

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

IN THE MATTER OF:

ROBERT G. HAMILTON,

Applicant.

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DECISION

Iowa Code § 411.6(3) (2017) and
Iowa Code § 411.6(5) (2017)

STATEMENT OF THE CASE

Robert G. Hamilton ("Hamilton") submitted his application for an accidental disability pension on or about February 13, 2017. On May 1, 2017, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Hamilton's disability. An initial decision awarding an accidental disability pension was made by the System on June 22, 2017, due to the heart and lung presumption. Hamilton simultaneously applied for an accidental disability pension due to low back, bilateral knees and right wrist cyst which was denied by the System in that same communication. The City of Des Moines filed a timely appeal challenging the award of an accidental disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of June Anne Gaeta, chair, Michelle Weidner, and Mary Bilden) on October 4, 2017, at the offices of the System. Hamilton appeared and was represented by attorney Charles Gribble and attorney Christopher Stewart. The City of Des Moines appeared and was represented by attorney Michelle Mackel-Wideranders and attorney Lawrence Dempsey. Daniel Cassady, deputy director appeared on behalf of the System. Elizabeth Coonan was present as counsel to the Committee. Live testimony was received from Robert Hamilton. Deposition testimony was received from Dr. Jason Mohr, DO. The parties filed briefs.

FINDINGS OF FACT

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

1. Hamilton commenced service as a Firefighter for the City of Des Moines on or about January 22, 1990. He rose to the rank of Firefighter in January of 1991. He was promoted to the position of Fire Medic in the fall of 1991 and was then promoted to Senior Fire Medic in 1993. He held this position for

approximately twenty (20) years until 2013 when he elected to return to the Firefighter position. He testified he gave up the Senior Fire Medic position due to stress. (Hearing Testimony "Tr." p. 13-14).

2. According to the System's Medical Board, Hamilton has a history of diabetes, hypertension, back pain, knee pain, pulmonary embolism/lung disease, heart disease and a right wrist ganglion cyst. (System Exhibit 5.1-5.2). Hamilton also testified he had other on the job injuries. (Tr. p. 16).
3. On March 13, 2016, Hamilton reported he was working around his home and experienced shortness of breath. (Tr. p. 16). He contacted his physician's office on March 14, 2016, and was seen that day by a physician's assistant who referred him to a cardiologist. (Tr. p. 17).
4. On March 18, 2016, he again experienced shortness of breath and was seen in the emergency room. (Tr. p. 18). He saw Dr. Lentz who diagnosed him with "pulmonary embolism, bilateral." (System Ex. 4, p. 101).
5. On May 17, 2016, Hamilton underwent an echocardiogram which revealed a mildly dilated right ventricle. (System Ex. 4, p. 524). He underwent the same diagnostic on October 14, 2016, which revealed "No significant change in sequela of chronic pulmonary thromboembolism." (System Ex. 4, p. 522).
6. Hamilton also participated in physical therapy from March 2016-December 2016 (Tr. P. 19).
7. Hamilton attempted to return to work. (Tr. p. 19). He met with the City on December 22, 2016 to discuss returning to work. (Tr. p. 19). He was ultimately not able to return to work. (Tr. p. 20).
8. On April 26, 2017, Hamilton was seen at the University of Iowa Hospitals and Clinics by Drs. Gerr and Chen on April 27, 2017 at the direction of the System. (System Ex. 5.1-2).
9. On May 1, 2017, Drs. Gerr and Chen opined that Hamilton can perform firefighting duties while on anti-coagulant medication at this time but doing so would present a substantial risk of major bleeding event. (System Ex. 5.2). They indicated employment was not advisable but stated the fire department was to make that call. (System Ex. 5.2). They also noted that his heart disease, lung disease, knees and right wrist cyst did not limit him from performing work duties. (System Ex. 5.2).
10. On May 1, 2017, Hamilton was again hospitalized for pulmonary embolism. (Member Ex. 12 & 13); (Tr. p. 24). He spent six days in the hospital. (Tr. p. 24). While in the hospital, he treated with Drs. Mohr, McCracken and Hughes. He was released from care on May 6, 2017. (Tr. p. 24-25).

11. Hamilton contacted System the week after he was released and was told that Iowa City wanted to look at the new medical records. (Tr. p. 25). He was granted a 10 day extension to provide documentation to Iowa City. (Tr. p. 25-26).
12. On May 25, 2017, Hamilton underwent an EKG which showed that his right ventricle was mildly to moderately dilated. (System Ex. 13). Dr. Lovell diagnosed him with pulmonary embolism, shortness of breath, hypertension and chronic right-sided congestive heart failure. (System Ex. 12, p. 3).
13. On May 30, 2017, Hamilton was seen by Dr. Mohr, who diagnosed Hamilton with chronic right-sided congestive heart failure due to chronic thromboembolic pulmonary hypertension. (System Ex. 11, p. 3); (Tr. p. 28).
14. On June 1, 2017, Hamilton submitted his records to the System for resubmission to Iowa City. (Tr. p. 26).
15. On June 2, 2017, Dr. Lovell indicated that Hamilton has a bilateral pulmonary embolism which has caused shortness of breath, decreased exercise tolerance and right-sided congestive heart failure. He needs to be on lifetime anti-coagulants and Dr. Lovell was unable to determine the severity or duration. (System Ex. 6).
16. On June 16, 2017, after review of the additional documentation submitted by Hamilton concerning his relapse, Dr. Gerr indicated:

After review of the new medical records for Robert G. Hamilton, I certify that it is my opinion that the applicant is unable to further perform the duties of his position as described in the application provided by MFPRSI as a consequence of his heart disease and lung disease. As I previously noted, anticoagulant treatment itself does not necessarily prevent a member from performing the duties of a firefighter at any given moment, although it does increase the risk of future bleeding episodes to an extent that may not be prudent for a firefighter.

Mr. Hamilton is presently incapacitated from the performance of the functional demands of the position as described 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.

(System Ex. 5, p. 13-14).

17. On June 22, 2017, the System awarded Hamilton with an accidental disability pension. (System Ex. 8).

18. Dr. Mohr testified at the hearing via deposition that Hamilton has heart disease. (Tr. p. 42). He testified that Hamilton has an abnormal heart. (Tr. p. 46-47). Dr. Mohr diagnosed Hamilton with "chronic thromboembolic pulmonary hypertension, which is certainly considered a disease of the heart, specifically the right side of the heart. That is due to prior pulmonary emboli." (Tr. p. 48). Dr. Mohr also stated that Hamilton's disease is "pulmonary and it does affect the lungs, the manifestations of which are a lot more prominent on cardiac function than pulmonary function." (Tr. p. 42).

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 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 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. 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) states (in relevant 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.

* * * * *

c. (1) Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases.

(2) Disease under this subsection shall also mean cancer or infectious disease and shall be presumed to have been contracted while on active duty as a result of that duty.

(3) However, if a person's membership in the system first commenced on or after July 1, 1992, and the heart disease, disease of the lungs or respiratory tract, cancer, or infectious disease would not exist, but for a medical condition that was known to exist on the date that membership commenced, the presumption established in this paragraph "c" shall not apply.

3. It is undisputed that Hamilton is a member in good standing and is incapacitated from the performance of duty, and that 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). He is therefore entitled to a disability pension from the System. Thus the issue before this Committee is whether Mr. Hamilton is entitled to an ordinary or accidental disability pension.

4. A disabled member is entitled to an accidental disability pension under § 411.6(5) if his disability is "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." Hamilton does not claim an injury. Instead, he argues that he has a "disease" which, as a matter of law, brings him within § 411.6(5).
5. The term "disease" is defined to include "heart disease or any disease of the lungs or respiratory tract." Iowa Code § 411.6(5)(c). A member disabled by such a "disease" is not required to prove job-relatedness or that the disability was incurred at some definite time and place. The statute presumes those requirements to be met. *Id.*
6. The Iowa Supreme Court in *Benson v. Fort Dodge Police Pension Bd. of Trustees* held that the statutory definition of disease is exclusive. *Benson v. Fort Dodge Police Pension Bd. of Trustees*, 312 N.W. 2d 548, 551 (Iowa 1981). If proven, the presumption is conclusive. *Id.* At 551. The burden is "only to show the existence of the disease, not that it was incurred in or aggravated by the actual performance of duty at some definite time and place." *Reisner v. Board of Trustees of the Fire Retirement System of Dubuque*, 203 N.W.2d 812, 815 (Iowa 1973).
7. Hamilton was diagnosed with heart disease (Tr. P. 42), chronic right-sided congestive heart failure due to chronic thromboembolic pulmonary hypertension (Tr. P. 28) and pulmonary embolism. (System Ex. 4, p. 101; System Ex.12). Because his conditions constitute diseases under Iowa Code § 411.6(5)(c), Hamilton is entitled to the presumption.
8. Hamilton's situation is somewhat similar in nature to *Butler v. Pension Board of Police Dept.*, 259 Iowa 1028, 147 N.W.2d (1966). Butler was found to be disabled based on a diagnosis of "hypertensive and coronary artery heart disease with high blood pressure." The Iowa Supreme Court held that Butler was entitled to an accidental disability pension because her disabling condition fell within the heart-lung presumption. The Court later, in *Benson*, distinguished the *Butler* case, noting that Butler, unlike Benson had "in addition to hypertension, symptoms and signs of heart disease secondary to high blood pressure and coronary artery heart disease" thereby establishing that the presumption may apply in situations where a combination of diagnoses are at issue. *Benson*, 312 N.W.2d at 551.
9. The City avers that Hamilton's heart disease was caused by something other than the performance of duty, namely his blood clotting problem

(hypercoagulable state) and his pulmonary embolism, thereby rebutting the presumption. However, Dr. Mohr clearly states that Hamilton's disease is "pulmonary and it does affect the lungs, the manifestations of which are a lot more prominent on cardiac function than pulmonary function." (Tr. P. 42). As such, the Committee finds that the presumption has not been adequately rebutted.

10. Iowa Code § 411.6(5)(c) provides a presumption that a disabling disease of the heart, lung or respiratory tract is job-related. It does not provide a presumption of disability. See, *City of Sioux City, Iowa v. Board of Trustees of Fire Retirement System of City of Sioux City*, 348 N.W.2d 643, 644 (Iowa Ct. App. 1984). As noted *supra*, the Medical Board described Hamilton's condition as limiting his ability to work. (System Ex. 5, p. 13-14)
11. The record evidence supports the finding that Hamilton's inability to perform as a firefighter is the result of a disease of the heart and or lungs. Since his conditions qualify as a "disease" as defined in § 411.6(5)(c), the presumption has not been adequately rebutted and Hamilton is therefore entitled to an accidental disability pension.

DECISION

The appeal of the System's award of an accidental disability pension to Robert Hamilton is denied. The System's initial award of an accidental disability pension under Iowa Code chapter 411 is hereby affirmed.

Dated this 16 day of November, 2017.

 _____, Chair
Disability Appeals Committee

Copies to:

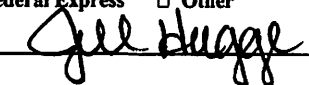
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CERTIFICATE OF SERVICE

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 17 day of November 2017.

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

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