

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

IN THE MATTER OF:

SARAH T. KELLY,

Applicant.

DECISION

Iowa Code § 411.6(3) (2013) and
Iowa Code § 411.6(5) (2013)

STATEMENT OF THE CASE

Sarah T. Kelly ("Kelly") filed her application for an accidental disability pension on or about July 26, 2012. On October 5, 2012, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Kelly's disability. An initial decision awarding an accidental disability pension was made by the System on October 10, 2012. The City of Iowa City filed a timely appeal challenging the award. A hearing was held before the Disability Appeals Committee of the Board (comprised of Marty Pottebaum, chair, Mary Bilden, and Kay Cmelik) on November 13, 2013 at the offices of the System. Kelly appeared and was represented by attorney Jennifer Germaine. First Assistant City Attorney Sarah Holecek appeared for the City of Iowa City. Dan Cassidy, Deputy Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Sarah Kelly, her psychotherapist, Anne Cremer and Iowa City police officers Kevin Bailey, Ryan Wood, Dennis Kelly, Richard Wyss, Vicki Lalla and Chief Samuel Hargedon. Both parties filed post-hearing briefs.

FINDINGS OF FACT

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

1. Sarah Kelly was born on August 22, 1980 and commenced service as a police officer for the City of Iowa City on or about January 12, 2006.
2. Kelly's last working day on the job was April 20, 2012.
3. On September 25, 2012, the System's Medical Board opined that Kelly is mentally incapacitated from the performance of her duties as a police officer as a result of her post-traumatic stress disorder ("PTSD"), panic and anxiety disorder.

4. The Medical Board, in the history section of Dr. Crocker's report, stated that Kelly's symptoms "began in 2008 after she was called to the scene of a gruesome murder-suicide." Dr. Crocker noted that the history was obtained from Kelly and from a review of records from her therapist, Anne Cremer and her psychiatrist, Dr. Dana Wiebel.
5. On March 24, 2008, Kelly was one of four officers who initially responded to an "unknown problem" at a residence in Iowa City. Someone had called 911 from a cell phone, said that officers needed to respond to the address immediately, and hung up.
6. In searching the home, the officers discovered that four children ranging in age from three to ten, and their mother had been brutally murdered. Based on the appearance of the victims, which were found in various rooms of the house, the officers initially thought they had been shot in the head. They later learned that their father/husband had beaten them to death with a baseball bat.
7. Kelly and officers Bailey and Wood first checked the basement of the house, where they discovered the body of a little girl lying with a pool of blood coming from her head. At that point, Bailey radioed that they had a gunshot victim and told dispatch to send an ambulance and all the officers they could get. (A total of 33 officers were at the scene at some time during the course of the investigation.)
8. The officers then tried to open a door in the room. It would only open slightly and felt as though someone was pushing back from the other side. The officers suspected that an "active shooter" was behind the door and "covered" it with their weapons. It was later determined that it was the family's stored Christmas tree that was pushing on the door, and that the suspect had already committed suicide by driving his car at high speed into a concrete abutment on the interstate.
9. While the other officers covered the door and Kelly, she checked the little girl for a pulse. She thought that she felt one and that she saw the girl's chest move, so carried her out of the room to the back door, where another officer took the child and carried her outside to an ambulance. She later learned that the child had already been dead when she carried her.
10. Other officers arrived on the scene and cleared the upstairs and main level of the house, finding the bodies of the mother and two more children. Kelly and three other officers went back to re-check the basement, where Kelly saw the body of another small child.
11. Following this incident (hereinafter referred to as the "Sueppel murders"), Synchrony Employee Assistance Program provided critical incident stress debriefing to the officers for three days at the request of the City. All officers who had been at the scene were required to participate in the debriefing, and it was also made available to dispatchers and to spouses of officers. Officers were also encouraged, but not required, to participate in one-on-one counseling with Synchrony.

12. Anne Cremer, Kelly's psychotherapist, is now in private practice but worked at Synchrony at the time of the Sueppel incident. She testified that the incident was overwhelming for the employees of Synchrony, due both to the time involved and the nature of the incident. She testified that management was called in to work extra, and that management also held debriefing sessions for staff due to the intense nature of the material they were hearing. She testified that both these steps were unprecedented, to her knowledge.
13. Kelly and Kevin Bailey, Ryan Wood and Dennis Kelly, the other three officers who were the first at the scene, all testified about the incident.
14. Bailey joined the department in 1999 and has been a detective for seven years, but was "rotated" back to patrol during 2008. He testified that he was affected by the Sueppel murders and that the incident was not routine. He testified that officers "see death a lot" but that family murders aren't common.
15. Wood has been a patrol officer since 2006. He testified about the debriefing and commented that he wasn't aware of counselors being called in before or since. He testified that this was an exceptionally stressful case and that he had worked other homicides, but that this one stood out.
16. Dennis Kelly has been an Iowa City police officer since approximately a year and a half prior to the Sueppel murders. He and Sarah had been dating for two years at the time of the murders and married two years later. (Her last name was McAdams at the time of the murders.) He testified about the changes in Sarah after the incident and also testified about the incident, as one of the four initial responding officers. He testified that the incident was particularly stressful in part because he wasn't expecting anything serious when he went in, but found "a house full of dead children."
17. Captain Richard Wyss, Sergeant Vicki Lalla and Chief Samuel Hargedon testified for the City of Iowa City.
18. Wyss has been on the force since 1984 and is currently the captain in charge of field operations. He testified that it is not unusual for an officer to experience a death investigation, and that other stressful incidents that officers routinely deal with include domestics, fights and a variety of emergency responses. When asked whether responding to the Sueppel call was something that would be unusual or stressful, he responded that he was not on the call, but in general a response to that kind of call would not be stressful.
19. Lalla testified that she has been with the department since 1979. She started as a patrol officer and has been a sergeant since 1994. She testified that she had been called to two homicides and perhaps 100 "dead body calls." She described City Exhibit 20, which consisted of 41 pages of pictures of dead bodies, a few of which were members of the Sueppel family. She testified that the pictures were printed from 145 DVDs of death investigations in Iowa City between 2008 and 2013. She

testified that officers could encounter dead bodies on any given day and that it wouldn't be unexpected.

20. Chief Hargedon has been the police chief in Iowa City for 8 years and has been an officer for 32 years. In a memo to the Iowa City Temporary Disability Board, he described the Sueppel murders as a "horrific event." He testified, however, that it is not unusual for a police officer to go to a homicide call, that he has been involved in "dozens" of homicides during his career, and that the incident in question was not unusually stressful.

CONCLUSIONS OF LAW

1. As a preliminary matter, we must consider the City's objection to Ann Cremer's qualifications as an expert witness. First, it should be noted that Cremer is Kelly's treating psychotherapist and was testifying primarily in that capacity as a fact witness. The Iowa Supreme Court generally takes "a liberal view on the admissibility of expert testimony." *Ranes v. Adams Laboratories, Inc.*, 778 N.W.2d 677 (Iowa 2010). The test for admissibility of expert testimony in Iowa has two prongs: (1) whether the testimony will assist the trier of fact in understanding the evidence or determining a fact at issue; and (2) whether the witness is qualified to testify as an expert "by knowledge, skill, experience, training or education." The Court noted that no particular degree or type of education is needed, and an expert does not necessarily need to be a specialist in the area of the testimony as long as the testimony is within his or her general area of expertise. Cremer is a trained psychotherapist, including training in EMDR, which is specifically designed for treating PTSD. The City's objection is overruled.

2. 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.

3. 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.

4. The City first argues that Kelly is not entitled to a disability pension because “her documented, pre-hire psychiatric conditions are causally related to her current condition.” The City further argues that Kelly must prove that her pre-hire psychiatric conditions are not “causally related” to her alleged disability. The evidence shows that Kelly had been treated for depression off and on prior to being hired as a police officer. The statute generally provides that a member is not eligible for a disability pension if the disability would not exist but for a medical condition that was known to exist on the date that membership commenced. There is no medical evidence to support the City’s contention that Kelly’s PTSD would not exist but for a pre-existing condition. The only evidence on that issue is Anne Cremer’s testimony that Kelly’s previous psychiatric issues did not predispose her to PTSD, and that there is no evidence in general that depression or various other psychiatric conditions predisposes an individual to PTSD. Kelly is not required to prove a negative. The City has the burden of proof on this issue and has failed to meet its burden.
5. It is undisputed that Kelly is mentally incapacitated from the performance of duty, and the incapacity is likely to be permanent (i.e., is likely to be of at least 12 months duration, in accordance with the System’s administrative rules). Since the City did not establish that her disability would not exist but for a preexisting condition, she is therefore entitled to a disability pension from the System. The issue is whether an ordinary or accidental disability pension is payable.

6. The evidence clearly establishes that Kelly's PTSD was caused by her involvement as an officer in the Sueppel murder incident.
7. An accidental disability pension is payable under chapter 411 for a mental injury only if the traumatic incident that caused the injury constitutes workplace stress of greater magnitude than the day-to-day stresses experienced by other police officers (or firefighters). *See Moon v. MFPRSI*, 548 N.W.2d 565 (Iowa 1996) and *City of Cedar Rapids v. MFPRSI*, 572 N.W.2d 919 (Iowa 1998).
8. There was testimony on both sides of this issue, with Kelly and her witnesses generally testifying that the Sueppel murder incident was unusually stressful for police work, and the City's witnesses testifying that it was not.
9. The Sueppel murder case was clearly a horrific event, and would constitute workplace stress of greater magnitude than the day-to-day stresses experienced by workers in most professions. Police work is inherently dangerous and stressful, however. The Committee finds that responding to the Sueppel murder incident, which caused Kelly's mental injury was not unusually stressful for police work.
10. Kelly is entitled to an ordinary disability pension from the System.

DECISION

The System's initial award of an accidental disability pension under chapter 411 is hereby reversed. Kelly is hereby awarded an ordinary disability pension. The vote was 2-1 with Kay Cmelik voting to uphold the initial decision of the System.

Dated this 9 day of January, 2014.


Marty Pottebaum, Chair
Marty Pottebaum, Disability Appeals Committee

Copies to:

Jennifer Germaine
Day Rettig Peiffer, P.C.
150 First Avenue NE, Suite 415
P.O. Box 2877
Cedar Rapids, Iowa 52406-2877

Sarah E. Holecek
First Assistant City Attorney
410 East Washington Street
Iowa City, Iowa 52240

Dan Cassady, Deputy 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 13 day of January, 2014

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

Signature 