

MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA
7155 Lake Drive, Suite 201
West Des Moines, IA 50266

IN THE MATTER OF:

MARY BETH DOWNS,

Applicant.

:
:
:
:
:
:
:

DECISION

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

STATEMENT OF THE CASE

Chief Mark Dalsing of the Dubuque Police Department filed an application for an accidental disability pension on behalf of the member, Mary Beth Downs ("Downs") on or about May 11, 2010. On July 14, 2010, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Downs' disability. An initial decision awarding an ordinary disability pension was made by the System on August 26, 2010. Downs filed a timely appeal challenging the award of an ordinary disability pension rather than an accidental disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of Kay Cmelik, Marty Pottebaum, and Mary Bilden, chair) on November 17, 2010 at the offices of the System. Downs appeared and represented herself. Attorney Barry Lindahl appeared by telephone for the City of Dubuque. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Downs. There were no other witnesses. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Downs commenced service as a police officer for the City of Dubuque on or about April 4, 2008.
2. Downs began experiencing pain in her leg shortly after beginning her training at the Iowa Law Enforcement Academy in July of 2008. She initially suspected that the pain was caused by shin splints, but was diagnosed with adamantinoma of the tibia of her left leg, a rare bone cancer, in October of 2008.
3. Downs was restricted to light duty upon her diagnosis until she retired from the department in August of 2010.

4. On January 9, 2009, Downs underwent a surgical resection of the tumor with reconstruction and internal fixation. This procedure included a bone graft from a cadaver donor. She remained in a cast following surgery until May, 2010.
5. After removal of the cast, Downs continued to experience pain with ambulation, and further examination showed that the bone graft has not completely healed,. Her treating physicians are unable to determine at this time whether the graft will eventually heal, but have advised her that she will remain at increased risk of fracture in any event.
6. It is undisputed that Downs is unable to perform the full duties of a police officer, and has already been unable to do so for more than 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.

* * * * *

c. (1) Disease under this subsection 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.

(2) Disease under this subsection shall also mean cancer or infectious disease and shall be presumed to have been contracted while on active duty as a result of that duty.

(3) However, if a person's membership in the system first commenced on or after July 1, 1992, and the heart disease, disease of the lungs or respiratory tract, cancer, or infectious disease 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 "c" shall not apply.

3. Iowa Code section 411.1(6) states (in relevant part) as follows:

6. "*Cancer*" means prostate cancer, primary brain cancer, breast cancer, ovarian cancer, cervical cancer, uterine cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer.

4. As noted, it is undisputed that Downs is incapacitated from the performance of duty as a police officer, and that the capacity is permanent (i.e. will last at least 12 months). She is therefore entitled to a disability pension from the System. The issue is whether an ordinary or accidental disability pension is payable.
5. A disabled member is entitled to an accidental disability pension under § 411.6(5) if her 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." Downs does not claim an on-the-job injury. Instead, she argues that she has a "disease" which, as a matter of law, brings her within § 411.6(5).
6. The term "disease" was initially 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. In 2009, the General Assembly added “cancer” and infectious disease to the definition of “disease” under the statute. The definition of “cancer” for purposes of the statutory presumption is limited to certain specified cancers, however. See Iowa Code § 411.1(6), set out in paragraph 3, above.

7. It is undisputed that bone cancer in general and adamantinoma in particular are not included in the listing of cancers that constitute a “disease” for purposes of the statutory presumption.
8. Downs argues that “cancer is cancer” and that it is illogical to include some cancers and not others in the statutory definition. In the alternative, she argues that adamantinoma is thought to be a result of trauma to the bone, and therefore should be included among the cancers that is presumed to be job-related under chapter 411.
9. The definition of “disease” under chapter 411 is exclusive. *Benson v. Fort Dodge Police Pension Board*, 312 N.W.2d 548, 551 (Iowa 1981). It follows that the definition of “cancer” under the statute is also exclusive. The System has no authority to expand that definition beyond the specific terms enacted by the General Assembly.
10. Since Downs’ disabling condition, adamantinoma, does not meet the definition of either “cancer” or “disease” under chapter 411, she is not entitled to an accidental disability pension.

DECISION

The appeal for an accidental disability pension on behalf of Mary Beth Downs under chapter 411 is hereby denied. She will continue to receive an ordinary disability pension.

Dated this 18 day of November, 2010.

Mary Bilden, Chair
Disability Appeals Committee

Copies to:

Mary Beth Downs
2244 Seippel Road
Dubuque, Iowa 52002

Barry Lindahl
City Attorney
Dubuque, Iowa

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 19th day of November, 2010.

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

Signature *Andrea Wells*