

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

IN THE MATTER OF:

EMILIO PUENTE,

Applicant.

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DECISION

Iowa Code § 411.1(14) (2017)

Iowa Code § 411.6(3) (2017)

Iowa Code § 411.6(5) (2017)

STATEMENT OF THE CASE

Emilio Puente (“Applicant”) filed his application for an accidental disability pension on or about June 14, 2022. On June 15, 2022, the System denied Applicant’s application because the application indicated the Applicant was not a member in good standing. On June 27, 2022 attorney Peter Sand 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 February 28, 2024 at the offices of the System. Marty Pottebaum served as Chair. Applicant appeared and was represented by attorney Peter Sand. The City of Iowa City appeared and was represented by attorney Jennifer Schwickerath. 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, Rose Puente, Andrew Bratek, and Zakary Kohlmeyer. Applicant and the City of Iowa City filed post-hearing briefs on April 12, 2024.

FINDINGS OF FACT

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

1. Applicant was born on June 12, 1997. He commenced service as a police officer for the City of Iowa City on April 24, 2019. At the time of his application for accidental disability benefits, Applicant had resigned from his position with the City of Iowa City. Prior to resigning, he held the rank of officer with the City of Iowa City Police Department.
2. On or around June 14, 2022, Applicant applied for an accidental disability benefit due to an injury sustained while completing an arrest.

3. Iowa City Police Chief Dustin Liston certified that Applicant was not a member in good standing at the time his application was submitted.
4. The System denied Applicant's application for an accidental disability benefit on June 15, 2022 because the application indicated Applicant was not a member in good standing at the time his application was filed. Applicant's appeal was timely filed with the System on June 27, 2022. The City did not appeal the decision. The only issue on appeal is whether Applicant is a member in good standing.
5. The injury for which Applicant submitted his application was sustained on November 21, 2021 while working as a police officer. Tr. 20:15-20. Applicant was called to a club where an individual had been knocked out. Tr. 20:23-25, 21:1-2. After Applicant arrived at the club, a fight broke out. Tr. 21:9-14. While arresting one individual, Applicant sustained a severe injury to his right leg, causing significant damage to the nerve in his leg. Tr. 22:11-16. The City and Applicant agree that Applicant was a member in good standing at the time he sustained this injury.
6. After the November 21 incident, Applicant was notified that he was being investigated for an event that occurred earlier in the month of November. Tr. 32:21-24. The investigation stemmed from an arrest that took place on November 12, 2021. On that date, Applicant was involved in a use of force in the arrest of a suspect referred to for purposes of this appeal as "J.W." Tr. 18:7-21. Applicant was interviewed twice in connection with the investigation, in December of 2021 and January of 2022. Tr. 40:15-20. Applicant was also notified that the Iowa City Police Chief intended to suspend, demote, or terminate his employment as a result of the investigation. Tr. 40:25, 41:1-4.
7. Applicant resigned in lieu of termination on February 3, 2022. Tr. 37: 21-23. At the hearing, Applicant testified that he did not understand the significance of his decision to resign or the severity of his injury at the time he resigned. Tr. 38:13-20.

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.

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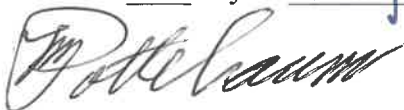
d. The requirement that a member be in good standing to apply for and receive a benefit under this subsection may be waived for good cause as determined by the board. The burden of establishing good cause is on the member.

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 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. Applicant argues that he was a member in good standing at the time of his injury, even if he was not a member in good standing at the time he applied for a disability benefit. Therefore, he argues, he should be eligible for a disability benefit. The Committee is bound by the language of Iowa Code Chapter 411 and cannot find that a member remains in good standing and eligible to apply for a disability benefit following a resignation by the member.
6. Alternatively, Applicant argues that the Board should waive the member in good standing requirement for Applicant. In his post-hearing brief, Applicant makes several policy arguments for why police officers and firefighters in Applicant’s position should be entitled to an accidental disability benefit. Applicant bears the burden of showing that good cause exists to waive the member-in-good standing requirement. The System has previously only waived the member-in-good standing requirement in situations where (1) the behavior being investigated or disciplined resulted from the disabling condition; or (2) the member resigned prior to applying for a disability benefit based on the promise of the employing city that the member would be eligible to apply post-separation. Similar facts are not present here. Accordingly, the Committee finds that Applicant has not met his burden to demonstrate that good cause exists to waive the member-in-good standing requirement.

DECISION

The appeal for an accidental disability pension on behalf of Emilio Puente under chapter 411 is hereby denied.

Dated this 9 day of May, 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 10th day of May, 2024.

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

Signature Kathleen Frise