

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

IN THE MATTER OF:

RAMON MAXEY,

Applicant.

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DECISION

Iowa Code § 411.1(14) (2013)
Iowa Code § 411.6 (2013)

STATEMENT OF THE CASE

Ramon Maxey ("Maxey") filed his application for accidental disability benefits on or about January 22, 2020. An initial determination denying disability benefits was made as it was determined that the Member was not a member in good standing. A letter communicating the denial was issued to Maxey by Dan Cassady, Deputy Director of the Municipal Fire and Police Retirement System of Iowa (the "System") on February 10, 2020. Maxey filed a timely appeal challenging the denial. A hearing was held before the Disability Appeals Committee of the Board (comprised of Marty Pottebaum (appearing in person), Michelle Weidner (appearing telephonically) and Mary Bilden (appearing in person)) (the "Committee") on June 24, 2020 at the offices of the System. Maxey appeared and was represented by attorney Michael Marquess. The City of Marshalltown 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 the Member in person.

FINDINGS OF FACT

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

1. Maxey was born on August 26, 1965 and commenced service with the Marshalltown Police Department on or about January 2, 2008. He is a Police Officer. (Ex. 1.1 and 1.5).
2. On December 17, 2014, Maxey and his partner Ben Scheevel were involved in a shooting at 2nd Avenue and Linn Street in Marshalltown, Iowa. Maxey and Scheevel both fired their weapons at an armed suspect. (Ex. 3.9). The suspect was critically wounded and later died. (Ex. 3.14; 3.18). The matter was investigated by the Iowa Division of Criminal Investigation and Maxey and Scheevel were taken off work during the pendency of a DCI investigation which ultimately determined that the shooting was justified.

3. At the direction of the Marshalltown Police Department, Maxey saw Dr. Philip Ascherman on December 22, 2014, for a psychological evaluation and was cleared to return to light duty and then full duty status as soon as administratively appropriate. (Ex. 3.49). Dr. Ascherman opined that Maxey has "not shown evidence of posttraumatic stress reactions and there is no expectation for development of anxiety symptoms related to the incident." Dr. Ascherman did not believe a 30 day follow-up visit was necessary. (Ex. 3.49). Maxey returned to Dr. Ascherman three (3) years after the incident on December 15, 2017, and reported that he had developed anxiety because the suspect's nephew had contacted him. Dr. Ascherman ultimately concluded that Maxey was fit for duty. (Ex. 3.57). Maxey testified that he ultimately returned to work but continued to suffer from flashbacks from the 2014 incident.
4. On November 20, 2019, Maxey executed a Resignation of Employment and Release Agreement with the City of Marshalltown as a consequence of a personnel situation. The Agreement was ratified by Marshalltown Mayor Joel Greer on November 26, 2019. The agreement provided in part that Maxey, "resigns his employment effective March 15, 2020, or upon approval of a disability retirement, whichever comes first." (Ex. 3).
5. On or about January 22, 2020, Maxey completed an application for disability benefits based upon an injury he sustained on December 17, 2014. (Ex. 1).
6. On January 22, 2020 Marshalltown Police Chief checked and signed the Certificate of Execution indicating that Maxey was not a "member in good standing" according to the definition provided within this application packet. No explanation was provided in part II-D of the application. (Ex. 1.4)
7. On February 10, 2020, Dan Cassady, Deputy Director of the System, having considered Maxey's application for disability benefits, issued a letter to Maxey denying the same because his application indicated he is not a member in good standing. (Ex. 4).
8. At the June 24, 2020 hearing, System Exhibits 1-5, which included Maxey's Application for Accidental Disability Benefits, Membership Application and Protocol incident reports and personnel documents, a Settlement Agreement with the City of Marshalltown and Decision of System on Disability and a Letter of Appeal were received into evidence, pursuant to the System's Rules. (Ex. 1-5).
9. At the June 24, 2020 hearing, Maxey offered Exhibits 6 and 7, which consisted of Maxey's witness and exhibit lists and a medical record from Dr. Sarah Renze, MD of the McFarland Clinic dated November 13, 2019. Maxey's exhibits were received into evidence without objection.

CONCLUSIONS OF LAW

1. Iowa Code §411.6(5)(a) states:

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 member should be retired.

2. Iowa Code § 411.1(14) states:

"Member in good standing" means a member in service who is not subject to removal by the employing city of the member pursuant to section 400.18 or 400.19, or other comparable process, and who is not the subject of an investigation that could lead to such removal. A person who is restored to active service for purposes of applying for a pension under this chapter is not a member in good standing.

3. Iowa Code §411.6(5)(d) states:

"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."

4. Iowa Code §400.18 states:

1. A person holding civil service rights as provided in this chapter shall not be removed, demoted, or suspended arbitrarily, except as otherwise provided in this chapter, but may be removed, demoted, or suspended after a hearing by a majority vote of the civil service commission, for neglect of duty, disobedience, misconduct, or failure to properly perform the person's duties. 2. The party alleging neglect of duty, disobedience, misconduct, or failure to properly perform a duty shall have the burden of proof. 3. A person subject to a hearing has the right to be represented by counsel at the person's expense or by the person's authorized collective bargaining representative.

5. Iowa Code §400.19 states:

The person having the appointing power as provided in this chapter, or the chief of police or chief of the fire department, may peremptorily suspend, demote, or discharge a subordinate then under the person's or chief's direction for neglect of duty, disobedience of orders, misconduct, or failure to properly perform the subordinate's duties.

6. Maxey testified that he was placed on paid administrative leave due to a situation involving a complaint made against him by an individual outside of the Marshalltown Police Department. He testified he did not believe he was subject to disciplinary action or investigation at the time he applied for an accidental disability pension on January 22, 2020. The City of Marshalltown did not offer evidence or testimony at the hearing but according to

the Marshalltown Chief of Police's representation on Maxey's initial application filed on January 22, 2020, Maxey was not a member in good standing. (Ex. 1.4-1.5).

7. Consequently, Maxey has not established that he is a "member in good standing". However, Iowa Code §411.6(5)(d) provides for waiver of the member in good standing requirement.
8. Maxey also testified he was advised that entering into the agreement with the City of Marshalltown would not cause him to forfeit his right to proceed with his accidental disability pension application. For this reason and based on the record evidence, this Committee finds that good cause exists to waive the "member in good standing" requirement under Iowa Code §411.6(5)(d).

DECISION

Ramon Maxey is not and was not at the time of application for disability benefits a "member in good standing" under Iowa Code §411.1(14) as required by Iowa Code §411.6(5)(a) for consideration for the receipt of benefits. However, good cause exists to support a waiver of the "member in good standing" requirement under Iowa Code §411.6(5)(d). As such, Maxey's application will be processed accordingly.

Dated this ____ day of June, 2020.



Marty Pottebaum, Chair
Disability Appeals Committee

Original filed.
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Daniel Cassady, Deputy Director

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 30 day of June, 2020.

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

Signature Jill Blagge

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