

2836 104th Street
Des Moines, Iowa 50322

IN THE MATTER OF:

RONALD L. SAMUELS,

Appellant.

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DECISION

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

STATEMENT OF THE CASE

Mark Frese, Fire Chief for the city of Davenport ("Chief") filed an application for an ordinary disability pension on behalf of Ronald L. Samuels ("Samuels") on or about November 14, 2005. On January 17, 2006, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Samuels' disability. An initial decision awarding an ordinary disability pension was made by the System on February 8, 2006. Samuels filed a timely appeal challenging the System's determination that he is disabled from the performance of duty as a firefighter. A hearing was held before the Disability Appeals Committee of the Board (comprised of Mary Bilden, Allen McKinley, and June Anne Gaeta, chair) on April 12, 2006 at the offices of the System. Samuels appeared, and was represented by attorney Steven A. Berger. Attorney Tom Warner appeared for the City of Davenport. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Samuels. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Samuels' date of birth is August 13, 1952. He commenced employment with the Davenport Fire Department on September 17, 1979. His last day of full duty was July 12, 2005. He returned to work on light duty on July 27, 2005, and worked until he was determined to be disabled by the System.
2. Samuels reached the rank of Fire Lieutenant. He had been assigned to a 100' aerial ladder company and supervised a crew of three. He did not drive the truck as a Fire Lieutenant.

3. Samuels' first episode of loss of consciousness was in 1992. He was helping on his brother's farm at the time and awoke in the emergency room with a laceration of the tongue, sore muscles and a right shoulder injury. He was diagnosed at that time with polycythemia vera ("PV"), a condition which causes his body to over-manufacture red blood cells. The PV was thought to have caused his loss of consciousness. His PV is treated by periodic phlebotomies to reduce his blood volume. He had a unit removed every other day for 2 weeks at the time of diagnosis. He now has phlebotomy about every six months – generally when his hematocrit gets above 55%.
4. Samuels' second episode of loss of consciousness was in 1995. He was tilling a garden for friends, who saw him "stiffen up." He awoke in the emergency room. He was not placed on Dilantin at that time.
5. The third (and last) episode occurred on July 12, 2005, Samuels abruptly lost consciousness while grocery shopping. A friend heard a noise as he struck an object and found him unconscious. He suffered a laceration to his head that required eight stitches, a small subdural hematoma and a knee injury in the resulting fall. Subsequent EEGs were normal. Dr. John Hixson, a treating neurologist at University Hospitals and Clinics, stated his impression that Samuels "may be suffering from epileptic events" and prescribed Dilantin.
6. The exact cause and nature of Samuels' episodes of loss of consciousness has not been conclusively diagnosed, but it is referred to in the various medical reports as "epilepsy, type unspecified" or more generally as a seizure disorder.
7. Per Iowa law, Samuels was not allowed to drive for six months following the July 12 seizure.
8. The two evaluating physicians from the System's Medical Board differed in their opinions regarding whether Samuels can return to unrestricted firefighting activity.
9. Dr. Erik St. Louis of the Medical Board stated his opinion that Samuels should be able return to unrestricted firefighting duty, since he had been seizure free for six months. He further stated, "If he and his employer are willing to assume the slightly increased risk of injury due to his epilepsy, than I see no reason why he can't return to work at full duty effective immediately." It should be noted that the City stated that it is not willing to assume any increased risk of injury to Samuels, his coworkers or the citizenry.
10. Dr. Patrick Hartley of the Medical Board stated that he had concerns regarding Samuels' ability to resume unrestricted firefighting duties at this time since he remains at risk of further seizures, although, given the intervals between previous seizures, the timing of any future episodes, if any, is uncertain. Dr. Hartley recommended that Samuels continue his restricted duty if that could be accommodated by the department. He opined that if continued light duty could not be accommodated, he should be considered temporarily disabled with a reevaluation in 6 to 12 months.

11. Samuels' treating neurologist, Dr. Stephen Rasmus, opined in September, 2005 that, despite a normal EEG, Samuels' likely suffers from idiopathic epilepsy and that the risk of a fourth seizure is fairly high without treatment. He recommended Dilantin and noted that "unfortunately, this does impact Mr. Samuels' ability to work as a firefighter."
12. On January 17, 2006, Samuels was evaluated by Dr. Bruce Krueger, a neurologist at Mayo Clinic on referral from Dr. Rasmus. Dr. Krueger recommended that Samuels stay on Dilantin. He opined, however, that since it had been over six months since Samuels' last seizure, that there was no reason to limit his driving or other activities, including his work as a Fire Lieutenant.
13. Dr. Christine Deignan, Medical Director of Trinity Work Fitness, noted that the National Fire Protection Association ("NFPA") 1582 Standard classifies all epileptic conditions as "Class A" medical conditions, which do not allow accommodation. She further noted that the City of Davenport has adopted the NFPA 1582 as its "criteria for clearance" for firefighter duties. She opined that Samuels is "not in a stable medical condition to continue firefighter duties."
14. Other physicians also referenced the NFPA Standards, but with varying opinions. Dr. Hartley of the System's Medical Board noted that the NFPA 1582 guideline recommends that a candidate with epilepsy not be cleared for firefighting duty until he or she has completed five years without a seizure on a stable medical regiment, or one year without a seizure after discontinuing all antiepileptic drugs. He commented that the five-year NFPA standard was not consistent with the standard medical care for patients with seizure disorders and that being seizure-free for one year (with or without medications) may be sufficient.
15. Dr. St. Louis of the System's Medical Board, a neurologist who is the Associate Director of the Iowa Comprehensive Epilepsy Program, stated that he had read the NFPA Standards and that "they strike me as completely arbitrary."

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. 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. While the NFPA standards are instructive for purposes of Iowa Code chapter 411, they are not controlling.

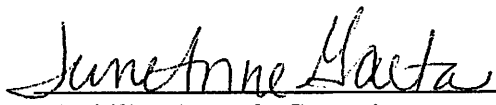
5. Samuels cites to Iowa Code § 411.6(3) (quoted above) for the proposition that a member cannot be awarded a disability pension unless the Medical Board certifies that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. Recommendations of the Medical Board are not conclusive and binding on the System, however. *Reisner v. Board of Trustees of the Fire Retirement System of the City of Dubuque*, 203 N.W.2d 812 (Iowa 1973).

6. Samuels also cited to *Benson v. Fort Dodge Police Pension Board*, 312 N.W.2d 548 (Iowa 1981) for the proposition that an increased risk of injury is not sufficient for a finding of disability under chapter 411. The substantive issue in that case, however, was whether hypertension is a "disease" for purposes of the heart/lung presumption of Iowa Code § 411.6(5). The Iowa Supreme Court held in *Benson* the fact that a person with hypertension might be more likely to develop heart disease at some time in the future did not mean that hypertension is a "disease of the heart, lungs or respiratory tract." The *Benson* ruling is not relevant here.
7. Although the physicians who have evaluated Samuels differ in their opinions as to both the nature of his seizure disorder and whether it renders him incapable of performing the full duties of a firefighter, there is a general consensus that he is at some increased risk of future seizures. For example, even though Dr. St. Louis opined that Samuels is capable of returning to full duty, he qualified that opinion by noting that such an event was contingent on both Samuels and the City being willing to accept some increased risk. Furthermore, while Dr. Hartley opined that Samuels should either continue on restricted duty or be considered temporarily disabled pending a reevaluation in 6-12 months, his opinion was stated in a letter to the System dated January 17, 2006. Six months from that date is July 17, 2006. Since Samuels' most recent seizure occurred on July 12, 2005, even the shorter reevaluation period suggested by Dr. Hartley translates to a date that would meet the minimum 12 month requirement under the System's administrative rules for a "permanent" disability.
8. Finally, the opinions of other physicians, including Drs. Hixson and Deignan, support a finding of "permanent" disability for Samuels.
9. The Committee recognizes Mr. Samuels' dedication to his profession and commends his desire to return to his duties. The Committee finds, however, that he is not capable of safely resuming all firefighting duties, due to his increased risk of seizure activity.

DECISION

The application for an ordinary disability pension on behalf of Ronald L. Samuels under chapter 411 is hereby approved. Samuels' appeal of that award is hereby denied.

Dated this 13 day of April, 2006.

 , 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 14th day of April, 2006.

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

Signature *Samuel Wells*