

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

IN THE MATTER OF:

KEVIN ERICKSON,

Applicant.

DECISION

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

STATEMENT OF THE CASE

Kevin Erickson (“Applicant”) filed his application for an accidental disability pension on or about May 4, 2021. On July 20, 2021, the Medical Board of the University of Iowa Hospitals and Clinics reported to the System its findings regarding Applicant’s disability. Sioux City Police Chief Rex Mueller submitted written comments to the System on July 31, 2021. The System made an initial decision awarding an ordinary disability pension on August 10, 2021. On August 23, 2021, Applicant filed 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 David McFarland, Duane Pitcher, and Mary Bilden) on November 17, 2021 at the offices of the System. Duane Pitcher served as Chair. Applicant appeared without legal counsel. The City of Sioux City appeared and was represented by Assistant City Attorney Connie Anstey. Daniel Cassidy, Director, appeared on behalf of the System. Cynthia Boyle Lande was present as counsel to the Committee. Testimony was received from Applicant, Sioux City Police Chief Rex Mueller, and Sioux City Police Captain Chris Groves. Applicant and the City waived the filing of post-hearing brief.

FINDINGS OF FACT

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

1. Applicant was born on November 19, 1988. Ex. 1.1. He commenced service as a police officer for the City of Sioux City on January 29, 2015. Ex. 1.5. Prior to becoming a police officer, Applicant served in the military. At the time he filed his application for disability benefits, Applicant held the rank of Police Officer. Id. Applicant had also been assigned to a temporary position within a negotiations unit of the Sioux City Police Department.
2. Applicant’s last working day on the job was May 4, 2021. Id.

3. On July 20, 2021, the System's Medical Board opined that Applicant is unable to perform the full duties of a police officer due to Post-Traumatic Stress Disorder (PTSD). Ex. 5.6. 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 on August 10, 2021. Ex. 7.1 Applicant's appeal was timely filed with the System on August 23, 2021. Ex. 8.1. The City did not appeal the decision. The only issue on appeal is whether the Applicant's PTSD qualifies him for an accidental disability retirement rather than an ordinary disability retirement.
5. Applicant's medical records indicate he began seeking medical care for PTSD in approximately December of 2019. Ex. 4A.1. His symptoms include anxiety, anger, low mood, fatigue, and panic attacks. Exs. 3A.1, 4A.1, 4A.2, 4A.9, 4A.12, 4B.1, 4B.6, 5.8, 5.12.
6. Applicant testified that his PTSD arose out of an incident that occurred on April 30, 2019. The incident began with a check welfare call to assist a suicidal individual. Ex. 3.2. From prior interactions between the Sioux City Police Department and this individual, the Applicant knew the individual was a veteran. Id. The individual was clearly upset and threatened several times to commit suicide. Id. Through several different phone calls, Applicant attempted to establish a rapport with the individual and to convince him to exit his home safely. Ex. 3.3. After approximately 90 minutes of phone calls (with some breaks between calls), the individual committed suicide. Ex. 3.6. The Applicant heard the gun shot and saw the muzzle flash through the individual's window. After the area outside of the victim's home was secured, Applicant entered the home and observed the victim, along with blood splattering and pooling, the victim's gun, and the phone the victim had been using to communicate with Applicant. Applicant testified that the group of officers involved in the incident was smaller than typical. While a negotiations team typically involves 3-4 individuals, Applicant was the only individual handling the negotiations at the location of the incident.
7. Applicant presented evidence from his counselor, Shari Conner, Ph.D., and three other officers, Chelsea Dexter, William Melville, and Jeremy McClure. Dr. Conner reported that, in her experience working with first responders, it is not common for officers to report having witnessed a suicide in progress. Member's Ex. 1.1. Officer Chelsea Dexter reported that it is not common for a police officer to negotiate with an individual for 1.5 hours before the individual commits suicide. Member's Ex. 2.1. However, Officer Dexter also reported that she had witnessed an individual committing suicide in front of her during her first couple years as a police officer. Id. Sergeant William Melville reported that, in his tenure as a police officer, he had never seen someone commit suicide in front of him. Member's Ex. 3.1. Sergeant Jeremy McClure reported that the "incident was unique and specific in that very few officers will ever encounter this particular circumstance making it difficult to prepare for and cope with." Member's Ex. 4.1.

8. The City entered evidence demonstrating that Applicant had specialized training and experience in the area of negotiations. The City's witnesses, Captain Chris Groves and Chief Rex Mueller, testified that part of this training is understanding that not all negotiations are successful. Applicant agreed that he had received training that not all negotiations would be successful.
9. Captain Groves and Chief Mueller testified that negotiating with a suicidal individual or witnessing a suicide are not unusual occurrences for police officers, particularly for specialized negotiators. Both testified that, in their opinion, the incident was not above and beyond the day-to-day stresses experienced by police officers.
10. Captain Groves and Chief Mueller testified that, in their experience, it is uncommon for a negotiator to enter a building or space where the other party to a negotiation has been following a suicide.

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, and the Committee may consider other relevant factors as well.
7. No evidence was 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. Accordingly, the only questions before the Committee are (1) whether the Applicant's PTSD constitutes an injury or disease for which accidental disability benefits are available under Iowa Code Chapter 411; and (2) whether Applicant's PTSD was incurred or aggravated by the actual performance of duty at a definite time and place.
8. Applicant's PTSD does 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 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 and other witnesses testified that Applicant had received significant training in negotiations, including negotiations with individuals considering suicide. Applicant and the victim involved in the incident had some commonalities in their background, and Applicant spent time establishing a rapport with the victim prior to his suicide, but Applicant did not know the victim personally prior to the date of his suicide. No evidence was entered indicating that Applicant's department or supervisor deviated from standard protocols in connection with the event. While Applicant provided several opinions that the incident was uncommon and more stressful than ordinary experiences of police officers, the City's witnesses testified to the contrary, that Applicant should have anticipated something like the April 30, 2019 incident based on training and the occurrence of similar incidents in the profession in the past.
10. Taking all of the evidence into account, the Board determined that the incident did not constitute workplace stress of greater magnitude than the day-to-day stresses experienced by other police officers. Accordingly, the System's decision awarding and ordinary disability retirement benefit is affirmed.

DECISION

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

Dated this 18TH day of November, 2021.



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 19 day of November, 2021.

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

Signature Jill Hagge