

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

IN THE MATTER OF:

ALAN ABBOTT,

Applicant.

DECISION

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

STATEMENT OF THE CASE

Alan Abbott ("Abbott") filed his application for an accidental disability pension on or about August 26, 2019. On November 26, 2019, the Medical Board of the University of Iowa Hospitals and Clinics reported to the System its findings regarding Abbott's disability. The System made an initial decision awarding an ordinary disability pension on December 17, 2019. On January 13, 2020, Abbott filed, through his attorney, Jay Smith, a timely appeal challenging the award of an ordinary, rather than accidental, disability pension. A hearing was held before the Disability Appeals Committee of the Board (comprised of June Anne Gaeta, Mary Bilden, and Duane Pitcher) on June 24, 2020. All parties consented to participation in the hearing via WebEx. Duane Pitcher served as Chair. Abbott appeared, and was represented by attorney Jay Smith. Dawn Gean appeared on behalf of the City of Ankeny. Daniel Cassady, Deputy Director, appeared on behalf of the System. Cynthia Boyle Lande was present as counsel to the Committee. Testimony was received from Alan Abbott, Member. Pursuant to Rule 6.20(2)(c) of the System's Administrative Rules, the Committee issued written inquiries to the Medical Board on June 29, 2020 and July 27, 2020.

FINDINGS OF FACT

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

1. Alan Abbott was born on August 30, 1960. He commenced service as a firefighter for the City of Ankeny on June 5, 2000. Prior thereto, he worked for Midwest Ambulance Service, the City of Altoona Fire Department, and Story County Ambulance Service. Abbott currently holds the position of Lieutenant with the Ankeny Fire Department.
2. On June 24, 2019, Abbott was placed on light duty pending the outcome of his disability application with the System. System Ex. 1-5.

3. On November 26, 2019, the System's Medical Board opined that Abbott is physically and mentally incapacitated from performance of the full duties of a fire Lieutenant because of his pulmonary embolism and that his incapacity is likely to be permanent (of at least one year's duration). System Ex. 5-6.
4. The System issued a decision awarding an ordinary disability pension on December 17, 2019. System Ex. 6-1. Abbott's appeal was timely filed with the System on January 13, 2020. System Ex. 7-1. The City did not appeal the decision. The only issue on appeal is whether Abbott is entitled to ordinary or accidental disability retirement benefits.
5. Abbott has a history of sinus problems. In December of 2018, he underwent two sinus surgeries. The first, bilateral maxillary antrostomies, were performed under general anesthesia on December 17, 2018. System Exs. 4B-38, 4D-10–4D-12. The second, an in-office procedure, was performed on December 26, 2018. System Ex. 4B-38. After the second procedure, Abbott reported difficulty breathing, which increased over the next week. On December 31, 2018, Abbott was admitted to Mercy West Lakes Hospital, where it was determined that he had pulmonary embolisms with high clot burden. Abbott was placed on Eliquis and discharged the next day. System Exs. 4B-38, 4D-19–4D-20. A subsequent inherited coagulopathy evaluation revealed that Abbott was positive for heterozygosity of the Prothrombin gene mutation, which increases the risk of blood clots. System Ex. 4B-47.
6. On January 11, 2019, Abbott was evaluated for return to service by Dr. Kuhnlein, DO, MPH at Medix Occupational Health in Ankeny. At that time, Dr. Kuhnlein restricted Abbott to administrative duties only. System Ex. 4A-140. On February 8, 2019, Dr. Kuhnlein modified Abbott's restrictions, releasing him to perform light duty work until June 30, 2019. System Ex. 4A-151.
7. On January 30, 2019, Abbott was seen by Dr. Patrick Hartley, MD at the University of Iowa Hospitals and Clinics. At the time, Dr. Hartley diagnosed Abbott with mild pulmonary hypertension. System Ex. 4A-144.
8. On April 11, 2019, Dr. James Mallen, DO with the Iowa Clinic Pulmonology released Abbott for full duty. System Ex. 4A-153. Dr. Mallen concluded that Abbott represented "a mild to moderate risk" for recurrent blood clots and concluded that additional testing with the potential for ending his anticoagulation regimen was appropriate. System Ex. 4E-7. On April 12, 2019, Dr. Kuhnlein reevaluated Abbott and moved up his full duty release date to May 1, 2019. System Ex. 4A-154.
9. On June 24, 2019, Abbott visited Dr. Jason Kopp, C.O. at MercyOne Ankeny Prairie Trail Clinic for numbness, swelling, and pain in his foot, ankle, and leg. System Ex. 4B-57. Abbott was referred to Mercy Medical Center hospital in Des Moines, where it was determined that Abbott had an acute posterior tibial vein DVT. System Ex. 4D-78. Following Abbott's discharge from the hospital, Dr. Kuhnlein opined that Abbott should be restricted to office duties only while additional examinations were completed. System Ex. 4A-157.

10. On July 23, 2019, Dr. Kuhnlein concluded that Abbott should be permanently restricted from wearing turnout gear and/or SCBA, working in temperature or humidity extremes, and driving emergency vehicles. System Ex. 3-1. On August 30, 2019, Dr. Kuhnlein supplemented his restrictions with the following comment on Abbott's diagnosis:

Mr. Abbott has a heterozygous prothrombin mutation that leads to increased risk for blood clotting. Mr. Abbott has now had a significant pulmonary embolism that initially resolved with treatment, but unfortunately, after he was released back to full duty in May 2019, with the hope that the problem would not recur, he developed a subsequent deep vein thrombosis in his right calf within several weeks of being off anticoagulants, and so is now on lifelong anticoagulation.

With the genetic history leading to a greater risk for blood clotting that has manifested itself in not only pulmonary embolism, but recurrent DVT while off anticoagulation, Mr. Abbott will be on lifelong anticoagulation. Because of the anticoagulation and subsequent risk of not being able to stop bleeding easily if injured, should Mr. Abbott be exposed to significant contusions or other injuries in his job he could have difficulty with bleeding that might become serious or life threatening. As a result, this medical condition precludes him from working safely as a firefighter without risk to himself or others.

System Ex. 3-2.

11. On June 29, 2020, pursuant to Rule 6.20(2)(c) of the System's Administrative Rules, the System submitted written inquiries to the Medical Board. Specifically, the System sought clarification regarding whether Abbott's disabling condition constituted a disease of the heart, lungs, or respiratory tract. The Medical Board responded that "Mr. Abbott's pulmonary embolism, in and of itself, would meet the definition of a disease of the heart or of the lungs/respiratory tract, as the severe and potentially fatal adverse effects of pulmonary embolism are borne by the heart and lungs."
12. On July 27, 2020, the System submitted additional written inquiries to the Medical Board and requested follow-up testing to determine whether Abbott continued to suffer from pulmonary hypertension. The testing was completed, and on August 13, 2020, Dr. Hartley reported that the additional testing "does not reveal any evidence of pulmonary hypertension at rest."
13. Signs of possible blood clots may have appeared as early as September of 2018. In September of 2018, Abbott completed his annual medical surveillance exam required by the City of Ankeny. Abbott was found to be medically qualified to perform all duties, although he had an abnormal pulmonary function test, which was assumed to be the result of an upper respiratory infection he was experiencing at the time. System

Ex. 4A-115. Further, there were conflicting reports of Abbott taking off his SCBA due to breathing difficulties while at a fire in November of 2018. System Ex. 4A-144; 4A-163.

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. Thus, if the member meets the requirements for 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 to qualify for an accidental disability benefit. See, Branson v. MFPRSI, 591 N.W.2d 193, 197 (Iowa 1999).
4. Iowa Code §411.6(5)(c) provides:

(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.
5. On November 26, 2019, Drs. Fredric Gerr, MD and Rachel Butler, MD opined Abbott is physically incapacitated from the performance of his duties as a firefighter as a result of his pulmonary embolism and that his incapacity is likely to be permanent based on the impression that it will be of at least one year's duration. System Ex. 5-6. On June 29, 2020, Dr. Hartley further opined that Abbott's pulmonary embolism is a disease of the heart, lungs, or respiratory tract.
6. As recognized by the initial award of ordinary disability retirement benefits, Abbott has established that he is totally and permanently incapacitated for duty as a firefighter. The opinion of Dr. Hartley that Abbott's pulmonary embolism is a disease of the heart, lungs, or respiratory tract further establishes that his medical condition resulted from the performance of duty. Accordingly, Abbott has satisfied the requirements for an accidental disability retirement benefit under Iowa Code § 411.6(5).

DECISION

The appeal for an accidental disability pension on behalf of Alan Abbott under chapter 411 is hereby granted.

Dated this 20 day of August, 2020.

X



Duane Pitcher, 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 21st day of August, 2020.

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

Signature Kathy Fraise