

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

IN THE MATTER OF:

RONALD E. LENZ,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Ronald E. Lenz ("Lenz") filed his application for an accidental disability pension on or about April 25, 2018. On July 11, 2018, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding his disability. An initial decision denying benefits was made by the System on August 13, 2018. Lenz filed a timely appeal challenging the denial of his application. A hearing was held before the Disability Appeals Committee of the Board (comprised of Frank Guihan, Duane Pitcher, and Mary Bilden, chair) on November 14, 2018 at the offices of the System. Lenz appeared, and was represented by attorney Jay Smith. The City of Sioux City did not appear. Daniel Cassady, Deputy Director, appeared on behalf of the System. Alice Helle was present as counsel to the Committee. Testimony was received from Lenz. Post-hearing briefs were waived.

FINDINGS OF FACT

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

1. Ronald E. Lenz was born on September 11, 1958 and commenced employment with the City of Sioux City as a firefighter on or about September 8, 1986. His last working day on the job was April 9, 2017.
2. Lenz began experiencing urinary symptoms and fatigue in the spring of 2016. He testified that in a typical month at that time, he would respond to 30 or 40 calls, about a third of which required "gearing up" in approximately 70 pounds of turnout gear. He noticed that he wasn't recovering from calls as quickly as before, and that "the gear seemed to be getting heavier."
3. Lenz sought medical attention for his symptoms. In May of 2016, his family doctor, Paul Peterson, D.O., found that Lenz' prostate specific antigen ("PSA") concentration

was elevated to a level of 6.8. He referred Lenz to David H. Daniels II, M.D., a urologist, who prescribed medication for nocturia. In On December 20, 2016, Lenz had a biopsy that was positive for prostate cancer.

4. After his diagnosis, Lenz was referred to Dr. Gregory Naden of Radiation Oncology in Sioux City, who recommended short-term androgen suppression and external radiotherapy. Lenz sought a second opinion from Dr. Thomas Pisansky of the Mayo Clinic in Rochester, Minnesota, who recommended proton beam therapy. He began that therapy, which he described as high dose radiation, 5 times/week for 3 weeks. That was followed by a two rounds of radiotherapy. Lenz has also been treated with Lupron and Casodex. He currently follows up with his physicians every three months.
5. Lenz testified that his fatigue was significantly worse after his proton beam and radiotherapy treatment. He reported to the medical board that he did not drive for two months following the treatment, due to extreme fatigue. He testified that he was also unable to mow his lawn following the treatment. His fatigue has gradually improved. This year, he was able to mow his lawn with his self-propelled mower, but would have to mow the front lawn in two stages, stopping to rest in between. He mowed the back lawn a few days later, again with rest in the middle. He testified that in addition to fatigue, he continues to have some urinary issues, but that those are much improved since his treatment. His PSA level was substantially decreased after treatment but has subsequently increased to some extent. The Clinical Notes from the Mayo Clinic dated July 12, 2018 noted that his PSA was 0.56 on October 30, 2017 and was 0.62 on January 18, 2018 and again on July 12, 2018.

6. The Medical Board's letter to the System dated July 16, 2018 stated:

In the opinions of the evaluating physicians, [Lenz'] prostate cancer does not limit his ability to fully perform all duties of a fire fighter.

The opinion of the evaluating physicians is that the symptoms Mr. Lenz believes to be performance limiting are not likely to be caused by his prostate cancer or its treatment.

7. Dr. Gerr of the Medical Board stated in his clinic note:

The etiology of Mr. Lenz' symptoms is unclear at this time. He described episodes of fatigue after light exertion that required hours of rest for recovery, a problem which is not typical following localized radiation therapy. However, weakness is also a known side effect of Lupron therapy, affecting up to 18 percent of individuals receiving treatment.

He went on to note that Lenz also mentioned experiencing fatigue for at least 6 months prior to his diagnosis, and that it was unclear from the record whether his treating doctors had performed a medical workup of his fatigue symptoms. He stated that "potential etiologies of Mr. Lenz' symptoms include hypothyroidism, anemia,

mood disorder, and hyperglycemia secondary to uncontrolled diabetes (of relevance given his recent diagnoses of diabetes).”

8. Dr. Rippentrop of the Medical Board included similar comments in his clinical note. Stated that Lenz:

has a medical history significant for prostate cancer, status post Lupron and Casodex therapy and proton beam therapy. His primary symptom of concern is a sensation of tiredness and fatigue following light physical exertion, which he stated that he has experienced since receiving proton beam therapy in July 2017.

* * * * *

While complications from prostate cancer and its treatment could result in fatigue, there are numerous other treatable causes that may be present. Likely conditions include but are not limited to thyroid disease, depression or other mood disorder, or fluctuations in blood sugar secondary to his diabetes.

9. Dr. Peterson, Lenz’ treating physician, opined in his August 23, 2018 letter that Lenz is unable to perform certain enumerated essential duties of his position due to his fatigue and weakness, and that those symptoms are side-effects of his treatment for his prostate cancer.
10. The Medical Board doctors did not opine that Lenz is not disabled from the performance of duty. Instead, they opined that “his prostate cancer does not limit his ability to fully perform all duties of a firefighter.” They apparently focused on his prostate cancer since that was the only impairment Lenz listed on his disability application.

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. 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.

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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.

d. The requirement that a member be in good standing to apply for and receive a benefit under this subsection may be waived for good cause as determined by the board. The burden of establishing good cause is on the member.

3. Iowa Code § 411.1(6) states:

"Cancer" means prostate cancer, primary brain cancer, breast cancer, ovarian cancer, cervical cancer, uterine cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer.

4. The threshold issue in this appeal is whether Lenz is incapacitated from the performance of his duties as a firefighter. This prong is met if Lenz is unable to perform all of the essential functions of his position, with or without reasonable accommodation. Lenz is unable to perform several essential functions of his job as a firefighter due to his weakness and fatigue, including rescuing persons from structures, pulling hoses, climbing ladders and operating fire apparatus. He is appropriately concerned that he could endanger the public and his coworkers if he attempted to return to duty. Lenz is entitled to at least an ordinary disability pension.
5. The next issue is whether Lenz is entitled to an ordinary or accidental disability pension. If his disability is the result of his prostate cancer or its treatment, he is entitled to an accidental disability pension due to the cancer presumption. Although the etiology is not entirely clear, Dr. Peterson's letter, Lenz' testimony and the general progression and timing of his symptoms constitute substantial evidence that his fatigue and weakness are the result of his treatment for prostate cancer.

DECISION

The appeal for an accidental disability pension on behalf of Ronald E. Lenz under chapter 411 is hereby approved. The decision was 2-1, with Duane Pitcher voting for ordinary.

Dated this 15th day of November, 2018.

 _____, 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 16 day of November, 2018.

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

Signature 