

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

IN THE MATTER OF:

JOHN M. PETERS,

Member.

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DECISION

Iowa Code § 411.6(3) (2007) and
Iowa Code § 411.6(5) (2007)

STATEMENT OF THE CASE

Chief Alan Byers of the Council Bluffs Fire Department filed an application for an accidental ordinary pension on behalf of John M. Peters ("Peters") on or about September 11, 2006. On November 8, 2006, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Peters' disability. An initial decision awarding an ordinary disability pension was made by the System on December 4, 2006. Peters filed a timely appeal challenging the award of an ordinary disability pension and asking to be returned to duty as a firefighter. A hearing was held before the Disability Appeals Committee of the Board (comprised of Cindy Kendall, June Anne Gaeta and Mary Bilden, chair) on March 14, 2007 at the offices of the System. Peters appeared, and was represented by attorney Michael Carroll. The City of Council Bluffs was represented by City Attorney Richard Wade. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Peters and from John Filbert, a Council Bluffs Fire Fighter and union representative, who testified for Peters. The parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Peters commenced employment with the City of Council Bluffs as a firefighter on or about March 4, 1991.
2. Peters began experiencing pain in his right hip in approximately 2003 and was diagnosed with osteoarthritis. He was initially treated conservatively with medication, but his hip condition continued to get worse. He was eventually unable to play golf, hunt, or to put on his pants and socks without sitting down. His sleep was interrupted and fitful due to the pain in his hip. He continued to work for the

Council Bluffs Fire Department as an engineer/fire apparatus operator. He was also an EMT.

3. Peters' last working day on the job was May 2, 2006. He was put on sick leave by the City thereafter.
4. On May 23, 2006, Peters had a right total hip replacement. The surgery was performed by his orthopedic surgeon, C. Kent Boese, M.D. at Mercy Hospital in Council Bluffs. He was discharged from the hospital on May 25, 2006. Peters testified that he had immediate relief from the pain in his hip after the surgery and was full weight bearing upon his release two days after surgery.
5. On about June 26, 2006, Peters began physical therapy with David Schremmer, P.T. at Excel Physical Therapy. Records from Excel were admitted as Member's Exhibit 1. After five weeks of physical therapy at Excel, Peters was released to continue his exercises on his own at home.
6. On August 28, 2006, Peters returned to Dr. Boese's office for a three-month post-surgery examination. He was released without restrictions, and was also released to return to work at that time.
7. Peters then asked to return to work. He was informed by the Chief that, due to concerns regarding the NFPA 1582 standard, he would be required to file an application for a disability pension under chapter 411 for a determination regarding whether he was able to perform his duties as a firefighter following hip replacement surgery. Peters declined to file the application, so the Chief filed for him pursuant to § 411.6(3).
8. The City submitted a letter dated from Sue McCann, ARNP, of Mercy Occupational Health Services dated October 11, 2006 as part of the disability application process. That letter stated, in part: "The NFPA standard for medical evaluation of candidates classifies total joint replacement as a category A condition for new hires and thus precludes hiring of an individual with a total joint replacement. The NFPA standard concludes that artificial joints can prevent the safe performance of essential job tasks. These include but are not limited to performing fire fighting tasks, climbing 6 or more stairs, rescues-dragging or carrying victims, climbing ladders and crawling. In my medical opinion and based on the NFPA standard a patient that has undergone total hip replacement cannot safely perform the essential duties of the job."
9. In its November 8, 2006 findings, the System's Medical Board opined that Peters is unable to perform the full duties of a firefighter as a consequence of his hip arthroplasty. The Medical Board reports noted normal range of motion of the hip and normal gait, balance and upper and lower extremity strength. The Medical Board's conclusion was based its concerns, as noted below.
10. Dr. Chen of the Medical Board stated: "I discussed with [Peters] that this is a difficult situation with less than optimal real world data or research. It is my opinion that when patients who are experienced and know possible job requirements and are

asymptomatic I tend not to restrict their job duties. However given more recent occupational medicine guidelines it is not expected that some physicians may feel that his total joint replacement would preclude his safe performance of his essential job duties. . . . Therefore it is my medical opinion that he should avoid return to his full duties as a firefighter given his total hip arthroplasty."

11. Dr. Gerr of the Medical Board stated: "The decision regarding return to full duty for Mr. Peters is a difficult one. In particular, little evidence-based information is available to indicate whether his hip arthroplasty has durability to impact and blunt trauma that is comparable to a normal hip. Given that is not the standard of practice to clear persons with hip joint replacement in other professions for such exposures (see NFPA, described above), and given the fact that the consequences of joint failure or compromise for a firefighter can place the member himself, other firefighters, or members of the general public at risk of life-threatening injury, I recommend that the board not permit Mr. Peters to return to firefighting duty."
12. Peters testified that he has been able to return to all of his former physical activities, including golfing, hunting and carpentry. He has returned to doing construction work, which he did prior to entering the fire service and continued part-time thereafter. He can perform tasks including shoveling snow off roofs with no difficulty, and can "walk all day pain-free" day after day. He testified that he has had "a 180 degree reversal" and is much more able to perform his job duties than he was while still working prior to his surgery. He also testified that he is also more alert now since he is sleeping better. Peters further testified that his physical therapist, David Schremmer, administers fitness for duty tests for the Omaha Fire Department. Peters asked to be put through the Omaha test in late July after his physical therapy ended. The test included climbing flights of stairs and ladders and stacking weights. Peters testified that he passed the test, and that Shremmer told him he didn't see any reason why he couldn't return to firefighting.

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. Recommendations of the Medical Board are not conclusive and binding on the System. *Reisner v. Board of Trustees of Fire Retirement System of City of Dubuque*, 203 N.W.2d, 812 (Iowa 1973).
3. NFPA standards are advisory only and are not binding on the System. Furthermore, using an NFPA standard as an automatic disqualifier for employment would violate the Americans with Disabilities Act.
4. The Medical Board's recommendation was based not on Peters' medical condition or test results, but on the lack of research regarding the long-term durability to impact and trauma of a hip replacement to that of a normal hip.
5. Peters has demonstrated that he is able to perform the full duties of a firefighter.

DECISION

The appeal filed by John M. Peters is hereby granted, and the application for an ordinary disability pension filed on his behalf by the Chief of the Council Bluffs Fire Department is hereby denied. Peters shall be restored to active service in the position he last held with the Department.

Dated this 15 day of March 14, 2007.

Mary Bilden, Chair
Mary Bilden, 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 22nd day of March, 2007.

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

Signature Audilia Wally