

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

IN THE MATTER OF:

JULIE A. BRUNS,

Applicant.

DECISION

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

STATEMENT OF THE CASE

Julie A. Bruns ("Bruns") filed her application for a disability pension on or about June 1, 2010. On August 17, 2010, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Bruns' disability. An initial decision awarding an ordinary disability pension was made by the System on September 9, 2010. Bruns 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, Kay Cmelik, and Marty Pottebaum, chair) on January 5, 2011 at the offices of the System. Bruns appeared, and was represented by attorney Christine Frederick. Attorney Brian Heyer appeared by telephone for the City of Davenport. Dennis Jacobs, Executive Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Bruns. Dr. Robert Foote and Dr. Mrinal Patnaik testified by telephone. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Bruns was born on May 1, 1967.
2. She commenced service as a police officer for the City of Davenport on December 15, 2003.
3. At the time she filed her disability application she was still working for the Davenport Police Department, but was restricted to light duty.

4. Bruns has a history of cancer (specifically adenocarcinoma) of the base of the skull, currently resulting in multiple cranial nerve deficits, ptosis of the left eye, reduced visual acuity and monocular vision.
5. It is undisputed that she is unable to perform the full duties of a police officer as a consequence of her cancer.
6. Bruns' cancer was first diagnosed in 2006. At that time she was diagnosed by Mayo Clinic with metastatic adenocarcinoma of the head and neck with "unknown primary." A report of the Dr. Behl of the Mayo Clinic dated December 6, 2006 noted that the primary tumor had not been ascertained, and that "likelihoods" included a primary tumor of the salivary gland or the lung.
7. Bruns was treated at Mayo Clinic in 2006 with gamma knife surgery and radiation. She did well for three years, but in 2009 experienced increased ptosis of the left eye. It was determined at Mayo Clinic that she was not a candidate for more radiation due to the amount she had already received. Gamma knife surgery and conventional surgery were ruled out as too high risk. She was instead treated with chemotherapy.
8. Robert L. Foote, M.D., a radiation oncologist at the Mayo Clinic, testified that he treated Bruns with radiation beginning in 2006. He also provided a letter dated September 10, 2010 that was admitted as Member's Exhibit 1. In his letter, he noted that his initial impression was that Bruns' cancer could be arising from "a primary cancer within the skull base area, particularly a minor salivary gland cancer within the upper aerodigestive tract in the nasopharynx, Eustachian tube, or external auditory canal area." He further stated in his letter, however, that since there had been no evidence of cancer anywhere else in Bruns' body over the four years since, "I believe that this cancer could have arisen from the brain (cranial nerves) and that this did not represent a metastatic cancer." He testified that, as best as he can tell now, the cancer seems to have arisen from the dura (the covering of the brain) and the cranial nerves.
9. Mrinal M. Patnaik, M.B.B.S., a Fellow in the Division of Medical Oncology at Mayo Clinic, testified that he treated Bruns with chemotherapy. He took over that care in approximately November of 2009, replacing another treating physician who had left Mayo. His letter dated September 28, 2010 was admitted as Member's Exhibit 2. He testified that her tumor involves the dura and the cranial nerves and confirmed that they have not found a single other possible source. Dr. Patnaik also testified that the dura and the cranial nerves are considered to be part of the brain.
10. Bruns testified about her medical treatment and also testified that she was injured in an on-duty automobile accident in 2004. She had no health problems prior to the accident. She believes that the accident is what "activated" the cancer cells in her body, but admits that her doctors could not link the accident to her cancer. See also Bruns' notice of appeal (MFPRSI Exhibit 8).
11. A copy of the Motion to Dismiss Without Prejudice filed with the Iowa Industrial Commissioner on June 18, 2007 was admitted as City Exhibit 1. In response to

questioning by Mr. Heyer, Bruns testified that she had sought legal advice since she thought that her tumor might have been the result of her on-duty car accident, in which she was knocked unconscious. She testified that she was unaware at the time that a case had been filed. She further testified that she did not pursue an action against the city because she could not prove causation.

12. Bruns also testified in response to questioning by Mr. Heyer that she checked "ordinary" rather than "accidental" on her disability application on the advice of her chief and lieutenant and MFPRSI staff. These representations were not confirmed by separate evidence.

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 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.

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

3. Iowa Code § 411.1(6) states:

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. The fighting issue in this case is whether Bruns' adenocarcinoma is a "primary brain cancer" and thus constitutes a "disease" for purposes of Iowa Code § 411.6(5). Her initial diagnose indicated that the cancer was of unknown origin. Both Dr. Foote and Dr. Patnaik testified, however, that current medical evidence indicates no other source of Bruns' cancer, and that it is not metastatic. They both opined that the cancer arose from the dura and the cranial nerves, which are part of the brain. Bruns' cancer thus is a primary brain cancer, and is a "disease" for purposes of § 411.6(5).
5. The City argues that Bruns must prove that her cancer results from the performance of duty at some definite time and place. Under the statute, however, a "disease" is "presumed to have been contracted while on active duty as a result of that duty." The presumption operates to eliminate the member's obligation to prove that the disability resulted from the performance of duty at some definite time and place. The law presumes that to be the case.
6. The City also argues that Bruns' is precluded from appealing for an accidental disability pension because she checked "ordinary" on her application form. Bruns testified that she was advised to do so. It is possible that Bruns was incorrectly advised since the cancer presumption was not added to the statute until 2009. Whether she was incorrectly advised is immaterial, however. While the application form asks the applicant to indicate "accidental" or "ordinary" disability, the

distinction between the two is a legal issue and neither the System nor the member is bound by the box checked by the applicant.

DECISION

The application for an accidental disability pension on behalf of Julie A. Bruns under chapter 411 is hereby approved.

Dated this 5 day of January, 2011.

 _____, Chair
Disability Appeals Committee

Copies to:

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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 7th day of January, 2011.

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

Signature Julie A. Bruns