

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

MFPRSI

MAR 07 2014

IN THE MATTER OF:

KERVIN VEASLEY,

Applicant.

DECISION

Iowa Code § 411.1(14) (2013)

Iowa Code § 411.6 (2013)

STATEMENT OF THE CASE

Kervin Veasley ("Veasley") filed his application for disability benefits on or about August 31, 2013. An initial decision denying disability benefits was made and a letter communicating the denial was issued to Veasley by Dan Cassidy, Deputy Director of the Municipal Fire and Police Retirement System of Iowa (the "System") on October 2, 2013. Veasley filed a timely appeal challenging the denial of disability benefits. A hearing was held before the Disability Appeals Committee of the Board (comprised of Marty Pottebaum, Jody Smith and Chair, Mary Bilden) (the "Committee") on January 8, 2014 at the offices of the System. Veasley appeared with attorneys Charles Gribble and Luke DeSmet. The City of Des Moines appeared with attorney Carol Moser. Daniel Cassidy, Deputy Director, appeared on behalf of the System. Elizabeth Coonan was present as counsel to the Committee. Testimony was received from Veasley, Stuart Barnes and Des Moines Chief of Police Judy Bradshaw ("Bradshaw"). Post-hearing briefs were submitted by Veasley and the City of Des Moines, respectively on January 22, 2014. Bradshaw sits as the Chair of the Board of Directors for the System. She has recused herself from all deliberations and considerations associated with this matter.

FINDINGS OF FACT

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

1. Veasley was born on March 9, 1959 and commenced service as a police officer for the City of Des Moines on or about October 4, 1984. He advanced through the ranks to become a Sergeant.
2. Veasley applied for and was granted injury leave in September of 2012.
3. Veasley suffered a demotion to Senior Police Officer and conversion of nine (9) days of injury leave to "W" time on July 22, 2013, after Chief Bradshaw, in consultation

with Veasley's supervisors and the Chief's Guidance Committee, determined that Veasley had violated its injury leave policy by refereeing basketball games while on disability status. Chief Bradshaw testified that the majority of the Chief's Guidance Committee recommended termination.

4. On July 23, 2013, Veasley appealed the department's decision to the Civil Service Commission.
5. On August 30, 2013, Veasley completed an application for disability benefits based upon an injury he sustained in 1986.
6. On September 28, 2013, Des Moines Police Chief Judy Bradshaw checked and signed the Certificate of Execution indicating that Veasley was not a "member in good standing" according to the definition provided on the cover page of th[e] application.
7. On October 2, 2013, Dan Cassady, Deputy Director of the System, having considered Veasley's application for disability benefits, issued a letter to Veasley denying the same because he is not a member in good standing.
8. At the time of the January 8, 2014 Disability Benefits hearing, the Civil Service Commission had not yet heard Veasley's appeal.
9. At the January 8, 2014 hearing, the System offered various records at Exhibits 1, 3 and 4, which included Veasley's Application for Disability, incident reports and personnel documents and Decision of System on Disability. MFPRSI's Exhibits 1 and 4 constitute the administrative record and were received into evidence without objection.
10. At the January 8, 2014 hearing, Veasley offered various records at Exhibits 1-3, which included a settlement and withdrawal between the Des Moines Police Bargaining Unit Association and the City of Des Moines dated January 17, 2013, Disciplinary documents from the City of Des Moines to Veasley dated June 5, 2013, and Disciplinary documents from the City of Des Moines to Veasley dated July 22, 2013. Veasley's Exhibits 1-3 were received into evidence without objection.
11. At the January 8, 2014 hearing, the City of Des Moines offered various records at Exhibits 1-2, which included a Letter of appeal filed by Veasley on July 23, 2013 and Specification of Charges and Motion to Dismiss. The City's Exhibits 1-2 were received into evidence without objection.

CONCLUSIONS OF LAW

1. As a preliminary matter, we must first determine whether MFPRSI's Exhibit 3 should be admitted into evidence. The City objected to the inclusion of certain documentation designated as MFPRSI's Exhibit 3 on the grounds that it is not relevant to the matter before the Committee. The Committee took the objection under advisement at the time of hearing. The Committee has reviewed the exhibit and has

determined that it is indeed relevant to the instant matter and is part of the administrative record. The Committee hereby determines that Exhibit 3 is admitted.

2. We must also provide a ruling on two objections made by Veasley to testimony offered at the January 8, 2014 hearing. Veasley objected to a question posed by the City to Chief Bradshaw regarding whether there are times when an employee could be permitted to offer additional evidence for the Chief's consideration. Veasley contends this line of questioning was speculative in nature. Veasley's objection was taken under advisement and it is hereby determined that the objection is overruled as relevant to the process followed by the City when imposing disciplinary action. Veasley also objected to a question posed by the City to Chief Bradshaw regarding the results of a civil service hearing for another employee who was working while on disability. Veasley's objection was taken under advisement at the time of the hearing and is hereby determined that the objection is overruled as the treatment of others is relevant to the ultimate determination herein – whether Veasley is a member in good standing eligible for disability benefits.

3. Iowa Code §411.6(5)(a) states:

Upon application to the system, of a member in good standing or of the chief of the police or fire departments, respectively, any member in good standing 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 member should be retired.

4. Iowa Code § 411.1(14) states:

"Member in good standing" means a member in service who is not subject to removal by the employing city of the member pursuant to section 400.18 or 400.19, or other comparable process, and who is not the subject of an investigation that could lead to such removal. A person who is restored to active service for purposes of applying for a pension under this chapter is not a member in good standing.

5. Iowa Code §400.18 states:

1. A person holding civil service rights as provided in this chapter shall not be removed, demoted, or suspended arbitrarily, except as otherwise provided in this chapter, but may be removed, demoted, or suspended after a hearing by a majority vote of the civil service commission, for neglect of duty, disobedience, misconduct, or failure to properly perform the person's duties. 2. The party alleging neglect of duty, disobedience, misconduct, or

failure to properly perform a duty shall have the burden of proof. 3. A person subject to a hearing has the right to be represented by counsel at the person's expense or by the person's authorized collective bargaining representative.

6. Iowa Code §400.19 states:

The person having the appointing power as provided in this chapter, or the chief of police or chief of the fire department, may peremptorily suspend, demote, or discharge a subordinate then under the person's or chiefs direction for neglect of duty, disobedience of orders, misconduct, or failure to properly perform the subordinate's duties.

7. Iowa Code §400.27 states, "The civil service commission has jurisdiction to hear and determine matters involving the rights of civil service employees under this chapter, and may alter, modify, or reverse any case on its merits." See, Sieg v. Civil Service Commission of the City of West Des Moines, 342 N.W.2d 824 (1983) (noting that the civil service commission modified the department's decision to suspend Sieg and instead ordered his termination).
8. A decision of the civil service commission may be appealed *de novo* to the district court and that further or different disciplinary action may be imposed. Iowa Code §400.27. The Supreme Court of Iowa in Dolan v. Civil Service Commission of the City of Davenport, 634 N.W.2d 657, 662 (Iowa 2001) noted:

Iowa Code section 400.27 provides for a 'trial de novo' in the district court from an appeal of a commission decision....[i]n a trial de novo, the court hearing the case anew is permitted to receive evidence additional to that presented by the commission. Thus, a statute providing for a "trial de novo" in the district court contemplates a trial in the general meaning of the term, not merely a review of the agency proceeding. A trial de novo would also normally permit the district court to select the same remedies that were before the commission.

Id. At 662 (internal citations omitted.). In Dolan, the Iowa Supreme Court held that the employee should be terminated, despite the lower court's order of reinstatement. Id.

9. It is undisputed that Veasley was disciplined for misconduct, that he elected to appeal the decision to the Des Moines Civil Service Commission and that his appeal is pending.
10. The Civil Service Commission has the ability to alter or modify the department's decision under Iowa Code §400.27. The district court on appeal has the ability to modify the Civil Service Commission's finding in a trial de novo as provided for by the statute. Iowa Code §400.27.

11. Veasley is subject to removal by "other comparable process" while his appeal to the Des Moines Civil Service Commission is pending.
12. Veasley has not established that he is a "member in good standing" upon application for benefits under Iowa Code §411.1(14) and §411.6. He is therefore not entitled to disability benefits from the System.
13. Although Iowa Code §411.6(5)(d) provides for waiver of the member in good standing requirement, stating, "The requirement that a member be in good standing to apply for and receive a benefit under this subsection may be waived for good cause as determined by the board. The burden of establishing good cause is on the member," The facts weigh against a finding that good cause exists to waive the "member in good standing" requirement under Iowa Code §411.6(5)(d).

DECISION

Kervin Veasley is not and was not at the time of application for disability benefits a "member in good standing" under Iowa Code §411.1(14) as required by Iowa Code §411.6(5)(a) for consideration for the receipt of benefits. Good cause does not exist to support a waiver of the "member in good standing" requirement under Iowa Code §411.6(5)(d).

Dated this 27th day of February, 2014.



Mary Bilden, Chair
Disability Appeals Committee

Original filed.
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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 _____ day of February, 2014.

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

Signature _____

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