

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

IN THE MATTER OF:

DANIEL PAULSON,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Daniel Paulson (“Paulson”) applied for an ordinary disability pension for Parkinson’s disease, and was awarded that benefit on or about February 4, 2012. In August of 2017, Paulson requested that the System change his disability pension from ordinary to accidental, on the basis that his early-onset Parkinson’s disease may have been caused by chemicals he was exposed to in the course of his duties as a marksman and armorer for the West Des Moines Police Department. On August 21, 2017, the System informed Paulson that his request was denied because the appeal period for his 2012 ordinary disability award had expired. On October 30, 2017, the System received a request for re-examination, for purposes of determining whether his Parkinson’s disease constituted an accidental disability. On March 21, 2018, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Paulson’s disability. On April 26, 2018, the System notified Paulson that he remains permanently disabled and would continue to receive an ordinary disability pension, since the System had no authority under the Code to re-determine the type of disability payable. Paulson filed a timely appeal challenging the System’s refusal to re-determine the type of disability pension due. Paulson waived a hearing before the Disability Appeals Committee of the Board (comprised of Mary Bilden, Michelle Weidner, and Marty Pottebaum, chair) and asked that his appeal be decided based on a file review, including consideration of the brief filed by his attorney, Kellie Paschke. The City of West Des Moines received notice of the appeal and declined to participate.

FINDINGS OF FACT

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

1. Paulson was awarded an ordinary disability pension by the System on February 4, 2012, as a result of early-onset Parkinson’s disease.

2. No appeal of that decision was filed by either Paulson or the City of West Des Moines.
3. Paulson incapacitated from the performance of duty as a police officer as a result of his Parkinson's disease.

CONCLUSIONS OF LAW

1. Iowa Code § 411.6(7) states:

7. *Reexamination of beneficiaries retired on account of disability.* The system may, and upon the member's application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. The examination shall be made by the medical board or, in special cases, by an additional physician or physicians designated by such board. If any disability beneficiary who has not attained the age of fifty-five refuses to submit to the medical examination, the member's allowance may be discontinued until withdrawal of such refusal, and if the refusal continues for one year all rights in and to the member's pension may be revoked by the system. For a disability beneficiary who has not attained the age of fifty-five and whose entitlement to a disability retirement commenced on or after July 1, 2000, the medical board may, as part of the examination required by this subsection, suggest appropriate medical treatment or rehabilitation if, in the opinion of the medical board, the recommended treatment or rehabilitation would likely restore the disability beneficiary to duty.

a. (1) Should any beneficiary for either ordinary or accidental disability, except a beneficiary who is fifty-five years of age or over, be engaged in a gainful occupation paying more than the difference between the member's net retirement allowance and one and one-half times the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement, then the amount of the member's retirement allowance shall be reduced to an amount such that the member's net retirement allowance plus the amount earned by the member shall equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. Should the member's earnings be later changed, the amount of the member's retirement allowance may be further modified, provided that the new retirement allowance shall not exceed the amount of the retirement allowance adjusted by annual readjustments of pensions pursuant to subsection 12 of this section nor an amount which would cause the member's net retirement allowance, when added to the amount earned by the beneficiary, to equal one and one-half times the amount of the earnable compensation of an active member at the same position on the

salary scale within the member's rank as the member held at retirement. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the member was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have the member's retirement allowance suspended while in active service. If the rank or position held by the retired member is subsequently abolished, adjustments to the allowable limit on the amount of income which can be earned in a gainful occupation shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department. For purposes of this paragraph, "net retirement allowance" means the amount determined by subtracting the amount paid during the previous calendar year by the beneficiary for health insurance or similar health care coverage for the beneficiary and the beneficiary's dependents from the amount of the member's retirement allowance paid for that year pursuant to this chapter. The beneficiary shall submit sufficient documentation to the system to permit the system to determine the member's net retirement allowance for the applicable year.

(2) A beneficiary retired under this lettered paragraph, in order to be eligible for continued receipt of retirement benefits, shall no later than May 15 of each year submit to the system a copy of the beneficiary's federal individual income tax return for the preceding year. The beneficiary shall also submit, within a reasonable period of time, any documentation requested by the system that is determined to be necessary by the system to determine the beneficiary's gross wages.

(3) Retroactive to July 1, 1976, the limitations on pay of a member engaged in a gainful occupation who is retired under accidental disability prescribed in this paragraph shall not apply to a member who retired before July 1, 1976.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than the disability beneficiary's average final compensation, the disability beneficiary's retirement allowance shall cease, the disability beneficiary shall again become a member and shall contribute thereafter at the rate established in section 411.8, and former service on the basis of which the disability beneficiary's service was computed at the time of retirement shall be restored to full force and effect and upon subsequent retirement the disability beneficiary shall be credited with all service as a member and also with the period of disability retirement.

c. Should a disability beneficiary under age fifty-five be employed in a public safety occupation, the disability beneficiary's retirement allowance shall cease. Notwithstanding any provision of this chapter to the contrary,

if a disability beneficiary is employed in a public safety occupation that would otherwise constitute membership service, the disability beneficiary shall not become a member of the system. For purposes of this paragraph, "public safety occupation" means a peace officer, as defined in section 97A.1; a protection occupation, as defined in section 97B.49B; a sheriff or deputy sheriff as defined in section 97B.49C; and a police officer or fire fighter as defined in section 411.1, who was not restored to active service as provided by this subsection.

2. Rule 9.4 of the System's Administrative Rules addresses re-examinations of disability beneficiaries under the age of 55. Rule 9.4(3) states, in relevant part:

- e. Benefits may be suspended indefinitely for failing to comply with the re-examination process unless good cause is found to exist.

- f. Following the medical re-examination, the medical board shall submit written conclusions and recommendations to the System regarding *whether the beneficiary continues to meet the medical requirements* for disability benefits from the System.

- g. The System shall make a *continuing disability determination* in a manner similar to that set forth herein for determining initial entitlement to disability benefits, and shall notify the beneficiary in writing of its determination.

- h. Appeal procedures are comparable to those provided herein for initial denials, except that benefits shall be continued during the pendency of a timely filed appeal.

3. The focus of the statute and the administrative rules is on whether the member remains entitled to the disability pension that was awarded. Nothing in the statute or the rules provides a legal basis for re-determining the type of disability pension payable.

DECISION

The appeal for an accidental disability pension on behalf of Daniel Paulson under chapter 411 is hereby denied. His ordinary disability pension will continue.

Dated this 4th day of October, 2018.

 _____, 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 5th day of October, 2018.

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

Signature Jul Hagge