

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

IN THE MATTER OF:

ROBERT J. McNULTY,

Applicant.

:
:
:
:
:
:
:

DECISION

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

STATEMENT OF THE CASE

Robert J. McNulty ("McNulty") filed his application for an accidental disability pension on or about May 4, 2007. On June 25, 2007, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding McNulty's disability. An initial decision awarding an ordinary disability pension was made by the System on July 24, 2007. McNulty 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 June Anne Gaeta, chair, Mary Bilden, and Duane Pitcher) on January 16, 2008 at the offices of the System. McNulty appeared and was represented by attorney David M. Pillers. The City of Clinton did not appear. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from McNulty. He waived the opportunity to file a brief.

FINDINGS OF FACT

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

1. McNulty commenced service as a firefighter for the City of Clinton on or about April 17, 1978. He advanced through the ranks, and held the rank of lieutenant on his last day on the job, March 26, 2007.
2. McNulty has a history of type II diabetes, hyperlipidemia and hypertension, all of which are treated with medication. The System's Medical Board also noted a history of "episodic labile blood pressures associated with chest discomfort during strenuous work, accompanied by diaphoresis, lightheadedness, and altered vision."

3. The first such episode occurred on March 10, 2006 following a fire call at a hospital. McNulty became short of breath and nauseous after climbing four or five flights of stairs. His blood pressure was initially 240/120, but he became hypotensive in the emergency room and was admitted to Mercy Medical Center in Clinton for testing and monitoring. He was discharged on March 13, 2006. On March 17, 2006, he underwent cardiac catheterization and coronary angiogram which showed "mild 30% left anterior descending stenosis." He was returned to full duty with no restrictions on March 31, 2006.
4. On March 26, 2007, McNulty experienced chest pain and discomfort while performing an annual physical agility test. He was found to have elevated blood pressure and was hospitalized to rule out a myocardial infarction. MI was ruled out. He was discharged the next day but was not released to return to work.
5. On June 25, 2007, the System's Medical Board opined that McNulty is unable to perform the full duties of a firefighter as a result of labile blood pressure. 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. The Medical Board, in its report, noted that the cardiac catheterization performed on March 17, 2006 showed "an insignificant 30% obstruction of the left anterior descending coronary artery."
6. McNulty offered a letter dated January 10, 2008 from Saadi Albaghdadi, M.D., a cardiologist from Clinton, which was admitted into evidence as Member's Exhibit 1. Dr. Albaghdadi noted that he had reviewed McNulty's medical records, including his application for disability benefits, incident reports, and medical records from McNulty's physicians, including those at the University of Iowa and his angiographic film from March 17, 2006. Dr. Albaghdadi then set out McNulty's various diagnoses. The diagnosis relevant to this appeal is the first he listed, as follows: "hypertension, labile with hypertensive cardiovascular disease, 30% left anterior descending coronary artery disease, documented by cardiac catheterization 03/17/06." He concluded, "It is true however that the coronary disease in this patient, left anterior descending coronary artery is only 30% and cannot be attributed to his job as a fireman."

CONCLUSIONS OF LAW

1. Iowa Code § 411.6(3) states:

3. *Ordinary disability retirement benefit.* Upon application to the system, of a member in good standing or of the chief of the police or fire departments, respectively, any member in good standing 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. The member-in-good-standing requirement of this subsection may be waived for good cause as determined by the board. The burden of establishing good cause is on the member.

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 good standing or of the chief of the police or fire departments, respectively, any member in good standing 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 medical condition shall be deemed to have been known to exist on the date that membership commenced if the medical condition is reflected in any record or document completed or obtained in accordance with the system's medical protocols pursuant to section 400.8, or in any other record or document obtained pursuant to an application for disability benefits from the system, if such record or document existed prior to the date 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. It is undisputed that McNulty is incapacitated from the performance of duty, and that the incapacity is likely to be permanent (i.e., 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. A disabled member is entitled to an accidental disability pension under § 411.6(5) if his disability is "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." McNulty does not claim an injury. Instead, he argues that he has a "disease" which, as a matter of law, brings him within § 411.6(5).
5. The term "disease" is defined to mean "heart disease or any disease of the lungs or respiratory tract." Iowa Code § 411.6(5)(c). A member disabled by such a "disease" is not required to prove job-relatedness or that the disability was incurred at some definite time and place. The statute presumes those requirements to be met. *Id.*
6. The Iowa Supreme Court has held that the definition of "disease" under § 411.6(5) is exclusive and does not include hypertension. *See Benson v. Fort Dodge Police Pension Board of Trustees*, 312 N.W. 2d 548 (Iowa 1981). In *Benson*, the Supreme Court noted expert medical testimony that hypertension is a disease of the cardiovascular system, which includes the heart, and that, although it is a condition that can cause heart disease, none of the doctors who testified in that case characterized hypertension itself as a disease of the heart. The Court concluded, "If the legislature intended hypertension to be covered [as a "disease"] it could have used language similar to that covering respiratory disease."
7. McNulty argues that his case is more like *Butler v. Pension Board of Police Dept.*, 259 Iowa 1028, 147 N.W.2d (1966) than *Benson*. *Butler* was found to be disabled based on a diagnosis of "hypertensive and coronary artery heart disease with high blood pressure." The Iowa Supreme Court held that she was entitled to an accidental disability pension because her disabling condition fell within the heart-lung presumption. The Court later, in *Benson*, distinguished the *Butler* case, noting that *Butler*, unlike *Benson* had a diagnosis of heart disease in addition to hypertension.
8. This case is also distinguishable from *Butler*. § 411.6(5)(c) provides a presumption that a disabling disease of the heart, lung or respiratory tract is job-related. It does not provide a presumption of disability, however. Even if we assume, as opined by Dr. Albaghdadi, that McNulty has a heart disease (coronary artery disease), the record shows that condition is not disabling. As noted *supra*, the Medical Board described

9. Instead, the record supports the finding that McNulty's inability to perform as a firefighter is the result of his hypertension and labile (unstable) blood pressure. Since that condition is not a "disease" as defined in § 411.6(5)(c), he is not entitled to an accidental disability pension.

DECISION

The appeal for accidental disability retirement benefits on behalf of Robert J. McNulty under chapter 411 is hereby denied. The System's initial award of an ordinary disability pension under chapter 411 is hereby affirmed.

Dated this 17 day of January, 2008.

June Anne Gaeta, Chair
June Anne Gaeta, Disability Appeals Committee

Copies to:

David M. Pillers
Pillers and Richmond
1127 North Second Street
Clinton, Iowa 52732

Matthew Brisch
City Attorney
611 S. 3rd Street
Clinton, Iowa 52732

Dennis Jacobs, Executive Director
Municipal Fire and Police Retirement
System of Iowa
2836 104th Street
Des Moines, IA 50322

Alice E. Helle
Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.
666 Grand Suite 2000
Des Moines, IA 50309

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 _____, 2008.

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

Signature _____