

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

IN THE MATTER OF:

KEVIN CHURCH,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Kevin Church (“Applicant”) filed his application for an accidental disability pension on or about November 12, 2020. On January 13, 2021, the Medical Board of the University of Iowa Hospitals and Clinics reported to the System its findings regarding Applicant’s disability. The System made an initial decision awarding an ordinary disability pension on February 5, 2021. On February 21, 2021, Applicant filed, through his legal counsel Curtis Dial, 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 Marty Pottebaum, Mary Bilden, and Laura Schaefer) on June 23, 2021 at the offices of the System. Marty Pottebaum served as Chair. Applicant appeared, and was represented by attorney Robert Reding. The City of Keokuk appeared and was represented by attorney Jason Palmer. Daniel Cassady, Director, appeared on behalf of the System. Cynthia Boyle Lande was present as counsel to the Committee. Testimony was received from Applicant. Applicant and the City filed post-hearing briefs on July 29, 2021.

FINDINGS OF FACT

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

1. Applicant was born on April 4, 1968. Ex. 1.1. He commenced service as a police officer for the City of Keokuk on September 9, 1989. Ex. 1.8. At the time he filed his application for disability benefits, Applicant held the rank of captain. Id.
2. Applicant’s last working day on the job was September 16, 2020. Id.
3. On January 13, 2021, the System’s Medical Board opined that Applicant is unable to perform the full duties of a police officer due to Major Depressive Disorder and Post-Traumatic Stress Disorder (PTSD). Ex. 5.7. The Medical Board further opined that the

Applicant's incapacity is likely to be permanent, based on the impression that it will last for a period of at least one year. Id.

4. The System issued a decision awarding an ordinary disability pension due to PTSD and depression on February 5, 2021. Ex. 4.1 Applicant's appeal was timely filed with the System on February 21, 2021. Ex. 6.1. The City did not appeal the decision. The only issue on appeal is whether the Applicant's PTSD and depression qualify him for an accidental disability retirement rather than an ordinary disability retirement.
5. Applicant's medical records indicate he began seeking medical care for mental health in approximately December of 2018. Ex. 3A.1. His symptoms include fatigue, depression, loss of enjoyment in activities he previously enjoyed, anxiety, flashbacks, nightmares, and insomnia. Exs. 3A.1, 3A.26, 3B.1; Hearing Tr. 16:2-5, 19:2-8. Applicant reported to treating physicians and psychologists that symptoms relating to depression and anxiety began long before he began seeking mental health care. Exs. 3A.21, 3B.1, 3B.4, 3C.3, 3D.1, 3E.15. Applicant further reported that he believed his symptoms were the result of stressful situations he experienced in his job as a police officer. Ex. 3A.33.
6. At the hearing, Applicant testified that his mental health symptoms arose out of a house fire that occurred in December of 1999. Near the end of his shift, Applicant was called to the fire. Hearing Tr. 11:9-18. Several people died in the fire, including children who lived in the home and members of the fire department who were called to the fire. Hearing Tr. 12:1-4, 12:24-25, 13:1-6. Applicant testified that he worked in the same building as the firemen who died in the fire, saw them regularly, and had last seen them a few hours before the fire. Hearing Tr. 12:1-4, 13:8-11. Applicant testified that he had not received training for this type of a call. Hearing Tr. 15:9-14.
7. Applicant testified about another incident he believes contributed to his mental health problems. In 2008, Applicant was assigned to handle the autopsy for children who had died in a fire. Hearing Tr. 17:19-25, 18:1-11. Applicant was familiar with the parents of the children who had died. Hearing Tr. 17:20-25.
8. Applicant's medical records identified several potential causes for his PTSD and depression. See Ex. 3A.1, 3A.33, 3B.8, 3C.5, 3C.12, 3C.16, 3C.25, 3C.29, 3C.33, 3C.50, 3E.15. At the hearing, Applicant testified that his symptoms began around the time of and as a result of a house fire that occurred in Keokuk around 1999. Hearing Tr. 16:2-5. Applicant previously discussed this event and the impact it had on him with his mental health counselor and treating physician. Exs. 3C.21, 3E.8, 3E.15, 3F.1.
9. Applicant's medical health care providers opined that traumatic events experienced by Applicant during his service as a police officer caused or exaggerated Applicant's PTSD. Exs. 3F.1-2. The opinion specifically identified the 1999 house fire as one traumatic event Applicant experienced. Ex. 3F.1.
10. Applicant testified that previously he was unwilling to accept that his mental health problems could be the result of his experience at the 1999 house fire. Hearing Tr. 15:18-

25, 16:1-5, 16:14-25, 17:1-10. Applicant's mental health counselor concluded that Applicant had suppressed the negative emotions associated with this and other work-related events for many years. Exs. 3C.21, 3C.25.

11. Applicant testified, and his medical records state, that Applicant used alcohol on and off to attempt to self-medicate his symptoms of PTSD and depression. Exs. 3A.33, 3C.4, 3C.6, 3C.12, 3E.8, Hearing Tr. 27:2-6, 34:8-18. The Medical Board did not identify Applicant's alcohol consumption as a cause or significant contributing factor of Applicant's disability. Ex. 5.7.

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) (emphasis added).

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. An accidental disability pension is payable under Iowa Code 411 for a mental injury only if the injury was caused by "workplace stress of greater magnitude than the day-to-day stresses experienced by other police officers." *City of Cedar Rapids v. MFPRSI*, 572 N.W.2d 919, 922 (Iowa 1998); *Moon v. MFPRSI*, 548 N.W.2d 565, 568 (Iowa 1996).
6. The System has determined it will take the following factors into consideration in determining whether an incident involves workplace stress of greater magnitude than day-to-day stresses of other police officers or firefighters: (1) whether the incident(s) is something for which the member received training; (2) whether, with respect to the incident(s), the member's department or supervisor followed or deviated from standard

protocols in the profession; (3) the member's degree of familiarity with a victim prior to the incident; (4) the culpability or innocence of the victim(s); and (5) whether the incident occurred in close proximity to other more stressful incidents. This list is not exclusive.

7. No evidence has been presented showing that the Applicant was not a member in good standing at the time he submitted his application for an accidental disability retirement. The Medical Board opined that the Applicant was totally and permanently disabled as a result of his PTSD and depression. Accordingly, the only questions before the Committee are (1) whether the Applicant's PTSD and depression constitute an injury or disease for which accidental disability benefits are available under Iowa Code Chapter 411; and (2) whether Applicant's PTSD and depression were incurred or aggravated by the actual performance of duty at a definite time and place.
8. Applicant's PTSD and depression do not fall within the definition of a "disease" under Iowa Code § 411.6(5)(c). Accordingly, for Applicant to be entitled to an accidental disability benefit, Applicant's PTSD and depression must constitute an injury and must be caused by workplace stress of greater magnitude than the day-to-day stresses experienced by other police officers. *City of Cedar Rapids*, 572 N.W.2d at 922; *Moon*, 548 N.W.2d at 568.
9. Applicant's testimony and medical records support the conclusion that Applicant's PTSD and depression were incurred due to his involvement with the 1999 house fire. In his testimony, Applicant identified the 1999 house fire as the event that initiated his mental health struggles, and he made similar statements previously to mental health care providers. Medical opinions from Applicant's mental health care providers did not contradict these statements by Applicant. Accordingly, the Committee has concluded that Applicant's PTSD and depression constitute a mental injury incurred in the performance of duty at a definite time and place.
10. Applicant testified that he had never received training for house fires with multiple fatalities. Applicant also testified that the 1999 house fire involved multiple children in a family he knew. Accordingly, the Committee has concluded that Applicant's PTSD and depression involve workplace stress of greater magnitude than day-to-day stresses of other police officers.
11. Applicant is entitled to an award of accidental disability retirement benefits under Iowa Code § 411.6(5).

DECISION

The appeal for an accidental disability pension on behalf of Kevin Church under chapter 411 is hereby granted. Applicant is entitled to an accidental disability benefit.

Dated this 19 day of August, 2021.



Marty Pottebaum, 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 19 day of August, 2021.

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

Signature 