

JUL 20 2015

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

IN THE MATTER OF:

ROBERT J. HANSEN,

Applicant.

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DECISION

Iowa Code § 411.6(5)(2015)

STATEMENT OF THE CASE

Robert J. Hansen ("Hansen") filed his application for a disability pension on or about October 22, 2014. On January 26, 2015, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Hansen's disability. An initial decision denying Hansen's application for a disability pension was made by the System on February 17, 2015. Hansen filed a timely appeal challenging the denial. A hearing was held before the Disability Appeals Committee of the Board (comprised of Eric Court, Duane Pitcher, and Mary Bilden, chair) on May 20, 2015 at the offices of the System. Hansen appeared in person. He was not represented by counsel. Attorney Connie Anstay appeared for the City of Sioux City, in support of Hansen's application. Daniel Cassady, Deputy Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Hansen and from Chief Douglas Young of the Sioux City Police Department. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Hansen was born on August 8, 1962 and commenced service as a police officer for the City of Sioux City on April 12, 1990. He is currently continuing to work, but is on light duty due to back and knee problems.
2. The record reflects multiple job-related injuries, including a 1996 fall of approximately 7-8 feet after which Hansen had difficulty turning his neck, a 1997 fall during a foot chase in which he twisted his right knee, a 1997 motor-vehicle collision causing low back pain, and a 2002 incident in which he hyperextended his knee while assisting in the arrest of a resisting suspect. In a 2002 non-work related incident, he hit a deer while riding a motorcycle, which resulted in temporary pain in the left hip and left rib cage.

3. On January 26, 2015, the System's Medical Board opined that Hansen is physically incapacitated from performing the functional demands of his position, and that "this incapacity may or may not be permanent," citing a lack of objective evidence. It is worthy of note that the two reviewing Medical Board doctors initially disagreed in their assessment of this case. Dr. Laurence Fuortes, an occupational medicine specialist, stated in his clinical note that Hansen was unable to perform all the job duties of a law enforcement officer and further stated, "It is also my opinion to a reasonable degree of medical certainty that re-evaluation in one year is not warranted, as his condition is not expected to improve." On the other hand, Dr. Joseph Chen, an orthopedic surgeon, stated in his clinical note that due to a lack of recent imaging studies, he was unable to state within a reasonable degree of medical certainty that Hansen was unable to perform the regular duties of a police officer. He then recommended that Hansen undergo medical evaluation and attempts at conservative treatment for his knee and back pain. The close of the joint opinion stated: "The medical board would like to clarify that they are in agreement that Mr. Hansen would be best served by a trial of intensive physical therapy and rehabilitation attempts and subsequently be medically reevaluated in one year's time."
4. On February 17, 2015, the System denied Hansen's application, based on the lack of evidence that Hansen's incapacity would last 12 months.
5. Hansen filed his appeal on March 5, 2015 and submitted x-rays of his knees and lumbar spine taken on February 25, 2015, along with the related notes from his attending physician, Rodney Cassens, M.D.
6. Prior to convening the Appeals Committee, the System submitted the medical evidence Hansen provided with his appeal to the Medical Board for its review of the permanence issue in light of the new evidence.
7. On March 17, 2015, the Medical Board (Drs. Fuortes and Chen) replied as follows:

The examiners did not find a basis for changing their opinions. The medical board still certifies that the member is physically incapacitated from performance of the functional demands of this position as described to the board by the System. This incapacity may or may not be permanent.
8. Hansen testified that he has become unable to perform the essential duties of his job as a police officer because his knees buckle and he can't really run anymore, and he has back pain all of the time. He further testified that this has caused him to be concerned for the safety of himself and his fellow officers.
9. Chief Young testified that he has known Hansen for 28 years and that he is a good officer who has never had any issues regarding malingering, etc. He further testified that Hansen was put on light duty based on information received from the City's workers compensation doctor and that the Department has no permanent light duty assignments.

10. Hansen offered History & Physical Report #1 from his personal physician, Kurt Rosenkrans, M.D. dated April 10 2015. It was admitted into evidence as Member's Exhibit #1. Dr. Rosenkrans' assessment included knee pain, bilateral; degenerative arthritis of the knee, bilateral; and low back pain. He noted that he had reviewed current and prior x-rays and stated:

Clearly he has evidence for end-stage degenerative changes in his knee that is evident on the standing films done today. He also has significant changes in his lumbar spine with facet arthropathy. This appears non-surgical. We did discuss options for management. We discussed use of Tylenol and NSAIDS for pain control. We discussed that this is progressive in nature and likely there is not anything that he can do such as physical therapy to repair the damage that has already been done.

11. Pursuant to Rule 6.20(2)(c), the Committee requested the Medical Board to again review this matter, in light of the new medical evidence submitted by Hansen at the disability appeal hearing. The Medical Board replied on June 10, 2015, stating:

The examiners did not find a basis for changing their opinions. The medical board still certifies that the member is physically incapacitated from performance of the functional demands of this position as described to the board by the System. This incapacity may or may not be permanent depending on response to intensive physical therapy. Without physical therapy this incapacity is not likely to improve rapidly and is likely to persist for at least twelve months.

CONCLUSIONS OF LAW

1. Iowa Code section 411.6(5) states (in relevant part) as follows (emphasis added):

5. *Accidental disability benefit.*

- a. 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 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 medical condition shall be deemed to have been known to exist on the date that membership commenced if the medical condition is reflected in any record

or document completed or obtained in accordance with the system's medical protocols pursuant to section 400.8, or in any other record or document obtained pursuant to an application for disability benefits from the system, if such record or document existed prior to the date 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. Rule 9.2(3) of the System's Administrative rules states:

9.2(3) *Duration Requirements.*

- a. 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.

- b. A "temporary" disability is a disability, as defined in the statute, which is not expected to be permanent, as defined in a, above.

3. It is undisputed that Hansen's back and knee injuries were incurred in or aggravated by the actual performance of duty at some definite time and place. The issue is whether his inability to perform the essential functions of his job as a police officer is "permanent" (i.e. whether it will be of at least 12 months' duration).
4. The Medical Board has opined that the incapacity may or may not be permanent, depending on Hansen's response to "intensive physical therapy," and that without physical therapy, it is expected to persist for at least 12 months. Hansen testified that he has not pursued physical therapy because he has been advised by his doctor that his back and knees were "shot" and aren't "rehabable." This is consistent with the report of Dr. Rosenkrans. (See ¶ 10 of the Findings of Fact, above.) Furthermore, although no report from the City's workers' comp doctor was submitted, the City reported that no physical therapy was directed.
5. It has been more than 8 months since Hansen filed his disability application with the System and nearly 5 months since the Medical Board's initial opinion in this matter. It is disputed whether Hansen's condition will improve with physical therapy, but undisputed that he is currently unable to perform the duties of a police officer and that he will remain unable to do so absent physical therapy. Hansen has reasonably chosen not to undergo physical therapy based on the opinion of his treating physician.

DECISION

The appeal for an accidental disability pension on behalf of Robert J. Hansen under chapter 411 is hereby granted.

Dated this 15 day of July, 2015.

Mary Bilden, Chair
Mary Bilden, 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 21st day of July, 2015.

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

Signature

Sandra A. Wells