

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

IN THE MATTER OF:

LARRY L. DICKEY,

Appellant.

DECISION

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

STATEMENT OF THE CASE

Larry L. Dickey ("Dickey") filed his application for an accidental disability pension on or about January 9, 2006. On March 13, 2006, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Dickey's disability. An initial decision awarding an ordinary disability pension for a back condition and denying disability for C.O.P.D. (chronic obstructive pulmonary disorder) was made by the System on March 29, 2006. Dickey filed a timely appeal challenging the System's award of an ordinary rather than accidental disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of Mary Bilden, chair, Duane Pitcher, and June Anne Gaeta) on August 23, 2006 at the offices of the System. Dickey appeared and was represented by attorney Robert Leyshon. 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 Dickey. Dickey's treating pulmonologist, Charles Bruyntjens, M.D., testified by deposition. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Dickey's date of birth is December 3, 1947. He commenced employment with the Davenport Fire Department on April 24, 1978. His last day of full duty was November 2, 2005. After attempting to "rehab his back," he returned to work on light duty in January, 2006. He continued on light duty until he was determined to be disabled by the System.
2. Dickey testified that the conditions limiting his work ability are chronic low back pain, with radiation into the hips and thighs, and breathing problems.

3. The record reflects several documented work-related back injuries. The first of these injuries occurred in October, 1991, and the last documented injury occurred on December 8, 2003. The most significant of these events occurred in October of 1994, when he fell through a floor in a structure fire at a restaurant and landed on his air pack on the floor below. There is no record of any off-duty injuries to Dickey's back.
4. Dickey returned to work after all of the work-related injuries, with no contemporaneous time lost. He testified that he was treated by a chiropractor following the 1994 incident, but the earliest records in evidence date back to 2003.
5. Dickey's family physician, Jeffrey Walczyk, M.D. opined in a letter that Dickey is severely limited in the performance of his duties by his back pain and that he did not have significant problems prior to the 1994 fall at work. His primary orthopedist, Ronnie Kafiluddi, M.D., has treated Dickey with periodic epidural steroid injections, oral pain medication and anti-inflammatory medications. He opined that Dickey is not able to lift victims weighing more than 50 or 60 pounds. He further opined, in a report dated May 3, 2006 and introduced as Member's Exhibit 5, that Dickey's current back complaints are the result of the 1994 incident in which he fell through a floor and landed on his oxygen tank.

The report of Orthopaedic Specialists, P.C. of Davenport, Iowa of an MRI performed on October 13, 2005 found "mild degenerative disk changes" at L3-4 and L4-5, but concluded that "no other abnormal findings are appreciated in the MRI of the lumbar spine.

6. The two evaluating physicians from the System's Medical Board differed in their opinions regarding whether Dickey is disabled as a result of low back pain.
7. Dr. Ernest Found of the Medical Board, an orthopedist, referenced the October, 2005 MRI finding in his report, and opined that Dickey has "mild diffuse age-related changes throughout the lumbar spine." He also noted that Dickey is "somewhat deconditioned." Dr. Found further stated his impression that Dickey "should be on an aggressive back health maintenance program and again feel that other than his age, he is capable of performing the duties of a firefighter."
8. Dr. Patrick Hartley of the Medical Board also noted that MRIs of the lumbar spine revealed degenerative disk disease. He opined, however, that Dickey is unable to perform his regular firefighter duties as a consequence of his chronic low back pain and radicular pain.
9. With regard to his pulmonary symptoms, Dickey reported dyspnea upon climbing stairs and a morning cough. He began treating this with an albuterol inhaler in November, 2005 on an as-needed basis. His treating pulmonologist is Charles Bruyntjens, M.D.
10. Dr. Bruyntjens performed tests including a pulmonary function test and CT scan of the lungs on November 17, 2005. Test results indicated moderate airway obstruction with a significant response to bronchodilators.

11. Christine Deignan, M.D., Medical Director of Trinity Work Fitness, referenced the November 17 test results in a letter to the System dated December 30, 2005. She noted that Dickey's results were within the standard set out in National Fire Protection Association ("NFPA"), indicating that he could safely perform job functions. She opined that Dickey is not disabled by chronic lung disease.
12. Dr. Bruyntjens, in a letter dated April 20, 2006, opined that Dickey is "still unable to return to work as a firefighter due to his chronic obstructive disease/environmental, occupational lung disease."
13. Dr. Hartley of the Medical Board found that Dickey has "reversible air flow obstruction with some reduction in diffusing capacity that is probably multifactorial in origin (smoking related, workplace smoke exposure, asthma)." He further stated that Dickey's lung condition "has not been adequately treated as he is not on any asthma controller medications at this time and only uses albuterol on a PRN basis." Finally, Dr. Hartley noted that further workup is necessary to determine the extent Dickey is limited by his pulmonary disease, but that it is unclear if Dickey would be able to tolerate a cardiopulmonary exercise test due to his low back pain and deconditioning. He recommended that Dickey follow up with Dr. Bruyntjens to discuss treatment of his lung disease, and noted that the Medical Board could then reassess his pulmonary status.
14. Dr. Bruyntjens testified by deposition taken on August 7, 2006 and admitted into evidence as Member's Exhibit 8. Much of Dr. Bruyntjens' testimony related to the cause Dickey's lung condition (his history of smoking cigarettes, workplace exposure or both). He also commented generally on the question of whether Dickey's lung condition is adequately treated, stating, "We experiment with it. Some days this medication works. A week later it doesn't work." It appears that there has been no change in the treatment for Dickey's lung condition since his evaluation by the Medical Board, but the record is somewhat unclear on this point. Dr. Bruyntjens also generally opined that Dickey is unable to perform as a firefighter due to his lung condition. He further stated, "So irregardless of what the cardiopulmonary stress test shows, I wouldn't put him back to work."

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. This appeal raises two distinct issues, as follows:

- a. Is Dickey's back condition 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?
 - b. Does Dickey's lung disease incapacitate him from the further performance of duty as a firefighter?
4. With regard to Dickey's back condition, medical opinions in the record differ on the issue of causation, but objective medical findings (MRIs) in the record reflect degenerative changes to the lumbar spine, with no evidence of injury. The record supports a finding of age-related degenerative changes. Dickey's back condition is not 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.
5. With regard to Dickey's lung condition, there is insufficient objective medical evidence in the record to support a finding that Dickey's lung disease incapacitates him from the further performance of duty as a firefighter.

DECISION

The determination of the System awarding an ordinary disability pension for Dickey's back condition and denying disability for his respiratory condition is hereby affirmed. Dickey's appeal is hereby denied.

Dated this 24 day of August, 2006.

Mary Bilden, Mary Bilden, 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 28th day of August, 2006.

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

Signature *Stephen W. Wells*