

***MUNICIPAL FIRE & POLICE
RETIREMENT SYSTEM OF IOWA***

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October 6, 2016

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

RE: Kervin Veasley - Appeal Decision

Dear Ms. Moser:

The Board of Trustees of the Municipal Fire and Police Retirement System of Iowa has acted to ratify the proposed finding of facts and conclusion of law of the Appeals Committee in the referenced case. Said action was taken by the Board of Trustees in a regularly scheduled meeting, dated October 6, 2016.

Said action denies the appeal of the City of Des Moines. Therefore, Mr. Veasley will continue accidental disability benefits.

Sincerely,



Daniel Cassady
Deputy Director

DC:jh

Enclosures

cc: Charles Gribble
Elizabeth Coon

BOARD OF TRUSTEES
OF THE
MUNICIPAL FIRE AND POLICE RETIREMENT
SYSTEM OF IOWA

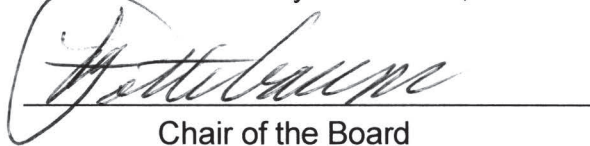
The Board of Trustees of the Municipal Fire and Police Retirement System of Iowa, based on an appeal from the decisions of or determinations by the Deputy Director of the Municipal Fire and Police Retirement System of Iowa, and having reviewed the proposed decision of law of the Appeals Committee hereby ratifies the proposed findings of fact and conclusions of law of the Appeals Committee in the following cases:

Kervin Veasley

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the proposed Decision be accepted, and is the final decision of the System.

Dated this 6th day of October, 2016


Chair of the Board

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

IN THE MATTER OF:

KERVIN R. VEASLEY,

Applicant.

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DECISION

Iowa Code § 411.6(3) (2016) and
Iowa Code § 411.6(5) (2016)

STATEMENT OF THE CASE

Kervin R. Veasley ("Veasley") filed his application for accidental disability retirement benefits on or about October 5, 2015. Des Moines Chief of Police, Dana Wingert signed Veasley's application certifying that all applicable records from the city's files were included with the application or mailed separately to the system, and that Veasley was a member in good standing. On January 22, 2016, the Municipal Fire and Police Retirement System of Iowa ("MFPRSI" or the "System") issued a decision awarding accidental disability pension benefits due to Veasley's headaches. Payments were to begin effective January 23, 2016.

It is from this decision that the City of Des Moines appeals. On February 12, 2016, the city of Des Moines filed an appeal contesting the accidental nature of the benefits awarded. A hearing was held before the Disability Appeals Committee of the Board ("Committee"), comprised of Mary Bilden, Michelle Weidner, and Marty Pottebaum, on August 26, 2016 at the offices of the system. Veasley appeared and was represented by attorney Charles Gribble. Attorney Carol Moser and Michelle Mackel-Wiederanders appeared on behalf of the City of Des Moines. The City's Representative, Allan Tunks was also in attendance. Daniel Cassady, deputy director appeared on behalf of the System. Elizabeth Coonan was present as counsel to the Committee. Testimony was received from: Steven Adelman, MD; David Murillo and Kervin Veasley.

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 October 4, 1984.
2. Veasley filed for an accidental disability pension from the System, citing headaches.

3. Veasley was a member in good standing at the time he submitted his October 5, 2015 Application.

4. On December 28, 2015, the System's Medical Board opined:

Mr. Kervin Veasley is a 56-year-old police officer with a history of chronic headaches. In the opinions of the evaluating physicians he is unable to perform the full duties of a police officer as a consequence of his recurring moderate-severe headaches. The medical board, after medical examination of the member, certifies that it is the opinion of the board 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 is likely to be permanent based on the impression that it will be of at least one year's duration.

5. On January 22, 2016, the System awarded an accidental disability pension due to Veasley's headaches.
6. The City of Des Moines filed an appeal on February 12, 2016, challenging the award of an accidental, rather than ordinary, disability pension.
7. At the August 26, 2016 hearing, Veasley testified he was involved in an on-duty automobile accident on October 19, 1986, during which he hit his head, sustained a laceration to the head and sustained various minor injuries. The injury was reported to the City.
8. Veasley's testimony revealed that the City treated Veasley's absences relating to his headaches as injury leave time due to an on-the-job accident and the medical costs associated with his treatment were paid by the City.
9. Veasley treated with several medical providers for headaches following the accident until 1995. Veasley testified that from 1995-2012, while he did not seek medical treatment for his headaches, he continued to suffer from them and continued to use medication. Veasley resumed treatment for his headaches in 2012 and continued treating until the present. (See generally, Exhibit 3).
10. Veasley's doctors referred to his headaches as post-traumatic in nature and reported his history of severe headaches occurring since the 1986 motor vehicle accident. (See, e.g. Exhibit 3, p. 92, 122, 129, 133, 154).
11. Veasley testified that he did not experience headaches before the 1986 accident. (See also, Exhibit 3-155). However, post-1986 accident, Veasley reported headaches approximately 2-4 times per week.
12. Dr. Steven Adelman was hired by the City to evaluate Veasley's condition. On January 4, 2013, Dr. Adelman saw Dr. Veasley and stated that "it is somewhat unusual for someone to have debilitating headaches 25 years after an accident". (Exhibit 3, p. 40). At the hearing, Dr. Adelman testified that Veasley's current headaches were not causally connected to the 1986 accident. He did not opine as to what caused Veasley's headaches.

13. Veasley testified that he did not suffer from another traumatic incident following the 1986 accident. Dr. Adelman also stated that he found no evidence that Veasley suffered another traumatic incident after 1986.

CONCLUSIONS OF LAW

1. Iowa Code Section 411.6(3) states:

3. *Ordinary disability retirement benefit.* 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 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. The member-in-good-standing requirement of this subsection may be waived for good cause as determined by the board. The burden of establishing good cause is on the member.

2. Iowa code section 411.6(5)(a) states, in pertinent part, as follows:

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.

3. It is undisputed that Veasley is incapacitated for further performance of duty, that the incapacity is likely to be "permanent" as defined in the System's Administrative Rules and that Veasley is entitled to disability retirement benefits under chapter 411. The issue presented to the panel is whether he is entitled to accidental disability retirement benefits under Chapter 411.6(5)(a).
4. Section 411.6(5)(a) can essentially be broken down into the following three elements: 1) a total and permanent incapacitation for duty caused by an injury; 2) the disabling injury occurred in the actual performance of duty; and 3) the injury occurred at some definite time and place. Branson v. Municipal Fire and Police Retirement System of Iowa, 591 N.W.2d 193, 197 (Iowa 1999).
5. The greater weight of the credible evidence establishes that Veasley's headaches are causally related to the on the 1986 job accident, have caused him a total and permanent incapacitation for duty, that the headaches resulted from the actual performance of duty and occurred at a definite time and place.
6. Because Veasley's incapacity for duty is the result of his job-related headache condition, he is entitled to an accidental disability pension from the System.

DECISION

The city's appeal for an ordinary rather than accidental disability pension for Kervin R. Veasley under chapter 411 is hereby denied.

Dated this ____ day of _____, 2016

Marty Pottebaum, Chair
Disability Appeals Committee

Copies to:

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Carol Moser
Michelle Mackel-Wiederanders
City of Des Moines
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Des Moines, Iowa 50309

Daniel Cassady, Deputy Director

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 7th day of October, 2016.

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

Signature Jill Hagg

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