

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

IN THE MATTER OF:

TIMOTHY PEAK,

Applicant.

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DECISION

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

STATEMENT OF THE CASE

Timothy Peak (“Applicant”) filed his application for an accidental disability pension on or about June 30, 2023. On July 6, 2023, the System denied Applicant’s application because the application indicated the Applicant was not a member in good standing. On August 2, 2023, attorney Kellie Paschke filed a timely appeal on behalf of Applicant challenging the System’s denial of Applicant’s application. A hearing was held before the Disability Appeals Committee of the Board (comprised of Marty Pottebaum, Duane Pitcher, and Laura Schaefer) on January 3, 2024 at the offices of the System. Marty Pottebaum served as Chair. Applicant appeared and was represented by attorney Kellie Paschke. The City of Des Moines appeared and was represented by attorney John Haraldson. Daniel Cassady, Executive Director, appeared on behalf of the System. Cynthia Boyle Lande was present as counsel to the Committee. Testimony was received from Applicant, Patrick Hickey, Joshua Rhamy, and Michael McTaggart. Applicant filed a post-hearing brief on February 15, 2024. The City of Des Moines filed a post-hearing brief on February 15, 2024.

FINDINGS OF FACT

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

1. Applicant was born on November 27, 1967. He commenced service as a police officer for the City of Des Moines on December 5, 1994. At the time of his application for accidental disability benefits, Applicant held the rank of Captain with the City of Des Moines Police Department.
2. An investigation into Applicant’s conduct began on or around June 13, 2023. City Exhibit “C”; City Exhibit “G.” The investigation included interviews with individuals familiar with the subject of the investigation. City Exhibit “G.” The investigation also included a review of Applicant’s GPS location, computer log, and call records. Id.

During his interview, Applicant admitted to having an intimate relationship with an individual who the investigation revealed he visited approximately 23 times during working hours over an approximately 10-week period. Id.

3. As part of the investigation, Applicant was interviewed by Sergeant Jeff Cronin and Captain Josh Rhamy on June 28, 2023. City Exhibit "B." Sergeant Pat Hickey was present for the interview as a union representative. Id.
4. On June 29, 2023, Applicant was notified that he was being placed on administrative leave while the investigation was completed. Member Exhibit 4; City Exhibit "C."
5. On or around June 30, 2023, Applicant applied for an accidental disability benefit due to knee and shoulder injuries. City of Des Moines Chief of Police Dana Wingert certified that Applicant was not a member in good standing at the time his application was submitted.
6. On July 5, 2023, Applicant voluntarily resigned. City Exhibit "E."
7. On August 1, 2023, the City of Des Moines Office of Operations Division issued its final investigation report. City Exhibit "F." On August 8, 2023, the City of Des Moines Office of Professional Standards issued its Administrative Review summary of findings. Member Exhibit 2. With respect to claims that Applicant was not available for calls, the investigation concluded that the claims were unfounded. Member Exhibit 2; City Exhibit "F." However, the results of the investigation concluded that pursuit of an intimate relationship and engaging in sexual intercourse during working hours violated Department Standards of Conduct as Conduct Unbecoming for a member of the Department. Id. The investigation concluded that, had the Applicant not resigned previously, the Applicant's conduct would have warranted termination from employment. City Exhibit "F."
8. The System denied Applicant's application for an accidental disability benefit on July 6, 2023 because the application indicated Applicant was not a member in good standing. Applicant's appeal was timely filed with the System on August 2, 2023. The City did not appeal the decision. The only issue on appeal is whether Applicant is a member in good standing.

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.

d. The requirement that a member be in good standing to apply for and receive a benefit under this subsection may be waived for good cause as determined by the board. The burden of establishing good cause is on the member.

3. A member in good standing is “a member in service who is not subject to removal by the employing city of the member pursuant to section 400.18 or 400.19, or other comparable process, and who is not the subject of an investigation that could lead to such removal.” Iowa Code § 411.1(14).
4. Pursuant to Rule 9.1(4) of the System’s Administrative Rules, the employing department certifies whether or not an applicant is a member in good standing. In the event an applicant is not a member in good standing at the time he or she applies but ultimately prevails in a personnel matter and becomes a member in good standing, the applicant’s application will be reopened. Id.
5. It is Applicant’s position that Applicant was in good standing at the time his application was filed for three reasons. First, Applicant asserts that the investigation ended when his interview was completed on June 28, 2023. Second, Applicant asserts that the investigation was unfounded. Finally, Applicant asserts that the City of Des Moines did not provide sufficient documentation at the time Applicant filed his application for disability benefits.
6. Applicant argues that the investigation ended on June 28, 2023, immediately following the interview of Applicant. The City of Des Moines argues, and the System agrees, that the investigation continued following Applicant’s interview. At the time of the June 28 interview, the investigators were still reviewing call logs, GPS data, and other data relating to Applicant’s activities. Tr. 70:3-11; 85:22-25; 86:1-4, 18-25; 87:1-11; 132:10-17; 133:6-13. The investigation was not complete until August 1, 2023, when the City of Des Moines Office of Operations Division issued its final investigation report confirming that a policy violation had occurred which would have resulted in a recommendation of termination had Applicant not already resigned.
7. Applicant argues that Applicant remained a member in good standing because the city’s investigation was unfounded. Iowa Code § 411.1(14) defines a member in good standing as one who is not the subject of an investigation that *could* lead to removal. It does not require the System to consider the merits of the investigation. Whether the investigation was unfounded is a personnel matter exclusively between the Applicant and his employer, the City of Des Moines. While the merits of the investigation are a personnel matter between the Applicant and the City of Des Moines, the System notes that no evidence was presented demonstrating that the results of the investigation were subsequently overturned, altered, or rescinded by the City of Des Moines.
8. Applicant argues that the City of Des Moines did not comply with MFPRSI Rule 9.1(4), which requires the employing city to provide records associated with the Applicant’s status as a member in good standing. The City of Des Moines included a note on Applicant’s application stating “The pension applicant is currently under investigation by the department for policy violations. The internal investigation is not yet completed.” Ex. 1-6. Applicant filed his appeal with the System on August 2, 2023, one day after the City of Des Moines Office of Operations Division issued its final report and six days before the City of Des Moines Office of Professional Standards issued its final Administrative Review findings. See City Exhibit “F”;

Member Exhibit 2. Following the conclusion of the investigation, the City of Des Moines submitted ten separate exhibits detailing the investigation. Accordingly, the System rejects Applicant's argument that Applicant should be deemed a member in good standing because the City of Des Moines provided insufficient documentation relating to Applicant's employment status.

9. The Applicant also asserts that good cause exists for the board to waive the member in good standing requirement because the member had received no warnings that his conduct was a violation of policy and it was common for members of the Department to take personal breaks during the day. The burden for establishing good cause sits with the Applicant. Iowa Code § 411.6(3), 411.6(5)(d). The System has reviewed past decisions in which it has waived the member in good standing requirement in consideration of this argument. After reviewing those decisions, the System has concluded that, in each case where the System has waived the requirement, there has either been (1) a clear causal connection between the member's disabling condition and the personnel issues preventing the member from meeting the member in good standing requirement; or (2) a clear procedural mistake, for which the employing city is responsible, which prevents the member from meeting the member in good standing requirement. This appeal does not fall into either of those categories. Accordingly, the System declines to waive the member in good standing requirement.

DECISION

The appeal of the System's denial of benefits for failure to meet the member in good standing requirement is denied. The Applicant's request for waiver of the member in good standing requirement is denied.

Dated this 29 day of February, 2024.



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 29th day of February, 2024.

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

Signature Kathy Fraise