of Cindy Kendall, Marty Pottebaum and Mary Bilden, chair) on August 24, 2005 at the offices of the System. Dobert appeared, and represented himself. No one appeared for the City of Muscatine. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Dobert and his wife, Serikit "Kitty" Dobert. Dobert waived post-hearing briefs.

FINDINGS OF FACT

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

1. Dobert commenced employment with the City of Muscatine as a police officer on or about December 27, 1989.
2. Dobert's last day on the job was January 10, 2005. He was put on sick leave by the City thereafter.
3. On May 13, 2001, while off-duty, Dobert was thrown from a horse. He suffered a head injury with loss of consciousness and some seizure activity. He was transported to a hospital by ambulance and was hospitalized overnight. He had a neurological workup with a negative CT scan and subsequent negative EEG and MRI findings.

4. Dobert subsequently experienced difficulty with symptoms including anxiety, insomnia, dizziness, panic attacks irritability and headaches. Dr. James Worrell, his treating neurologist, stated a diagnosis of post concussion syndrome with mental status changes and prescribed medication. Dobert had no history of mental illness prior to the fall from the horse. He has continued to take prescription psychotropic medications since the accident, but the prescriptions have been changed from time to time. He reports that the medications have improved his symptoms but have not completely resolved them.
5. Dobert was medically released to return to his position as a police officer with no restrictions on September 4, 2001.
6. After his return to work, Dobert's supervisors noted an increase in "use of force incidents" that were perceived to be excessive in nature and out of character for Officer Dobert. A "fitness for duty" screening was therefore conducted in August, 2002. As a result, Dobert was placed on light duty for approximately one month. He was subsequently returned to full duty.
7. Dobert was a member of the Army Reserve. He was activated and served in Iraq from January 2003 to March 2004. He was in a primarily administrative position and reported that he didn't see much action. He has since retired from the Army Reserve with 20 years of service.
8. Dobert resumed his duties as a Muscatine police officer in May, 2004, following his service in Iraq.
9. Approximately four months after his return from Iraq, he began experiencing dizziness and the feeling that he was going to black out, although he did not lose consciousness. He also experienced increased mood difficulties, including depression and anger.
10. Dobert also had an uncharacteristic number (compared to his service prior to the horse incident) of "use of force" incidents at work. This culminated in an incident on or about December 26, 2004 in which he lost his temper and slapped a suspect who was in handcuffs at the time. He received a one-day suspension for striking the suspect and using profanity and was referred to the City's psychologist, Dr. Aquino, who recommended that he be placed on leave and undergo further treatment.
11. Dobert was referred to the Veterans Administration Hospital in Iowa City, Iowa for a neuropsychological consult with Dr. Joseph Barrash. Following a three-hour examination on January 24, 2005, Dr. Barrash opined that Dobert suffers from an "organic mood disorder and organic personality disorder" indicative of "prefrontal damage from contracoupe injury" resulting from the fall from the horse. Dr. Barrash also noted "marked personality changes subsequent to the head injury with particularly prominent (a) emotional hyperactivity and (b) interpersonal problems from poorly modulated responses to provocative or frustrating circumstances."

12. In its April 20, 2005 findings, the System's Medical Board opined that Dobert is incapacitated from the performance of his duties as a police officer due to his anxiety and mood disorder which resulted from the May, 2001 head injury. The Medical Board further opined that the incapacity is "permanent," in that it is likely to be of at least one year's duration.

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. It is undisputed that Dobert is mentally incapacitated from the further performance of duty, and that the incapacity is likely to be permanent.
4. It is further undisputed that Dobert's mental incapacity is the result of the off-duty injury when he fell from the horse in 2001.
5. Dobert argues, however, that his condition is aggravated by the stress of being a police officer, and that the stress is of a greater magnitude than the day-to-day mental stress experienced by other police officers (*see Moon v. MFPSRI*, 548 NW 2d 565, 569 (Iowa 1996)) because the physical/mental injury he sustained results in stresses that may be "day-to-day" for other officers to be of greater magnitude to him. The courts have confirmed that the "unusual stress" standard is objective, rather than subjective, however. (*See Nagel v. Board of Trustees.*)
6. § 411.6(5) also contains a "definite time and place" requirement. As applied to this case, in order to qualify for an accidental disability pension from the System, Dobert must establish that his impairment is the result of an injury "incurred in or aggravated by the actual performance of duty at some definite time and place." He argues that the December 26, 2004 incident in which he slapped a handcuffed suspect meets this requirement. The record does not establish that this incident aggravated his condition to the point he could no longer perform his duties, however. Instead, the record supports a conclusion that the incident was merely a symptom of his disorder. As noted, it is undisputed that his mental disorder was caused by the off-duty head injury Dobert suffered in 2001.

DECISION

The application for an accidental disability pension on behalf of Alan D. Dobert under chapter 411 is hereby denied, and the award of an ordinary disability pension is hereby affirmed.

Dated this 25 day of August, 2005.

Mary Belden, Chair
Disability Appeals Committee

Copies to:

Alan D. Dobert
5817 63rd Avenue West
Muscatine, Iowa 52761

Chief Gary Coderoni
Muscatine Police Department
Muscatine, Iowa 52761

Dennis Jacobs, Executive Director
Municipal Fire and Police Retirement
System of Iowa
2836 104th Street
Des Moines, IA 50322

Alice E. Helle
Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.
666 Grand Suite 2000
Des Moines, IA 50309

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 26th day of August, 2005.

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

Signature London Wells