

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

IN THE MATTER OF:

KEVIN M. MURPHY,

Applicant.

DECISION

Iowa Code § 411.1(6) (2011)
Iowa Code § 411.6(3) (2011) and
Iowa Code § 411.6(5) (2011)

STATEMENT OF THE CASE

Kevin M. Murphy ("Murphy") filed his application for a disability pension on or about June 8, 2011. On September 16, 2011, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Murphy's disability. An initial decision awarding an ordinary disability pension was made by the System on October 5, 2011. Murphy filed a timely appeal challenging award of an ordinary, rather than accidental, disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of Marty Pottebaum, Scott Sanders, and Mary Bilden, chair) on July 11, 2012 at the offices of the System. Murphy appeared without an attorney. The City of Davenport did not appear. Daniel Cassady, Deputy Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Kevin Murphy and his wife, Christina Mondanaro-Murphy. Murphy waived post-hearing briefs.

FINDINGS OF FACT

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

1. Murphy was born on October 9, 1956 and commenced service as a police officer for the City of Davenport on or about July 27, 1977. He advanced through the ranks to become a captain.
2. Murphy's last working day on the job was April 28, 2011. He testified that he had applied for FMLA leave as a result of various stress-related conditions, but the City instead put him out on "OJI" (on-the-job-injury) pay.

3. On September 16, 2011, the System's Medical Board opined that Murphy is unable to perform the functional demands of his position as a consequence of his celiac disease and depression.
4. Murphy has been diagnosed with multiple impairments that impact his ability to perform his duties as a police officer, including celiac disease, depression, post-traumatic stress disorder ("PTSD"), asthma and suspected non-Hodgkin's lymphoma. He also suffered two strokes in January of 2012, which were suspected to be caused by a hole in his heart (patent foramen ovale), which was surgically repaired in April, 2012. The strokes and heart issue arose subsequent to his retirement and application for disability, and are not at issue in this proceeding.
5. The Medical Board did not mention asthma in its opinion letter to the System, but in his Visit Summary, Dr. Gerr of the Medical Board stated: "it is my opinion that Mr. Murphy's asthma prevents him from fully performing all duties of his job. With aggressive treatment, it is possible that re-evaluation in one year's time may be of benefit for this condition." System's Exhibit 5 at 5-6.
6. Dr. Gerr's Visit Summary also mentioned non-Hodgkin's lymphoma in Murphy's medical history, but noted that it was "per patient report, supporting documentation not provided." System's Exhibit 5 at 5-4. Murphy confirmed that non-Hodgkin's lymphoma is suspected, but has not yet been diagnosed. Testing for that condition has been delayed due to other medical issues, including his strokes and associated medications, which currently medically preclude the necessary testing.
7. The records from the Medical Board also included a Psychiatric General Diagnostic Evaluation Note. It notes chief complaints of depression and anxiety and references severe stress at work and symptoms including suicidal ideation. The "Axis 1" diagnosis stated: "Major depressive disorder, severe, without psychosis. Anxiety disorder not otherwise specified. Rule out Post traumatic stress disorder." System's Exhibit 5 at 5-12.
8. Murphy offered a copy of email correspondence with Jeniece Nott, MD, PhD, a resident in the University of Iowa Department of Psychiatry in which he inquired about the reference to "rule out PTSD" since he had received that diagnosis from a psychiatrist and two psychologists. She responded that "rule out PTSD" in her notes means that she was considering that as a diagnosis but had not yet reached a definitive conclusion. She commented that it means that her thinking was in line with the thinking of the other providers. See Member's Exhibit 2.
9. Murphy offered various medical records as Member's Exhibit 1, which included the "Axis 1" diagnosis of Kathryn Gilligan, MD of "Post-traumatic stress disorder. Chronic. Alcohol dependence. Depressive disorder not otherwise specified." Member's Exhibit 1 was received into evidence.
10. Murphy also submitted a May 2, 2012 letter from Elizabeth Lonning, PsyD, MSCP who stated that she provided psychotherapy treatment to Murphy as an outpatient

from December 2010 through December 2011, at which time she referred him to Dr. David Wolgin for Eye Movement Desensitization Recovery (EMDR) treatment for his PTSD. Murphy testified that he is currently undergoing EMDR treatment.

11. No medical reports, incident reports or personnel records were received from the City. On June 22, 2012, Thomas Warner, City Attorney, sent an email to the System and to Murphy that stated: "I am writing to inform you that the City of Davenport is not contesting Kevin Murphy's appeal. Our review of the facts and records submitted leads us to the conclusion that Kevin Murphy should be granted a work related/accidental disability, and accordingly, we will not be contesting the matter." The email was admitted into evidence as Member's Exhibit 3.
12. As noted, no incident reports or other records were received from the City, but Murphy testified about several unusually stressful incidents he experienced as a Davenport police officer. The incidents in question are also referenced in various medical records in file. In addition, Murphy's wife, Christina, testified about the incidents and their effect on him. She had knowledge of the incidents both as his wife and as a result of her employment as an employment law and ADA manager with the City of Davenport.
13. Both testified that two incidents in particular haunted him.
14. The first was the suicide of the son of Murphy's college football coach and longtime friend in approximately 2007. Murphy was the crisis team negotiator called to the scene of the Centennial Bridge over the Mississippi where the young man was threatening to jump. After talking to Murphy for a time, the man jumped and was killed. Murphy testified that it seemed that he was falling in slow motion, and made eye contact with him on the way down. He testified that, "I had to explain to his mom and dad that I failed that day." There was no critical incident debriefing in place in the City at that time. Murphy resigned as a crisis team negotiator two days later. His wife testified that this particular incident "destroyed him" and was "the straw that broke the camel's back."
15. The other incident involved a five-year old boy who suffered from cerebral palsy and was starved to death by his mother. Murphy answered the call. He testified that the boy weighed 14 pounds at death and "had bedsores on his behind I could stick my fist into." He testified with great emotion that he can't get the boy out of his mind.

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 § 411.1(6) states 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. There is no dispute that Murphy's celiac disease is disabling and that, although it is aggravated by stress, it is not a basis for an accidental disability pension.
5. Non-Hodgkin's lymphoma has not been established and therefore cannot be an additional basis for a disability pension until such time as a diagnosis is made and confirmed by the Medical Board.
6. If Murphy's non-Hodgkin's lymphoma is established, it will be a basis for an accidental disability pension, since it falls within the definition of "cancer" under § 411.1(6).
7. The medical evidence of record, including the above-referenced report of Dr. Gerr, establish that his asthma is also disabling. Although Dr. Gerr inferred that his asthma might improve in a year with "aggressive treatment," Rule 9.2(3)(a) of the System's Administrative Rules states: "A 'permanent' disability is a disability, as defined in the statute, which is expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than twelve months." Murphy's asthma has already lasted for many years.
8. Murphy's asthma is a basis for an accidental disability pension, since it is a disease of the "heart, lungs or respiratory tract."
9. An accidental disability pension is payable under chapter 411 for a mental injury such as PTSD or depression only if the traumatic incident or incidents that caused the injury are unusually stressful for the occupation. See *Moon v. MFPRSI*, 548 N.W. 2nd 565 (Iowa 1996).
10. The City has not disputed Murphy's appeal for an accidental disability pension, but instead indicated its support in the email admitted into evidence as Member's Exhibit 3.
11. The Committee finds that both the bridge suicide incident and the incident of the five-year-old starved to death by his mother were unusually stressful for police work.

12. Murphy is entitled to an accidental disability pension for his PTSD/depression since the mental injuries were caused by incidents that occurred at some definite place and time and meet the unusual stress requirement of the *Moon* test.

DECISION

The appeal for an accidental disability pension on behalf of Kevin M. Murphy under chapter 411 is hereby granted with respect to both his asthma and his PTSD/depression. The award of an ordinary disability pension is affirmed for his celiac disease. Furthermore, in the event non-Hodgkin's lymphoma is diagnosed by Murphy's physicians and confirmed by the Medical Board, he will then be entitled to accidental disability for non-Hodgkin's lymphoma as well.

Dated this 14 day of July, 2012.

Mary Belden, Chair
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 14 day of July, 2012.

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

Signature Julie Hagg