

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

IN THE MATTER OF:

THOMAS G. LEWIS,

Applicant.

:
:
:
:
:
:
:
:

DECISION

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

STATEMENT OF THE CASE

Chief Alan Byers of the Council Bluffs Fire Department filed an application for an ordinary disability pension on behalf of Thomas G. Lewis ("Lewis") on or about June 8, 2005. On August 16, 2005, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Lewis' disability. An initial decision awarding an ordinary disability pension was made by the System on September 8, 2005. Lewis filed a timely appeal challenging the award of an ordinary disability pension and seeking an accidental disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of Mary Bilden, Duane Pitcher, and June Anne Gaeta, chair) on November 16, 2005 at the offices of the System. Lewis appeared, and was represented by attorney MacDonald Smith. Attorney Richard Wade appeared for the City of Council Bluffs. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Lewis. The parties did not waive post-hearing briefs, but no briefs were filed.

FINDINGS OF FACT

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

1. Lewis commenced employment with the City of Council Bluffs ("City") as a civilian EMT/paramedic in November of 1988. In 1996, that department merged with the Council Bluffs Fire Department. Lewis was accordingly sent to the fire academy and became a Council Bluffs Firefighter and a member of the 411 System on or about September 7, 1996.
2. Lewis' last day of work for the department was on or about March 23, 2005. At that time, he was data services coordinator for the department but was classified as a

firefighter. He was not routinely assigned to ambulance or fire truck duty, but was subject to such assignments and was occasionally so assigned.

3. Lewis was hospitalized on March 23, 2005 following a cerebrovascular accident ("CVA" or "stroke") which resulted in right-side weakness. He had a recurrent CVA episode about two weeks later. Testing at that time showed that the same area was affected and that there were no new areas of abnormality.
4. Lewis testified that he was feeling frustrated and upset at work on March 22, 2005 (the day before he was diagnosed with a CVA) due to problems with printers he was working on and other issues. He further testified that one of his coworkers came up behind him and grabbed his chair, apparently as a joke. This startled him, and he testified that his heart rate immediately quickened and he was short of breath. He further testified that by the time he went home, he had a bad headache, which lasted all night. His right eye was itching and watering, and he felt nauseous. He awoke with right-side weakness, which he initially attributed to "sleeping wrong." He went to work, but then went to the emergency room after noticing he also had numbness in the right side of his face and no sense of taste.
5. The City did not allow Lewis to return to work after his first stroke, due to concern about his medical condition and his ability to safely perform firefighter duties.
6. On August 16, 2005, the System's Medical Board opined that Lewis is incapacitated from the performance of his full duties as a firefighter as a consequence of his residual neurological dysfunction resulting from his CVAs.

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.

* * * * *

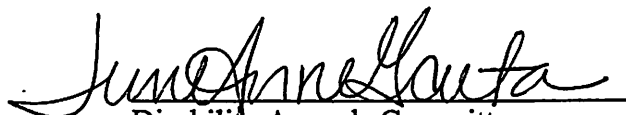
c. Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases. However, if a person's membership in the system first commenced 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 commenced, the presumption established in this paragraph shall not apply.

3. A stroke is not "heart disease or any disease of the lungs or respiratory tract." Therefore, the heart/lung presumption of Iowa Code § 411.6(5)(c) is inapplicable.
4. A stroke is also not a mental illness. Therefore the "unusual stress" standard of *Moon v. MPFRSI* is also inapplicable.
5. In order to establish entitlement to an accidental disability pension, Lewis has the burden to establish that his disability was caused or aggravated by the actual performance of duty at some definite time and place. Iowa Code § 411.6(5).
6. Although Lewis argues that the stressful incidents at work on March 22, 2005 caused his stroke, there is no medical evidence in support of his argument that his stroke was caused by the performance of duty.

DECISION

The award of an ordinary disability pension to Thomas G. Lewis under chapter 411 is hereby affirmed. His appeal for an accidental disability pension is hereby denied.

Dated this 5 day of January, 2006.

 Chair
Disability Appeals Committee

Copies to:

MacDonald Smith
Smith & McElwain Law Offices
530 Frances Building
505 Fifth Street
P.O. Box 1194
Sioux City, Iowa 51102

Richard Wade
City Attorney
City Hall
209 Pearl Street
Council Bluffs, Iowa 51503

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 6th day of January, 2005.

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

Signature 