

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

IN THE MATTER OF:

JEFFREY WESTPHAL,

Applicant.

:
:
:
:
:
:
:

DECISION

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

STATEMENT OF THE CASE

Jeffrey Westphal (“Applicant”) filed his application for an accidental disability pension on or about July 3, 2023. On September 17, 2023, 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 October 4, 2023. On or about October 18, 2023, 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 June Anne Gaeta, Duane Pitcher, and Nickolas Schaul) (the “Committee”) on February 28, 2024, at the offices of the System. June Anne Gaeta served as Chair. Attorney Charles Gribble represented the Applicant. Attorney Mark Lambert represented the City of Ames (the “City”). Daniel Cassady, Executive Director, appeared on behalf of the System. Jennifer Lindberg was present as counsel to the Committee. BrownWinick attorney Cynthia Boyle Lande observed the hearing. Testimony was received from Applicant, Dr. Paul Ascheman, and Ames Fire Chief Richard Higgins. The parties waived their right to file written briefs at the conclusion of the hearing.

FINDINGS OF FACT

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

1. Applicant was born on March 26, 1968. Ex. 1-1. He began service as a fire fighter for the City of Ames on October 21, 2003. Ex. 1-5. At the time he filed his application for disability benefits, Applicant held the rank of fire fighter. *Id.*
2. Applicant’s last working day with the City of Ames was in early March of 2023. (Member’s Hearing Testimony).
3. Applicant filed for an accidental disability pension on or around July 3, 2023. Ex. 1-1.

4. On September 17, 2023, the System's Medical Board opined that Applicant is unable to perform the full duties of a fire fighter due to his post-traumatic stress disorder ("PTSD"). 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 on October 4, 2023. Ex. 6-1 Applicant's appeal was timely filed with the System on October 18, 2023. Ex. 7-1. The City did not appeal the decision. The only issue on appeal is whether Applicant's PTSD qualifies him for an accidental disability retirement rather than an ordinary disability retirement.
6. Applicant's testimony indicates that Applicant's PTSD arose out of two specific incidents that occurred in 2020 and 2021.¹ The Applicant testified that on March 9, 2020, he was dispatched to a home where two elderly individuals committed suicide in their vehicle inside their garage. While at the home, Applicant was asked to assist the funeral home staff remove the victims from the vehicle. The Applicant testified that the victims had been dead for several days, and their bodies had begun decomposing which made removal challenging. After this incident, the Applicant sought counseling after experiencing anger, flashbacks, and suicidal ideation. The Applicant was placed on leave but returned to work after a period of time.
7. The City submitted evidence in advance of the hearing that corroborates the Applicant's testimony regarding the double suicide incident. At the hearing, Fire Chief Higgins and Dr. Ascherman both testified that the removal of two individuals who had jointly committed suicide and the delayed discovery and removal of these bodies resulted in an incident that was above and beyond that expected or encountered by fire fighters. Fire Chief Higgins testified that a fire fighter may experience one badly decomposed body during his or her career, but two at one time in this manner is out of the ordinary. The Committee finds Fire Chief Higgins' testimony credible and compelling on this point.
8. The Applicant also testified about an incident that occurred just over one year after the double suicide. On April 24, 2021, Applicant was called to a scene where it was believed a child fell out of a highchair. It was subsequently determined that the two-year old child was severely beaten by his mother's boyfriend. Applicant observed the child's physical condition and the ongoing resuscitation attempts.² Applicant became ill on the scene and was unable to complete his shift due to feelings of anger and suicidal ideation. At the hearing, the Fire Chief and Dr. Ascherman testified that this event is above and beyond that which is expected or normally encountered by fire fighters. Fire Chief Higgins further testified that seeing a child beaten to death and specifically the resulting physical deformities observed by Applicant here is outside of

¹ While Applicant provided testimony regarding a 2017 incident involving the natural death of a colleague, the Committee did not believe that event constituted a workplace stress of greater magnitude than day-to-day stresses of other police officers or fire fighters. Accordingly, the testimony regarding that 2017 incident is not addressed in further detail in this Decision.

² There was testimony introduced that the child later died as a result of his injuries.

the ordinary stressors experienced by fire fighters. The Committee finds Fire Chief Higgins' testimony credible and compelling on this point.

9. Applicant testified that he began treatment with Dr. Ascherman following the incident with the child but was able to return to work after a period of time.
10. Applicant testified that he experienced a recurrence and/or exacerbation of his PTSD in March 2023. He testified that this recurrence resulted from being switched from his role as a driver to a frontline fire fighter. When he was on calls in that capacity, he experienced feelings of dread, anger, and suicidal ideation. He reported the symptoms to Fire Chief Higgins and went back to treatment with Dr. Ascherman. He was restricted from active duty and did not return to work as a fire fighter in any capacity.

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. Iowa Code §411.6(5) also requires that a member's incapacitating disability be attributed to a specific event or incident in order to qualify for an accidental disability pension.
6. 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.* This test remains the applicable legal standard used by the System.

7. 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 fire fighters: (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.
8. No evidence was presented showing 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 Applicant was totally and permanently disabled as a result of his PTSD. Accordingly, the only question before the Committee is whether Applicant’s PTSD constitutes an injury or disease for which accidental disability benefits are available under Iowa Code Chapter 411.
9. 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 fire fighters. *City of Cedar Rapids*, 572 N.W.2d at 922; *Moon*, 548 N.W.2d at 568.
10. The evidence established that Applicant’s PTSD can be attributed to two separate and specific instances that occurred while he was on duty, the double suicide and the child’s death, satisfying the requirements of Iowa Code §411.6(5).
11. The Board determined that these two incidents, if they were to be taken separately and independently, do not meet the *Cornish-Moon* standard. However, taking all of the evidence into account, the Board determined that these two specific incidents constitute a workplace stress of greater magnitude than the day-to-day stresses experienced by other fire fighters because they occurred in temporal proximity to each other, and the second incident involved an innocent victim (two-year old child).
12. Accordingly, the System’s decision awarding an ordinary disability retirement benefit is overturned and the Applicant is awarded an accidental disability benefit.

DECISION

The appeal for an accidental disability pension on behalf of Jeffrey Westphal under Chapter 411 is hereby granted. Applicant is entitled to an accidental disability benefit.

Dated this 29 day of February, 2024.

June Anne Gaeta

June Anne Gaeta, Chair
Disability Appeals Committee

COPIES TO:

Charles Gribble
Gribble, Boles, Stewart, and Witosky Law
2015 Grand Ave., Suite 200
Des Moines, IA 50312
Counsel for Member

Mark Lambert
515 Clark Avenue, P.O. Box 811
Ames, IA 50010
Counsel for City of Ames

Daniel Cassady, Executive Director
Municipal Fire and Police Retirement
System of Iowa
7155 Lake Drive, Suite 201
West Des Moines, IA 50266

Jennifer Lindberg
Brown, Winick, Graves, Gross and
Baskerville P.L.C.
666 Grand Suite 2000
Des Moines, IA 50309
Counsel for Committee

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 1st day of March, 2024.

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

Signature Kathy Haise