

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

IN THE MATTER OF:

LARRY J. VANBAALE,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Larry J. VanBaale ("VanBaale") filed his application for an accidental disability pension on or about August 15, 2006. On October 16, 2006, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding VanBaale's disability. An initial decision awarding an ordinary disability pension was made by the System on November 14, 2006. VanBaale filed a timely appeal challenging the 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, Cindy Kendall, and Tom Ryan) on February 7, 2007 at the offices of the System. VanBaale appeared, and was represented by attorney Kent Balduchi. Assistant City Attorney Carol Moser appeared for the City of Des Moines. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from VanBaale, Lisa VanBaale, Jim Rivera, Mark Pavelka, Greg Chia and Chief Phillip Vorlander.

FINDINGS OF FACT

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

1. VanBaale commenced service as a firefighter for the City of Des Moines on or about June 7, 1982. Through the course of his career, he advanced through the ranks from firefighter, engineer, lieutenant and captain.
2. On July 8, 2002, VanBaale was acting Fire Captain. His normal duty assignment at that time was that of Fire Lieutenant at a different station. That afternoon, VanBaale and his crew responded to what they believed to be a personal injury accident. The alarm was then upgraded to include the Trench Rescue Team, the Hazardous Materials Team, medics and the Des Moines Police Department.

3. VanBaale and his crew on Pumper 3 were first to arrive. They were directed to an excavation site for sewer repair. They had to park a block away on a 90+ degree day and run to the scene and then back to the truck for rope while wearing full turnout gear.
4. The crew observed a two-level hole that was approximately four feet wide and ten feet deep on the first level, and approximately two feet wide and six feet deep at the second level. One worker was at the first level with an air hose attempting to supply air to the remaining six victims who were unconscious and stacked on one another. The top victims were visibly gasping, and were described by the rescuers who testified as looking like fish out of water. It was not possible to determine initially how many victims were in the trench, due to the manner in which they were stacked.
5. VanBaale had to decide whether to wait for the HazMat and Trench Rescue teams or immediately begin a rescue. Since he believed that waiting would be fatal to the victims, he began the rescue with the crew he had. He and his crew removed five survivors and two deceased victims by lowering a rope tied to an onsite crane and cinching it to the victims. They took turns going into the trench, and the rescuer in the trench was forced to stand on the bodies of the victims they were extricating. The survivors were removed prior to the arrival of the HazMat and Trench Rescue teams.
6. While Mark Pavelka, one of VanBaale's crew members, was in the trench removing the deceased victims, his SCBA malfunctioned. He became unable to breath and removed his SCBA mask. VanBaale observed his distress and sent in the Rapid Intervention Team (RIT) to assist. As Pavelka emerged from the trench without his mask, VanBaale was reprimanded by the District Chief, who thought that he had allowed Pavelka to go into the trench without his mask. VanBaale testified that he was also chastised on the scene by an Assistant Chief who arrived on the scene and told him he was "going to get someone killed."
7. Eight individuals, including VanBaale, his crew and members of the RIT team were awarded the Medal of Valor for their part in the trench rescue. District Chief Chia's letter nominating them for the award noted that the atmospheric conditions, including extreme heat, the number of incapacitated victims and the limited resources at the scene created extreme conditions. He also commented that their effort "was beyond what is expected of a fire company."
8. Jim Rivera testified that in his 23 years of experience on the department, this was the worst incident he had seen. He stated: "There's nothing to compare to this one, not, not at all. There's no way you could compare to this one. This is the worst by far of any incident I could think of seeing. . . ."
9. Despite the recognition and the rescue of five victims and the resulting recognition, the loss of two victims and the perceived criticism regarding possibly jeopardizing his crew weighed heavily on VanBaale. His wife, Lisa, testified that it had an immediate impact on him, and that his personality changed. He began having recurrent nightmares about the rescue and began drinking heavily.

10. VanBaale's symptoms continued to worsen. His last working day on the job was March 15, 2006. On April 11, 2006, he attempted suicide by carbon monoxide poisoning. The suicide attempt was interrupted by family members returning home, and he was admitted to Mercy Franklin Center for psychiatric treatment.
11. On October 16, 2006, the System's Medical Board opined that VanBaale is unable to perform the full duties of a firefighter as a result of major depressive disorder and post-traumatic stress disorder ("PTSD"). The Medical Board further opined that the incapacity is likely to be permanent, based on the impression that it will last at least one year.

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. It is undisputed that VanBaale is mentally incapacitated from the performance of duty, and the incapacity is likely to be permanent (ie, is likely to be of at least 12 months duration, in accordance with the System's administrative rules). He is therefore entitled to a disability pension from the System. The issue is whether an ordinary or accidental disability pension is payable.
4. VanBaale argues that the trench rescue is the cause of his PTSD. The City argues that he also described other calls for service to his treating physicians, and has a lengthy family history of depression and of an abusive father.
5. While VanBaale does have a family history of depression and other stressors, his nightmares and flashbacks are of the trench rescue incident. Dr. Tansey of the Medical Board opined: "There is no question in our minds that the patient is disabled by mental health symptoms, both chronologically and phenomenologically related to a traumatic work event." The "traumatic work event" she refers to is the trench rescue. The Committee finds that VanBaale's mental injury was caused by the trench rescue incident.
6. An accidental disability pension is payable under chapter 411 for a mental injury only if the traumatic incident or incidents that caused the injury are unusually stressful for the occupation. *See Moon v. MFPRSI*, 548 N.W. 2nd 565 (Iowa 1996).
7. The City argued that firefighters train for trench rescue, and that they will routinely be involved in calls involving people needing some form of critical care or rescue. In this situation, however, VanBaale was working out of rank and out of his usual station, and was faced with a life or death situation involving multiple victims, toxic fumes, extreme weather conditions and a deep, two-level pit, while lacking the proper equipment to effect the rescue. Furthermore, the stressful nature of the situation was exacerbated when he was initially reprimanded by two of his superiors who arrived on the scene after the survivors had been extricated. He and his crew performed a remarkable rescue under the circumstances. The City recognized this when it awarded the Medal of Valor.
8. The Committee finds that the trench rescue incident that caused VanBaale's mental injury was unusually stressful for firefighting.
9. VanBaale is entitled to an accidental disability pension from the System, since both prongs of the *Moon* test are met.

DECISION

The appeal for accidental disability retirement benefits on behalf of Larry J. VanBaale under chapter 411 is hereby granted. The System's initial award of an ordinary disability pension under chapter 411 is hereby reversed.

Dated this 15 day of March, 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 _____ day of _____, 2007

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

Signature _____