

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

IN THE MATTER OF:

ALLEN L. WHITE,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Allen L. White ("White") filed his application for an accidental disability pension on or about November 15, 2006. On December 19, 2006, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding White's disability. An initial decision awarding an ordinary disability pension was made by the System on January 10, 2007. White 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 Marty Pottebaum) on April 25, 2007 at the offices of the System. White appeared, and was represented by attorney Michael Winter. City 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 White and from his witnesses, Steve Kidder and Dr. Terry A. Davis. The City called no witnesses. Both the member and the city waived the opportunity to file briefs.

FINDINGS OF FACT

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

1. White commenced service as a police officer for the City of Council Bluffs on or about August 12, 1974. His last working day on the job was September 19, 2006. His service included 5 years as a crisis negotiator and many years as the second in command on the SWAT team.
2. In late 1999 or early 2000, after working in the Criminal Investigation Division for approximately 10 years, White was involuntarily returned to patrol duties. He was concerned at the time that he was inadequately trained to return to those duties, and

reported being anxious about responding to calls for fear that he would make a mistake.

3. He began experiencing anxiety symptoms and panic attacks and was admitted to the Richard Young center, a mental health facility, for two days in February of 2000. He was off work for approximately 6 weeks thereafter before returning to work. He began seeing a counselor and has continued with that treatment. He has also been treated with drug therapy. He reported being off work for approximately three weeks when his symptoms recurred after an incident in a trailer park in about November of 2001. He again returned to work and remained stable until July, 2005 when he was hospitalized at Jenny Edmundson Hospital for increasing anxiety, panic attacks and suicidal thoughts. He was an inpatient for 4 days and treated as an outpatient for 2 weeks. He returned to work, but decided to retire in September, 2006 due to worsening anxiety and panic attacks.
4. On December 19, 2006, the System's Medical Board opined that White is unable to perform the full duties of a police officer as a result of his anxiety disorder and panic disorder. 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.
5. White testified at length about stressors related to his transfer back to the street and to issues he had with three supervisors in the department, including the chief, who was one of his best friends until a disagreement in about 1998 relating to an internal affairs investigation.
6. White also testified about several stressful incidents at work that he believes contributed to his anxiety and panic disorder. They include:
 - A July 1999 incident at the Chalet Motel. The suspect had killed a woman in Omaha and was holding another woman, whom he had shot and wounded, hostage at the hotel. White arrived on the scene with the crisis negotiation team and was told a patrol officer, Steve Kidder, had been shot and taken to the hospital. Every 2 or 3 minutes the suspect would come out and fire shots at the officers and then would go back inside. White negotiated with him for 45 minutes over the speaker in squad car, with the suspect continuing to shoot. The incident eventually ended with the suspect shooting himself in the head.
 - A February, 2000 domestic incident in which White arrested a known drug addict who was known to be violent and was extremely high on drugs. He was able to cuff the individual and put him the back of in his car to transport him to jail. On the way, the suspect became violently ill and vomited in the car and on White. He then learned that the suspect was HIV positive. This information was given over the radio in code by dispatch, but White could not hear the radio due to the suspect's loud screams.
 - An incident in about October, 2001 involving a suicidal teenage girl who was holding a piece of broken glass and threatening to cut her wrists. In the course of

talking to her, he asked her about her medications and discovered that he was taking the same medications he was. This affected him to the point that he had an anxiety attack.

- A July, 2005 incident at a trailer court involving a report of shots fired. A total of 6 officers responded. White and one other officer went inside. While they were searching for suspect, a man hiding in a closet they had already searched fell out. White and the other officer had their weapons drawn, and he testified that was the closest he ever came to shooting someone. He testified that he took a heavy dose of his medication and was off work for 2 weeks.
 - A May, 2006 incident involving the recovery of the body of a murder victim from the river. Due to his anxiety disorder, White did not go to the scene until ordered to do so.
 - An August, 2006 incident in which he responded to a request for assistance from a female traffic warden who reported verbal abuse and threats. White testified that he would have "racing thoughts," had difficulty focusing on work and started making "stupid decisions." He gave this case as an example. He and two other officers went into an office building looking for the suspect, who they knew to be a large, emotionally disturbed man that they had dealt with in the past. White went to one of the floors by himself (which was against procedures) and encountered the man in the women's bathroom. He was in fear of being injured or killed.
7. Steve Kidder, a retired Council Bluffs police officer, testified on behalf of White. Kidder testified that he was the officer shot in the 1999 motel incident. He was shot in the arm and eventually returned to work, but retired on accidental disability for a mental injury caused by that incident in October, 2003. He testified that he believed that the motel incident was unusually stressful for police work.
8. Terry A. Davis, M.D., also testified. He became White's treating psychiatrist in February, 2006, after White's former psychiatrist died. He testified that he does fitness for duty and disability examinations for the City of Omaha as part of his practice. Dr. Davis testified that he saw White five times and had two telephone consultations with him in the seven months prior to White's retirement, and has seen him less frequently since. His primary role is to prescribe medication. White sees his psychologist for "talking therapy." Dr. Davis testified that White talked particularly about the stress relating to the politics of the police department and the anxiety he experienced over feeling like he did not have the support of his superiors. Dr. Davis testified that White didn't talk much about the job incidents at issue, but noted that there wasn't really much need to go into those by the time he saw him because he had "classic panic disorder symptoms" and was fairly stable on medications by the time he saw him, other than his ongoing difficulties at work. Dr. Davis testified that the two incidents that struck him as particularly stressful were the motel incident and the HIV incident. He also noted that White was hospitalized shortly after the latter

incident. He also testified that he didn't know the details of the incidents until shortly before the hearing.

9. There is little mention of the six stressful incidents in White's contemporaneous medical records. For example, the initial clinical assessment from White's February 25, 2000 admission to the Richard Young Center states: "Chief Complaint: Allen said that he has been under a great deal of stress at work. He had been demoted from a detective position. He was also given street duty without any training." (See MFPRSI Ex. 4-203.) There is no mention of the incidents in question. Likewise, the Psych Discharge Summary dated August 1, 2005 from the Jenny Edmundson Hospital, in "reason for admission" references general stress relating to his job, including taking the lieutenant's exam (and hoping he wouldn't pass) and problems with the police chief which resulted in his hospitalization in 2000, although that report does mention "a little incident with a patient that he had to deal with" that resulted in increased anxiety. (See MFPRSI Ex. 4-68.)

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 White 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. An accidental disability pension is payable under chapter 411 for a mental injury only if the injury was caused by a traumatic incident or incidents, and the incidents that caused the injury are unusually stressful for the occupation. *See Moon v. MFPRSI*, 548 N.W. 2nd 565 (Iowa 1996).
5. White has failed to prove that his mental injury was caused by any or all of the six stressful incidents cited. Instead, the medical evidence indicates that his disorder was more likely a result of his transfer back to patrol duties and his feelings of a lack of support from the chief and two other supervisors.
6. Iowa Code § 411.6(13)(a)(2) provides that a member who is otherwise eligible to receive a disability pension is not eligible if it is determined that "the disability is a mental disability proximately caused by appropriate disciplinary actions taken against the member, or by conflicts with a superior or coworker if the superior or coworker was acting legally and appropriately toward the member when the conflicts occurred." White is not disqualified, however. There was no disciplinary action in this case (even though he viewed his transfer as a demotion) and no grievances were filed. The Committee makes no finding as to whether White's supervisors acted appropriately, but finds that his anxiety disorder was related to his transfer to the street, not to any actual or perceived conflicts with the chief or other supervisors.
7. Although White's personnel issues are not disqualifying, those issues, including his transfer back to patrol duties are not unusually stressful for police work.
8. Furthermore, the Committee finds that none of the six incidents he cited were unusually stressful for police work. The Committee notes that Kidder was awarded an accidental disability pension for a mental injury related to the motel incident.

White's case is distinguishable, however. Unlike Kidder, White was not shot. Also, Kidder was a patrol officer, while White was a crisis negotiator who had trained with crisis intervention experts at both Offutt Air Force Base and the Los Angeles Police Department.

DECISION

The appeal for accidental disability retirement benefits on behalf of Allen L. White under chapter 411 is hereby denied. The System's initial award of an ordinary disability pension under chapter 411 is hereby affirmed. The vote was 2-1, with Marty Pottebaum dissenting.

Dated this 26 day of April, 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 _____