

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

IN THE MATTER OF:

DAVID L. GRIFFITH,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

David L. Griffith ("Griffith") filed his appeal for an accidental disability pension on or about October 11, 2001. On January 22, 2002, the Medical Board of the University of Iowa Hospitals and Clinics reported its finding to the System regarding Griffith's disability. The Medical Board determined that Griffith was mentally incapacitated from the performance of duty as a firefighter. An initial decision denying his application was issued by the System on February 27, 2002, however, based on a finding that Griffith's mental disability was the proximate result of appropriate disciplinary actions or by certain conflicts with coworkers or supervisors, pursuant to Iowa Code §411.6(16)(1)(2). Griffith filed a timely appeal challenging the denial of his application. This matter was stayed, however, pending the resolution of certain litigation and administrative matters between Griffith and the City of Des Moines.

Upon resolution of those matters, Griffith was referred to the Medical Board for reassessment, due to the time that had elapsed since his application. The Medical Board reported its findings on June 17, 2005. A decision awarding an ordinary disability pension was made by the System on July 8, 2005. Griffith filed a timely appeal challenging the award of an ordinary disability pension rather than accidental disability pension.

A hearing was held before the Disability Appeals Committee of the Board (comprised of Mary Bilden, Jody Smith, and Tom Ryan, Chair) on October 5, 2005 at the offices of the System. Griffith appeared and was represented by Attorney Kent Balduchi, Fire Chief Phillip Vorlander appeared for the City of Des Moines, which was represented by Assistant City Attorney Carol Moser. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony

was received from Griffith and from former Des Moines firefighter Patrick Daughenbaugh.

FINDINGS OF FACT

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

1. Griffith commenced employment with the City of Des Moines as a firefighter on or about January 9, 1989.
2. Griffith's last day of employment with the City was in October, 2001.
3. In December, 1999, Griffith was placed on unpaid leave by the Des Moines Fire Department after he was charged with sexual assault. He eventually plead guilty to misdemeanor charges of harassment and simple assault and was sentenced to two years probation.
4. He returned to the Des Moines Fire Department in May 2000 following his plea agreement and completed his probation in May, 2002.
5. Griffith testified about difficulties with his coworkers and supervisors when he returned to work, and described what he felt was a hostile work environment.
6. Griffith further testified that he was assigned to a different station house when he was reinstated, and felt he was not adequately trained for some of the tasks he was expected to perform. He also testified that some of his certifications had lapsed during his six month leave of absence.
7. Griffith experienced depressive symptoms and eventually sought treatment from his personal physician, Dr. Agey, in June 2001.
8. Griffith was referred to Clinical Psychologist, Dr. John Garfield, who diagnosed a Major Depressive Disorder and placed Griffith on medical leave on October 8, 2001.
9. On January 22, 2002, the System's Medical Board opined that Griffith was unable to perform the full duties of a firefighter due to his Major Depressive Disorder.
10. After its reassessment of Griffith, the Medical Board opined on June 17, 2005, that, although Griffith's Major Depressive Disorder was currently in remission, it continued to render him unable to perform his duties as a firefighter.

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. In addition to meeting the “definite time and place requirement” in order for a “mental injury” to be compensated as an accidental disability under Iowa Code § 411.6(5), the member has the burden to establish that his injury was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs regardless of their employer. *Moon v. MFPRSI*, 548 NW 2d 565, 568 (Iowa 1996).
4. Griffith described a May, 2001 incident in which he was on the “snorkel truck” that was dispatched to a river rescue (that ultimately turned out to be a false alarm). He testified that he was told to stay on the truck because he wasn’t qualified to participate in such a rescue. He testified that this was extremely humiliating and reinforced his belief that he was not qualified and that the Department was setting him up to fail.
5. Griffith argued that the May, 2001 river incident was a seminal event that resulted in his major depressive illness.
6. The river incident is mentioned by Dr. Hartley of the System’s Medical Board in the report of his January 11, 2002, examination of Griffith as a “specific situation prompting his decision to seek medical attention.” There is no medical evidence supporting Griffith’s argument that his disability was caused by the river incident, however.
7. The Committee further notes that the issue of the mental injury test under the *Moon* standard was considered by the United States District Court for the Southern District of Iowa in the context of Griffith’s claim for a temporary disability benefit under § 411.6(5) from the City of Des Moines. See Order entered August 6, 2003 by Chief Judge Ronald Longstaff in *Griffith v. City of Des Moines*, 4:01CV-10537, pages 5-8. The Court considered “whether criticism [Griffith] received at work could be considered the legal cause of his mental condition.” The Court found that the criticism at work could not be considered the “legal cause” of his mental condition (in other words, the *Moon* standard was not met). It is noteworthy that, in its discussion of facts relating to this issue, the Court did not even mention the river incident. Instead, the Court focused on comments allegedly made within the department regarding Griffith’s criminal charges, job performance and race. The fact that there was no mention of the river incident further supports the Committee’s conclusion that it was not the cause of Griffith’s disability.
8. Even if Griffith’s disability was caused by the May, 2001 river incident, that incident was not unusually stressful for firefighting.

DECISION

The application for an accidental disability pension on behalf of David L. Griffith under chapter 411 is hereby denied. The award of an ordinary disability pension is hereby confirmed.

Dated this 6th day of October, 2005.

Tom Ryan, Chair
Tom Ryan, 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 7th day of October, 2005.

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

Signature Laurie A. Wells