

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

IN THE MATTER OF:

REID LANDER,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Reid Lander ("Lander") filed his application for an accidental disability pension on or about May 9, 2019. On August 22, 2019, the Medical Board of the University of Iowa Hospitals and Clinics reported its findings to the System regarding Lander's disability. An initial decision awarding an ordinary disability pension was made by the System on September 10, 2019. On October 9, 2019, Lander filed a timely appeal challenging the award of an ordinary, rather than accidental, disability pension. An appearance was filed by Andrew Giller on behalf of Member Reid Lander on November 20, 2019. A hearing was held before the Disability Appeals Committee of the Board (comprised of Mary Bilden, Eric Hartman and Michelle Weidner) on January 6, 2020 at the offices of the System. Eric Hartman served as Chair of the Committee. Lander appeared, and was represented by attorney Andrew Giller. The City of Cedar Rapids did not appear. Daniel Cassady, Deputy Director, appeared on behalf of the System. Elizabeth Coonan was present as counsel to the Committee. Testimony was received from Reid Lander, Member, Heather Lander, Member's Spouse and Ernest Merriweather, Member's Co-worker and officer at Cedar Rapids Police Department. Lander filed a post-hearing brief on February 6, 2020.

FINDINGS OF FACT

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

1. Reid Lander was born on April 1, 1979. He commenced service as a police officer for the City of Cedar Rapids on June 6, 2005. Prior thereto, he worked for Iowa State University in the Department of Public Safety from August 2002 until June 2005.
2. Lander's last working day on the job was January 14, 2019. He was placed on leave and was referred to the Department's Employee Assistance (EAP) program. He was advised that he could not return to work until he was cleared by his counselor.

3. On August 22, 2019, the System's Medical Board opined that Lander is physically and mentally incapacitated from performance of the full duties of a police officer as a consequence of his lower urinary tract symptoms, stress, anxiety and depression and that his incapacity is likely to be permanent (of at least one year's duration).
4. The System issued a decision awarding an ordinary disability pension on September 10, 2019. Lander's appeal was timely filed with the System on October 9, 2019. The City did not appeal the decision. The only issue on appeal is whether Lander is entitled to ordinary or accidental disability retirement benefits.
5. The incident at issue in this appeal occurred at the Cedar Rapids City Services Building ("City Services Building") on August 23, 2017. Lander was the first on the scene for an active shooter call. He was required to enter the City Services building and proceed without cover where he discovered an armed male. Additional officers arrived on the scene shortly after he entered the building. Lander kept his AR-15 rifle trained on the suspect for forty-five (45) minutes in order to secure the suspect and ensure the other officers could facilitate orderly evacuation of the building and de-escalation of the situation. During the course of the forty-five (45) minute period, the suspect put his gun in his mouth and there were also periods of time where the gun was pointed elsewhere or obscured. Lander testified that he was faced with the decision of whether to shoot the subject for the entirety of the forty-five (45) minutes. Lander believed he was the only officer on the scene with a firearm trained on the suspect. After forty-five (45) minutes, Lander asked to be relieved of this duty because of cramping from holding his weapon. He was so-relieved and the suspect was disarmed approximately ten (10) minutes later. (Tr. 42). No shots were fired and no injuries occurred. Lander took the next half-hour to hour off and returned to duty, working until the end of his shift. (Tr. 44). Lander received a Class B Commendation of Heroism for his conduct on the scene. (Ex. M-1 at Tab 12).
6. Lander testified that following the incident at the City Services Building on August 23, 2017, he became anxious and depressed. He also developed urinary tract symptoms causing him to have urges to urinate several times per day. He also testified that he had bad dreams in which he would physically punch objects and his wife and pull her hair. (Ex. 4-1B; Tr. 53-54). He also started drinking heavily. (Tr. 55).
7. Heather Lander, Reid Lander's wife of 5 years, testified about the change in Lander's condition following the incident in 2017. She testified that she observed a gradual change in Lander's behavior but that 2018 was the worst. (Tr. 85). Lander was drinking every day, acting recklessly and she was afraid he would harm himself. (Tr. 87-89). She testified that prior to 2018, Lander wasn't as happy but she did not see signs of depression. (Tr. 85).
8. Ernest Merriweather, a Cedar Rapids Police Officer, testified that he and Lander have been friends/co-workers for years. He testified that the situation involving the 2017 City Services Building involved a barricaded suicidal subject, not an active shooter (Tr. 123), that he was on the scene (Tr. 124) and testified that Lander "was "actually

relatively well blocked by cubicles". (Tr. 125). Yet, he testified that Mr. Lander's experience was "Absolutely entirely different. A head-and-shoulders different experience" than the day-to-day experiences of a Cedar Rapids Police Officer. (Tr. P. 125). He also testified that although he was trained to pull his weapon and be ready to use it, he never thought that he would have to shoot a person. (Tr. 122).

9. Lander also offered an exhibit indicating that in 2017, Cedar Rapids Police officers displayed a firearm 263 times and in 2018 and 2019, Cedar Rapids police officers displayed a firearm 346 and 338 times respectively. (Ex. M1-2).
10. The City did not appear and offered no evidence.

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.

3. In order to qualify for accidental, rather than ordinary, disability retirement benefits, the member must show that his incapacity 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. See, Branson v. MFPRSI, 591 N.W.2d 193, 197 (Iowa 1999).
4. Iowa Code §411.6(5)(c)(1) provides that "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.
5. On August 22, 2019, Drs. Gerr and Leisveld opined Lander is physically and mentally incapacitated from the performance of his duties as a police officer as a result of his lower urinary tract symptoms, stress, generalized anxiety, major depression and that his incapacity is likely to be permanent based on the impression that it will be of at least one year's duration. (Ex. 5-1). On August 22, 2019, Dr. Gerr commented further that Mr. Lander's disability would exist absent the alcoholism that occurred during his employment. (Ex. 5-3).
6. While it is undisputed that Lander suffers from urinary tract symptoms, stress, anxiety and depression, such conditions do not qualify as a "disease" under Iowa Code §411.6(5)(c)(1). As such, the presumption does not apply. Accordingly, we must then determine whether Lander can satisfy the requirement that his incapacity is the

natural and proximate result of an injury incurred in or aggravated by the actual performance of duty at some definite time and place.

7. Dr. Gerr noted on August 14, 2019 that Lander “states that prior to 2016, he did not have urinary urgency, incontinence or enuresis (nighttime incontinence). (Ex. 5-5). Lander began to experience intense and unusual urinary urgency while on a road trip for a training exercise in 2016 and since that instance he has experienced urinary urgency on a daily basis. (Ex. 5-5). However, Lander testified that his urinary tract symptoms began in May 2018, approximately nine (9) months following the August 23, 2017 incident at the City Services Building. (Tr. 50; Ex. 4-3C). Lander avers in his brief on page 9, “It is not clear from the medical records or Reid’s recollection if these symptoms began before or after the August 2017 incident.” (Member’s Brief at p. 9). Additionally, Lander testified that he did not know when his urinary symptoms began. (Tr. 136). It follows that his urinary tract symptoms are not the natural and proximate result of an injury incurred in or aggravated by the actual performance of duty at some definite time and place as is required for the award of accidental disability retirement benefits under Iowa Code §411.6(5).
8. Lander also maintains that he suffers from Post-Traumatic Stress Disorder (PTSD). (Ex. 1-2). While Lisa Lahr, LMHC, an EAP counselor diagnosed Lander with PTSD on January 17, 2019 (Ex. 4-13B) and Dr. Adam Woods, a family psychiatrist indicated in a letter to Lander’s attorney on October 29, 2019, “Mr. Lander also qualifies for a formal diagnosis of Post-Traumatic Stress Disorder.” (Ex. M2-5), Lander’s treating professional Dr. Rene Duregger, MD did not so-diagnose. (Ex. 4-1B-4-10B). Moreover, the Medical Board opined that Lander does not suffer PTSD, noting that Lander did not initially identify a traumatic memory regarding his time on the police force during his August 14, 2019 visit. Dr. Gerr notes, “Upon further questioning, he does describe a suicidal worker at the City Services building in 2017...Mr. Lander does not re-experience this event through nightmares or flashbacks. He is not emotionally distressed regarding the incident. He does not avoid trauma-related thoughts, feelings or reminders. He has revisited the City Services building since the incident without difficulty. He does not meet DSM-V diagnostic criteria for post- traumatic stress disorder.” (Ex. 5-1). Moreover, Dr. Liesveld examined Lander in August 2019 and opined that he did not have PTSD. (Ex. 5-15). Lander’s Disability Retirement Application makes no mention the incident involving the City Services building, and in fact referenced “severe environmental stress” and “extreme stress inherent in police work.” (Ex. 1-2). Accordingly, whether Lander suffers from PTSD appears to be debatable.
9. It is undisputed that Lander suffers from stress, anxiety and depression and that these impairments constitute a permanent incapacity. (Ex. 4-5B; 5-1). An accidental disability pension is payable under chapter 411 for a mental injury only if the traumatic incident that caused the injury constitutes workplace stress of greater magnitude than the day-to-day stresses experienced by other police officers. See, Moon v. MFPRSI, 548 N.W.2d 565 (Iowa 1996) and City of Cedar Rapids v. MFPRSI, 572 N.W.2d 919 (Iowa 1998). The injury must also occur at some definite time and place. *Id.* at. 923. The more extraordinary the incident, the greater the

stress. See Waits v. United Fire & Cas., 572 N.W.2d 565 (1997) (holding that in personal injury case the way in which accident happened was relevant to prove whether the accident caused injuries to claimant and the nature and extent of any such injuries). Officer Merriweather testified that the situation at the City Services Building was stressful. (Tr. P. 125) (Lander's experience was "Absolutely entirely different. A head-and-shoulders different experience" than the day-to-day experiences of a Cedar Rapids Police Officer). He also testified that although he was trained to pull his weapon and be ready to use it, he never thought that he would have to shoot a person. (Tr. 122). Lander similarly described the City Services incident as one in which he was concerned for his life and for the life of others and noted that he only had to point his weapon at another person twice in his career. (Tr. 41; 47).

10. Lander testified he was trained on how to handle active shooter situations (Tr.34; 136-137) and that he generally followed protocol in handling the City Services building incident (Tr.141-142). While Lander's supervisor knew the suspect, Lander did not (Tr. 40). After the situation was diffused, Lander was commended for his behavior at the scene (Ex. M1-1). While Lander recounted other stressful situations at work, he indicated he only had to point his weapon at another person on one other occasion. (Tr. 16; 47).
11. The August, 2017 City Services building incident was clearly stressful and would constitute workplace stress of greater magnitude than the day-to-day stresses experienced by workers in most professions. However, law enforcement is inherently dangerous and stressful. The Committee finds that the incident in question was not unusually stressful for police work.
12. Even assuming Lander has established that the cited incident of constituted workplace stress of greater magnitude than the day-to-day stresses experienced by other police officers, he must establish that these incapacities were caused by that incident in order to meet the "definite time and place" requirement. Dr. Adam Woods reported to Lander's counsel on October 29, 2019, that Lander suffers from Adjustment Disorder with Mixed Anxiety & Depression as a consequence of the stresses & traumas he experienced as a Cedar Rapids Police Officer, he also reports that "Something happened that led to Mr. Lander's symptoms...and that something (*or those somethings*, if you will) are absolutely related to his tenure as an officer. (Ex. M2-6 (emphasis added)), indicating that perhaps one or more incidents caused depression and anxiety impairments. Lander first began treating for stress, anxiety and depression symptoms in August 2018, but reported the existence of these conditions as early as March 2016. (Ex. 4-B1). Lander reported to Dr. Rene Duregger, MD on March 13, 2019 that he began having depression three (3) years prior. Lander reported to his EAP counselor Lisa Lahr on January 14, 2019 that he "has been unhappy in his job for some time" and he had been placed on a "performance improvement plan" and stated that "no matter what he does it is not good enough" and that there is "inconsistency in expectations...and a lack of support from command staff". (Ex. 4-12B). Lander also reported to Angela Dolphin, PA-C on May 17, 2018, that the job was wearing him down, that he was given negative feedback often, that he never received a "thank you" for his service, and that the overall opinion toward

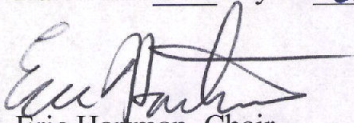
the law enforcement profession had become more negative. (Ex.4-14C; Ex. 5-7). He was diagnosed with mild depressive disorder. He made no mention of the City Services building incident. (Ex.4-14C; Ex. 5-7). He also generally testified that he did not know what caused his depression, acknowledging that it may have gone back to 2016, indicating that they had a vote of no confidence on the chief and morale was low. (Tr. 135-136). Consequently, Lander has not established that his stress, anxiety and depression were caused by the performance of duty at some definite time and place and is therefore not entitled to an award of accidental disability retirement benefits under Iowa Code §411.6(5).

13. While it is undisputed that Lander suffered urinary tract symptoms, anxiety, depression, and stress as a consequence of his work with the Cedar Rapids Police Department, Lander has failed to prove that his disability was caused by the actual performance of duty at some definite time and place or that the incident he cited was unusually stressful for law enforcement.

DECISION

The appeal for an accidental disability pension on behalf of Reid Lander under chapter 411 is hereby denied. Lander shall continue to receive ordinary disability benefits as awarded by the System on September 10, 2019.

Dated this 27 day of February, 2020.



Eric Hartman, 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 28 day of February, 2020.

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

Signature 