

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

IN THE MATTER OF:

RICHARD R. GLADE,

Applicant.

DECISION

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

STATEMENT OF THE CASE

Richard R. Glade ("Glade") filed his application for an accidental disability pension on or about August 2, 2010. On October 7, 2010, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Glade's disability. An initial decision denying an accidental disability pension was made by the System on October 19, 2010. Glade filed a timely appeal challenging the denial of his application. A hearing was held before the Disability Appeals Committee of the Board (comprised of Mary Bilden, Marty Pottebaum, and Duane Pitcher, chair) on June 22, 2011 at the offices of the system. Glade appeared and was represented by attorney Mollie Pawlowsky. The City of Des Moines waived its opportunity to participate. Dennis Jacobs, Executive Director appeared on behalf of the System. James H. Gilliam was present as counsel to the Committee. Testimony was received from Glade. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Glade commenced service as a police officer for the City of Des Moines on or about January 1, 1975.
2. Glade was assigned to the City's Traffic Unit during the flood event in June and July, 2008, working mandatory overtime in and around those areas of the City. He later was diagnosed with Non-tuberculosis Micro-bacterial Lung Disease, an infection caused by bacteria found in flood waters and the residual sediment and debris left behind by flood waters.
3. After Glade's August 2, 2010, application for accidental disability, he was examined by the Medical Board of the University of Iowa Hospitals and Clinics on September 22,

2010. On October 7, 2010, the Medical Board certified that Glade was "not physically incapacitated from performance of the functional demands" of his police officer position. However, the Medical Board did note Glade's need for "serial pulmonary follow-up to monitor for relapse" of his condition and further noted that relapse or re-infection may require retreatment or surgical intervention. Finally, the Medical Board noted, "further impairment and disability evaluation may be required in the future depending on the patient's symptoms and clinical course."

4. On October 16, 2010, the City placed Glade on light duty due to his condition and Glade was instructed to undergo a pulmonary stress evaluation, which was performed on October 26, 2010.
5. Glade remained on light duty until his retirement thereafter.
6. After the hearing, the Disability Committee requested the Medical Board, pursuant to MFPRSI rule 6.20(2)(c), to consider the records from Glade's October 26, 2010 evaluation and state whether it is still the opinion of the Medical Board that Glade was not physically incapacitated from the performance of the functional demands of his position.
7. On July 8, 2011, the Medical Board indicated it was still its opinion that Glade was not physically incapacitated from the functional demands of his position as described to the Board by the System.
8. Both the City and Glade were provided the opportunity to comment further on the Medical Board's additional July 8, 2011 report and the Committee has considered the parties' additional comments.

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. 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. Although the Disability Appeals Committee is sympathetic to the ongoing nature of Glade's condition, which as noted by the Medical Board, may lead to impairment or

disability depending on his future symptoms and clinical course. However, the Medical Board has certified that Glade is not now physically incapacitated for further performance of duty.

4. Because his application for accidental disability benefits fails to meet the requirements under Chapter 411, Glade is not entitled to an accidental disability pension.

DECISION

The application for an accidental disability pension on behalf of Richard R. Glade under Chapter 411 is hereby denied.

Dated this 25TH day of August, 2011.


_____, Chair
Disability Appeals Committee

Copies to:

Molly Pawlowsky
Dickinson Mackaman Tyler & Hagen PC
699 Walnut, Suite 1600
Des Moines, IA 50309
Member's Attorney

Carol Moser
City Hall
400 Robert D. Ray Drive
Des Moines, IA 50309
City Attorney

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

James H. Gilliam
Brown, Winick, Graves, Gross,
Baskerville & Schoenebaum, PLC
666 Grand Avenue, Suite 2000
Des Moines, IA 50309-2510

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 25th day of August, 2011.

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

Signature 