

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

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IN THE MATTER OF:

DAVID M. BEAVES,

Member.

DECISION

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Iowa Code § 411.6(3) (2009) and  
Iowa Code § 411.6(5) (2009)

STATEMENT OF THE CASE

Chief E. Daniel Brown of the Dubuque Fire Department filed an application for an ordinary disability pension on behalf of David M. Beaves ("Beaves") on or about May 21, 2008. On July 28, 2008, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Beaves' disability. An initial decision awarding an ordinary disability pension was made by the System on September 11, 2008. Beaves filed a timely appeal challenging the award of an ordinary disability pension and asked to be returned to duty as a firefighter. A hearing was held before the Disability Appeals Committee of the Board (comprised of June Anne Gaeta, Mary Bilden and Jody Smith, chair) on April 8, 2009 at the offices of the System. Beaves appeared, and was represented by attorney Michael Carroll. The City of Dubuque was represented by City Attorney Barry Lindahl. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Beaves. Jack Reed, an Ottumwa firefighter who is the past president of the board of Iowa Professional Fire Fighters, and John Peters, a Council Bluffs Fire Fighter who returned to duty following a hip replacement also testified for Beaves. The parties filed written post-hearing briefs and arguments.

FINDINGS OF FACT

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

1. Beaves commenced employment with the City of Dubuque as a firefighter on or about August 13, 1995.
2. Beaves began experiencing pain and stiffness in his right hip in approximately 2002. He was given a diagnosis of labral tear of the right hip - degenerative. A right hip arthroscopy and labral debridement was performed on July 10, 2002, with a 90%

improvement in his symptoms. His pain returned in about 2007, however. He continued to work as a fire fighter/paramedic for the Dubuque Fire Department.

3. Beaves' last working day on the job was February 2, 2008. His rank at the time was medical officer.
4. On February 4, 2008, Beaves had a right total hip replacement. The surgery was performed by his orthopaedic surgeon, Charles H. Morrow, M.D., at Mercy Medical Center in Dubuque. He was discharged from the hospital on February 7, 2008. He testified that he had experienced relief from the pain and stiffness in his hip after the surgery and had less pain the day after surgery than he did the day before.
5. Dr. Morrow approved Beaves for a full return to work as a firefighter on May 6, 2008, with long-term restrictions including no running, no jumping and no repetitive lifting over 50 pounds. Dr. Morrow specifically noted that occasional lifting of more than 50 pounds was acceptable, however.
6. The fire chief did not return Beaves to full duty, but instead filed an application for ordinary disability on behalf of Beaves, pursuant to § 411.6(3). Chief Brown noted on the application that Mr. Beaves was being sent for "evaluation of total joint replacement and fitness for duty as a firefighter."
7. In its July 28, 2008 findings, the System's Medical Board opined that Beaves is unable to perform the full duties of a firefighter as a consequence of his hip replacement. The Medical Board's conclusion was based on its concerns, as noted below.
8. Fredric Gerr, M.D., of the Medical Board commented: "Mr. Beaves is clearly in otherwise excellent physical condition and has experienced complete resolution of osteoarthritic symptoms of pain and stiffness. However, despite his lack of symptoms and current excellent physical condition, he is at greater risk of sudden incapacitation in comparison to a firefighter who has not been treated with total hip arthroplasty. This risk increase is of particular concern in settings that involve high impact, high joint loading, or trauma, such as firefighting. Specifically, as a consequence of his total hip arthroplasty, Mr. Beaves is at greater risk of both hip dislocation and periprosthetic femoral fracture (bone fracture adjacent to the prosthetic). Exact quantification of the risk increase is difficult to establish but, these are not uncommon complications of total hip arthroplasty and would result in sudden loss of hip function, rendering him immediately unable to engage in firefighting activities." Dr. Gerr specializes in pulmonary, critical care and occupational medicine.
9. Robert K. Yang, M.D., of the Medical Board stated that Beaves' current medical findings "show little in the limitation of the right hip" but noted "some concern regarding more accelerated wear and tear of the joint if he were to pursue running, jumping or lifting over 50 pounds." He commented that "it would be unusual to restrict Mr. Beaves from his job specifically on that basis." After reviewing Beaves' job description from the City of Dubuque and the "essential job requirements" for

firefighters as set out by the National Fire Protection Association in NFPA guideline 1582, however, Dr. Yang concluded that there were several job duties that would exceed what Beaves was able to perform, such as lifting individuals up to 200 pounds. Dr. Yang is in the Department of Orthopaedics and Rehabilitation at University Hospitals, but does not perform joint replacement surgery.

10. Beaves subsequently sought clarification from Dr. Morrow regarding his work restrictions and ability to perform the full duties of his position. Dr. Morrow referred him to Dan Focht, M.A. OTR, of Tri-State Occupational Health for a functional evaluation to assess the feasibility of his return to full duty as a firefighter. That evaluation was performed on August 28, 2008. In a letter dated November 11, 2008, Dr. Morrow opined that Beaves was fit to perform his job as a firefighter with no restrictions. He reiterated that position in his deposition conducted by the City on January 27, 2009. He noted the lack of "hard science" behind restrictions after joint replacement surgery, but opined that the potential risk associated with running, jumping and repetitive lifting is that the joint will wear out, not that it will break. On the issue of hip dislocation, he noted that in the past with "small ball" hip replacements, there was approximately a 5% occurrence of dislocation over the long-term. Beaves had a "large ball" replacement, utilizing newer technology, with a prosthetic femoral head of 52 mm, compared to the 22 – 28 mm heads that were previously used. He opined that Beaves is at no greater risk of hip dislocation than someone who has not had joint replacement surgery.
11. Beaves testified that he has been able to return to all of his former physical activities, but has chosen not to return to playing and coaching hockey. Since his surgery, he worked full time as a truck driver for a period of time, and is currently working as a cabinet maker. He testified that he is able to perform all of his duties as a firefighter.

#### 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

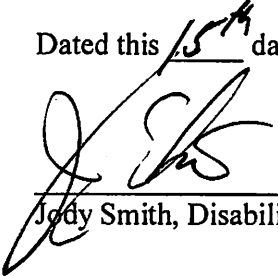
entitled to be restored to active service in the same position held immediately prior to the application for disability benefits.

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.
4. This matter comes down to a disagreement between physicians regarding Beaves' ability to perform the duties of a firefighter following hip replacement surgery. The conclusions of the medical board physicians, Doctors Gerr and Yang, were not based specifically on Beaves' medical condition or test results, but were instead based on the general slightly increased risk of hip dislocation or other traumatic hip failures observed in the past among other patients post-surgery. Dr. Morrow, the treating surgeon in this case, opined based on his assessment of Beaves' medical condition and firefighter job duties that Beaves is fully capable of performing those duties with no restrictions. The Committee finds the opinion of Dr. Morrow to be more persuasive in this case, and also notes that, of the three physicians whose opinions are of record in this case, he is the only orthopaedic surgeon who performs hip replacement surgeries.
5. Beaves has established that he is able to perform the full duties of a firefighter.

#### DECISION

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

Dated this 15<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_, Chair  
Jody Smith, 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 15<sup>th</sup> day of May, 2009.

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