

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

IN THE MATTER OF:

BRIAN LEE O'LOUGHLIN,

Member.

:
:
:
:
:
:
:

DECISION

Iowa Code § 411.6(3) (2015)

STATEMENT OF THE CASE

The City of Ames ("City") filed an application for an ordinary disability pension on behalf of Brian Lee O'Loughlin ("O'Loughlin") on or about April 21, 2016. On June 14, 2016, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding O'Loughlin's disability. An initial decision denying an ordinary disability pension was made by the System on July 18, 2016. The City filed a timely appeal challenging the denial. A hearing was held before the Disability Appeals Committee of the Board (comprised of Mary Bilden, Kay Cmelik, and JuneAnne Gaeta, chair) on November 16, 2016 at the offices of the System. O'Loughlin appeared and was represented by attorneys Charles Gribble and Chris Stewart. Assistant City Attorney Mark Lambert appeared for the City of Ames. Daniel Cassady, Deputy Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from O'Loughlin, Ames Fire Chief Shawn Bayouth and Charles Mooney, M.D. Devon Goetz, M.D., testified by deposition. Both parties waived post-hearing briefs.

FINDINGS OF FACT

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

1. Brian O'Loughlin was born on July 4, 1965. He commenced employment with the City of Ames as a firefighter on or about July 1, 2001. His current rank is lieutenant.
2. On June 14, 2016, the System's Medical Board opined that "the member is physically able to complete the functional demands of this position as described to the board by the System." The members of the medical board who evaluated O'Loughlin were Joseph Chen, M.D. an orthopaedic surgeon, and Fredric Gerr, M.D., an occupational medicine specialist. In his report, Dr. Gerr stated that in the absence of certain post-operative complications, which O'Loughlin had not experienced, "a total hip replacement does not impair the conduct of routine firefighting activities and Mr.

O'Loughlin is currently fully able to perform all such firefighting duties on a daily basis." Dr. Chen noted that the risk of post-operative joint dislocation or fracture is "quite small" and opined that such concerns should not impair O'Loughlin's ability to perform firefighting duties on a daily basis "and do not represent a serious health or safety concern."

3. O'Loughlin began experiencing pain in the hip and back in 2014. He was diagnosed with severe osteoarthritis of the right hip and was initially treated with corticosteroid injections, which were helpful for a short time.
4. On December 30, 2015, O'Loughlin underwent right total hip replacement. The surgery was performed at Iowa Methodist Hospital in West Des Moines by Devon Goetz, M.D.
5. Prior to surgery, O'Loughlin gave Dr. Goetz a list of his essential job functions as a firefighter and asked whether he would be able to return to work after the recommended total hip replacement. In a letter dated November 10, 2015, Dr. Goetz noted that he had reviewed the job duties and stated: "I think that if you are able to get through the procedure with no complications or problems then you should be able to do all the essential job tasks. I would predict somewhere around 2-1/2 months postoperative before you are released without restrictions."
6. On February 25, 2016, Dr. Goetz examined O'Loughlin and signed a "Fitness to Return to Work Certification" releasing O'Loughlin to return to work without restrictions on March 30, 2016.
7. O'Loughlin provided the Fitness to Return to Work Certification to the City and was referred to Charles Mooney, M.D., the occupational medicine physician for the City of Ames, for a fitness for duty exam.
8. Doctor Mooney conducted the fitness for duty examination on O'Loughlin on March 30, 2016. He testified that the examination lasted around ten minutes. In his report of the examination, he gave his assessment, in part, as follows: "Status post right hip replacement with overall good outcome in an individual who is otherwise physically fit and of appropriate height and weight. It is my opinion that Mr. O'Loughlin is not fit to return to the duties of a firefighter. It is my opinion that although he is in otherwise excellent physical health, he should be limited to a maximum lift of 50 pounds, he should not do open rung ladder climbing, he should not do angled roof walking or carrying greater than 50 pounds." Dr. Mooney testified that, in his opinion, no firefighter who has had a hip replacement should be returned to duty. He further noted that, while problems with hip replacements are a rare occurrence in everyday life, there is no data regarding such occurrences under extreme conditions such as firefighting. He testified that he had read the reports of the medical board and of Dr. Goetz, and that they did not change his opinion.
9. Chief Bayouth testified that he followed standard department procedures in sending O'Loughlin for a fitness for duty exam. He described O'Loughlin as a "fantastic

employee” and testified that his hip replacement is the only reason that he has not been allowed to return to duty with the fire department. When asked if he felt he could override Dr. Mooney’s recommendation, the Chief replied “absolutely not.”

10. Dr. Goetz, O’Loughlin’s surgeon, testified by deposition that he disagrees with Dr. Mooney’s restrictions and his opinion that O’Loughlin cannot safely return to full duty with the fire department for several reasons, and noted that the current “nationwide standard” is to allow people to return to physically active jobs after such surgery. He also described improvements in surgical outcomes over the years. When asked whether he could state, to a reasonable degree of medical certainty, that O’Loughlin “can safely return to his work as a firefighter and perform the essential functions of his job,” Dr. Goetz answered in the affirmative.
11. O’Loughlin testified that his hip replacement surgery was performed on December 30, 2015, and that was discharged from the hospital the next day. He testified that he has had an excellent result and recovery from his surgery and has been “ready, willing and able” to return to work since he was released to do so by Dr. Goetz effective March 30. He testified that he is currently age 51 and would like to work another 7 – 10 years because he feels good and enjoys his job and helping people.

CONCLUSIONS OF LAW

1. Iowa Code § 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 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. This matter comes down to a disagreement between physicians regarding O’Loughlin’s ability to perform the duties of a firefighter following hip replacement

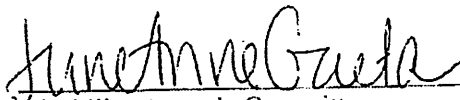
surgery. Dr. Goetz, the treating surgeon in this case, opined based on his assessment of O'Loughlin's medical condition and firefighter job duties that he is fully capable of performing those duties with no restrictions. Dr. Gerr and Dr. Chen of the System's Medical Board concurred. Dr. Mooney, the occupational medicine physician for the City, offered the only opinion to the contrary.

3. The Committee finds the opinions of O'Loughlin's treating physician and the System's Medical Board most persuasive in this matter.
4. O'Loughlin has established that he is able to perform the full duties of a firefighter.
5. In accordance with § 411.6(3), he is entitled to be restored to active service in the same position he held immediately prior to the application for disability benefits.

DECISION

The appeal by the City of Ames for a disability pension on behalf of Brian Lee O'Loughlin under chapter 411 is hereby denied.

Dated this 17 day of November, 2016.

 Chair
Disability Appeals Committee

Copies to:

Charles Gribble and Chris Stewart
Parrish Kruidenier
2910 Grand Ave
Des Moines, IA 50312

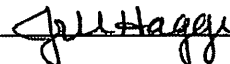
Mark Lambert
Assistant City Attorney
515 Clark Avenue
P.O. Box 811
Ames, Iowa 50010

Daniel Cassady, Deputy Director
Municipal Fire and Police Retirement
System of Iowa
7155 Lake Drive, Suite 201
West Des Moines, IA 50266

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 18 day of November, 2016.

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

Signature 

Alice E. Helle
Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.
666 Grand Suite 2000
Des Moines, IA 50309