

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

IN THE MATTER OF:

BROOKE CARTER,

Applicant.

DECISION

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

STATEMENT OF THE CASE

Brooke Carter (“Applicant”) filed her application for an accidental disability pension on or about November 19, 2021. On April 7, 2022, 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 April 22, 2022. On or about May 3, 2022, Applicant filed, through Applicant’s attorney Charles Gribble, 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) (the “Committee”) on August 17, 2022, at the offices of the System. Marty Pottebaum served as Chair. Applicant was represented by attorney Charles Gribble. The City of Waterloo (the “City”) was represented by attorney Ann Smisek. Daniel Cassady, Executive Director, appeared on behalf of the System. Cynthia Boyle Lande was present as counsel to the Committee. System Board member Mallory Merritt and BrownWinick attorney Nate Borland observed the hearing. Testimony was received from Applicant, Ben Bloker, Randall Hammitt, and Rob Camarata. The City waived the right to present any evidence or question any witnesses. On September 12, 2022, Applicant filed (through her attorney) a post-hearing brief.

FINDINGS OF FACT

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

1. Applicant was born on January 21, 1970. Ex. 1-1. She began service as a police officer for the City of Waterloo on August 31, 1990. Ex. 1-5. At the time she filed her application for disability benefits, Applicant held the rank of Sergeant. *Id.*
2. Applicant’s last working day with the City of Waterloo was August 21, 2021. *Id.* After that date, Applicant continued to receive sick pay from the City of Waterloo. *Id.*

3. Applicant filed for an accidental disability pension on or around November 19, 2021. Ex. 1-1.
4. On April 7, 2022, the System's Medical Board opined that Applicant is unable to perform the full duties of a police officer due to her post-traumatic stress disorder (PTSD) and alcohol use disorder. Ex. 5-6. The Medical Board further opined that 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.*
5. The System issued a decision awarding an ordinary disability pension due to PTSD and alcohol disorder on April 22, 2022. Ex. 6-1 Applicant's appeal was timely filed with the System on May 3, 2022. Ex. 7-1. The City did not appeal the decision. The only issue on appeal is whether Applicant's PTSD and alcohol use disorder qualify her for an accidental disability retirement rather than an ordinary disability retirement.
6. Applicant's medical records indicate she began seeking medical care for her alcohol use in August of 2021. Ex. 4A-1. After conferring with Unity Point Family Medicine ARNP Mary S. Knutson, Applicant entered in-patient treatment with Hazelden Betty Ford in Center City, MN on August 27, 2021. Exs. 4A-2, 4B-1, 4B-2. At Hazelden, Applicant was diagnosed with other specified depressive disorder, unspecified anxiety disorder, and uncomplicated bereavement. Ex. 4B-4. During her in-patient treatment, she described symptoms of depression and anxiety. Exs. 4B-56, 4B-213. Applicant discharged from Hazelden on September 24, 2021. Ex. 4B-1.
7. After completing in-patient treatment, Applicant continued to be treated at Unity Point Family Medicine, Pathways Behavioral Services, and by Dr. Adam James Woods, MD. On January 10, 2022, several months after Applicant discharged from Hazelden, Beth Bardonner, LMSW, M.ED, CADC, with Pathways Behavioral Services, opined that Applicant "meets the DSM-5 criteria for Substance Use Disorder, Alcohol-severe, PTSD, and generalized anxiety disorder." Ex. 4C-1. Ms. Bardonner opined that, per Applicant's own reporting, "her substance use escalated significantly following a traumatic incident she incurred while on duty." *Id.* On February 21, 2022, Dr. Adam James Woods, MD opined that Applicant's "primary diagnosis is Post-Traumatic Stress Disorder (PTSD - 43.10) as a direct result of an incident which happened during her service as a police officer." Ex. 4D-1.
8. Applicant's testimony indicates that Applicant's PTSD and alcohol use disorder arose out of an incident that occurred the morning of December 16, 2014 (the "Incident"). Tr. 23:3. Applicant was called to assist officers at a disorderly conduct call. Tr. 24:20-22. At the time Applicant and other officers arrived, they were aware that the call involved an individual who carried weapons and had a known history of assaulting police officers. Tr. 25:2-7, 39:2-7, 64:11-25, 65:1-9; Ex. 3-3.
9. After it appeared that the dispute between the victim and the suspect was resolved, the suspect returned and intentionally ran his car into another officer's police car at a high rate of speed, which caused the other police car to contact Applicant's car and then a tree. Tr. 28:19-25, 29:1-5, 31:4-25, 67:9-14; Exs. 4E-1-2. Applicant and other officers

at the scene initially feared that the officer in the first car was severely injured or possibly killed, but he promptly exited his vehicle on his own while Applicant and another officer were arresting the suspect. Tr. 32:8-10, 69:4-10, 70:13-20, 72:5-8. Applicant sustained minor injuries as a result of the incident. Tr. 34:5-9, 20-25, 35:1-3, 18-23; Exs. 4E-1-2. The police officer in the other car was also treated for non-life threatening injuries. Tr. 34:5-9; Exs. 4E-1-2. The suspect was charged with criminal mischief and assault on a police officer. Ex. 3-17-18. Applicant returned to light duty the day of the Incident and remained on light duty until January 29, 2015. Tr. 37:10-13, 39:22-24. Applicant and other current and retired Waterloo police officers testified that they were not aware of other situations in which a suspect tried to harm officers by intentionally driving an automobile towards them at a high rate of speed. Tr. 55:17-25, 56:1-4; 72:4-8, 83:24-25, 84:1-7, 89:7-10.

10. Applicant testified that her anxiety and drinking increased significantly following the Incident. Tr. 40:15-25, 41:1-19. Applicant continued working without apparent disciplinary or other issues during this time, and her colleagues did not notice any change in her performance at work. Tr. 85:2-4.
11. Applicant's medical records suggest that her anxiety, PTSD, and alcohol use disorder may have been caused or exacerbated by events other than the Incident, including the death of a parent, her divorce, other significant calls at work, or a change in leadership at work. Exs. 4B-31, 4B-48, 4B-56, 4B-57.
12. The City of Waterloo requested that Applicant complete a fitness for duty evaluation with Dr. Philip L. Ascherman, Ph.D of Psychology Associates. Ex. 4E-1. This evaluation was completed on March 7, 2022. *Id.* During the evaluation, Applicant identified the Incident as the trigger for her PTSD and alcohol use disorder. Ex. 4E-2. "She stated that she thought the suspect was going to shoot . . ." *Id.* Applicant reported that her drinking began to increase substantially following the Incident. *See* Ex. 4E-2. Following the examination, Dr. Ascherman concluded that Applicant "is not appropriate for continued duty as a law enforcement officer." Ex. 4E-5. He opined that Applicant's symptoms are consistent with diagnoses of Alcohol Use Disorder, Generalized Anxiety Disorder, and Unspecified Depressive Disorder. *Id.* He also concluded that she appeared to meet the minimum criteria for PTSD. *Id.* He opined that causation for Applicant's condition was questionable, but "more likely than not, the critical event triggered or exacerbated generalized anxiety including excessive worry, and played a significant role in the progression of [Applicant's] Alcohol Use Disorder." *Id.*

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 her 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. In previous cases, the Iowa Supreme Court has ruled that 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) ("Cornish"); *Moon v. MFPRSI*, 548 N.W.2d 565, 568 (Iowa 1996). The Court has referred to this test as "legal causation." *Id.* *Cornish* and *Moon* followed the same reasoning as previously issued decisions in the workers' compensation context. *See Dunlavey v. Economy Fire & Casualty Company*, 526 N.W.2d 845 (Iowa 1995).
6. In 2002, the Iowa Supreme Court revisited the legal causation standard in the workers' compensation case of *Brown v. Quik Trip Corporation*, 641 N.W.2d 725 (Iowa 2002). In issuing a decision that it described as "consistent with *Dunlavey*," the Court concluded that the situations experienced by the claimant, being manifest happenings of a sudden traumatic nature from an unexpected cause or unusual strain, met the legal causation standard, regardless of the fact that the claimant did not present any evidence of stress experienced by other workers in similar jobs. *Id.* at 728.
7. Earlier this year, the Iowa Supreme Court again revisited the legal causation standard in the workers' compensation case of *Tripp v. Scott Emergency Communication Center*, 977 N.W.2d 459 (Iowa 2022). In *Tripp* the Court articulated the legal causation standard in the workers' compensation context as follows: "When a purely mental injury is traceable to a readily identifiable work event, the claimant proves legal causation . . . by analyzing the unexpected or unusual nature of the injury-inducing event without regard to the claimant's own particular duties." *Id.* at 470. The Court retained the *Dunlavey* legal causation standard for "mental injuries that might result from a combination of work- and non-work-related factors." *Id.* at 467. While the Court's decision and a lengthy dissent touched on the application of the legal causation test in the context of Chapter 411, that issue was not before the Court in *Tripp*, and the *Moon* and *Cornish* decisions have not been overruled. Accordingly, Applicant in this

case has the burden of establishing that her disabling mental injury was caused by workplace stress greater than the day-to-day stress experienced by other police officers.

8. Chapter 411 accidental disability benefits and workers' compensation benefits are similar, but not identical. Because of the unique nature of Chapter 411 and the jobs its members perform as police officers and firefighters, law changes in the workers' compensation context should not automatically be extended to Chapter 411 without consideration of whether they are appropriate in the context of the System.
9. Chapter 411 accidental disability benefits are more than a substitute for workers' compensation benefits for employees of participating police and fire departments. Iowa's workers' compensation statute represents a compromise between workers, who relinquish their right to sue their employers for work-related injuries, and employers, who agree to promptly compensate employees for work-related injuries regardless of fault. *Baker v. Bridgestone/Firestone*, 872 N.W.2d 672, 676-77 (Iowa 2015). Chapter 411 disability benefits are a critical component of the overall Chapter 411 pension system. It is not uncommon for an individual retiring due to disability under Chapter 411 to receive a benefit amount calculated based on what they would receive if they had a service retirement. Iowa Code § 411.6(4), (6).
10. Specific aspects of Chapter 411 are also different from Iowa workers' compensation system. The formula for calculating an individual's accidental disability benefit is connected to the formula for calculating the amount the individual would receive if he or she retired. Iowa Code § 411.6(6). Unlike under the workers' compensation system, all individuals who retire due to disability receive a full disability benefit, and no percentage benefits are awarded. *See* Iowa Code § 85.34(2). Also unlike under the workers' compensation system, individuals who are not eligible for an accidental disability benefit are not without other recourse. Individuals who are disabled but do not qualify for an accidental disability benefit are eligible for an ordinary disability benefit under Chapter 411. Iowa Code § 411.6(3). Further, Chapter 411 contains its own provision for coverage of medical expenses incurred by members who are injured on the job. Iowa Code § 411.15. Chapter 411 accidental disability benefits are not available for cumulative injuries, even if the evidence demonstrates that they were incurred or aggravated by the performance of job duties. *See McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 373 (Iowa 1985); *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992). They must be tied to job duties performed at a definite time and place. Iowa Code § 411.6(5)(a).
11. The Iowa Legislature could have provided that members of the Chapter 411 system are covered by Chapter 85, or it could have mirrored the workers' compensation statute within Chapter 411. Instead, it created a separate system for police officers and firefighters, expressing a clear intent to treat those individuals differently when it comes to disabling injuries and illnesses.
12. The *Tripp* decision concludes that the Legislature must not have intended for the *Dunlavey* causation standard to apply in the workers' compensation context because it

is not found in the statute itself. *Tripp* at 467-68. This may be true in the workers' compensation context, but it is not true in the context of Chapter 411 accidental disability benefits. During the two legislative sessions immediately prior to the issuance of this Decision, legislation has been introduced that would eliminate the legal causation standard in the context of Chapter 411 accidental disability benefits. The Legislature has considered, and each time, declined to change the law, demonstrating that the Legislature believes the Iowa Supreme Court's rulings in *Moon* and *Cornish* are appropriate in the context of Chapter 411 accidental disability benefits.

13. 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.
14. No evidence was presented showing Applicant was not a member in good standing at the time she submitted her application for an accidental disability retirement. The Medical Board opined that Applicant was totally and permanently disabled as a result of her PTSD and alcohol use disorder. Accordingly, the only question before the Committee is whether Applicant's PTSD and alcohol use disorder constitute an injury or disease for which accidental disability benefits are available under Iowa Code Chapter 411.
15. Applicant's PTSD and alcohol use disorder 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 alcohol use disorder 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.
16. There was no testimony that Applicant's department or supervisors failed to follow standard protocols in connection with the Incident. While no evidence was presented as to whether Applicant had received training for situations similar to the Incident, Applicant testified that it was common for her to assist with difficult situations, and she and the other officers were aware the suspect had a history of carrying weapons and assaulting officers when they arrived at the call on December 14. The Incident involved a potential for severe injury to an individual who was a colleague and friend to Applicant. Tr. 56:11-17. The Committee recognizes that fact. However, in light of the fact that Applicant and officers often face dangerous suspects and entered this situation aware that the suspect was likely armed, the Committee assesses that the Incident was not above and beyond the day to day stress experienced by other police officers.

17. If the Iowa Supreme Court determines that it is appropriate to replace the legal causation standard it adopted in *Moon* and *Cornish* with the standard it recently announced in the workers' compensation context in *Tripp*, Applicant's mental injury still does not meet that standard. For the *Tripp* standard to apply, there must be a readily identifiable event, which is sudden, traumatic, and unexpected or unusual. The Incident was not sudden, unexpected, or unusual. Applicant and other officers testified that it was common knowledge among Waterloo police that the suspect involved in the Incident carried weapons and assaulted police officers. They had this information prior to arriving at the December 14 call, and it allowed them to prepare for a potentially dangerous situation. Similarly, testimony from Applicant and other officers demonstrated that the car crash Incident occurred after officers had been at the caller's home for some time, interacted with the suspect, and were aware he was angry. Applicant further testified that her job was to assist other officers with questions in difficult situations, and it was something she did on a daily basis.
18. 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. The Board also concluded that, to the extent the Iowa Supreme Court determines it is appropriate to extend its holding in *Tripp* to Chapter 411 accidental disability cases, the Incident did not represent a manifest happening of a sudden traumatic nature from an unexpected cause or unusual strain. Accordingly, the System's decision awarding an ordinary disability retirement benefit is affirmed.

DECISION

The appeal for an accidental disability pension on behalf of Brooke Carter under Chapter 411 is hereby denied. Applicant is entitled to an ordinary disability benefit.

Dated this 6 day of October, 2022.

A handwritten signature in dark ink, appearing to read "Marty Pottebaum", written over a horizontal line.

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 7th day of October, 2022.

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

Signature

Kathy Fraise