

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

IN THE MATTER OF:

DAVID BERNAL,

Applicant.

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DECISION

Iowa Code § 411.1(14) (2013),
Iowa Code § 411.6(3) (2013), and
Iowa Code § 411.6(5) (2013)

STATEMENT OF THE CASE

David Bernal (“Applicant”) filed his application for an accidental disability pension on or about June 13, 2023. On June 23, 2023, the System denied Applicant’s application because the application indicated the Applicant was not a member in good standing. On July 10, 2023, Applicant filed a timely appeal challenging the System’s denial. A hearing was held before the Disability Appeals Committee of the Board (comprised of Duane Pitcher, Frank Guihan, and Jennifer Sease) on October 1, 2025 at the offices of the System. Duane Pitcher served as Chair. Applicant appeared. The City of Des Moines appeared, represented by attorney John Haraldson. Daniel Cassady, Director, appeared on behalf of the System. Cynthia Boyle Lande was present as counsel to the Committee. Testimony was received from Applicant, District Chief Kerry Schneider, and Fire Chief John TeKippe. Applicant and the City waived the filing of post-hearing briefs.

FINDINGS OF FACT

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

1. Applicant was born on March 14, 1970. He commenced service as a firefighter for the City of Des Moines on October 10, 1990. Applicant’s last working day on the job was June 6, 2023.
2. Applicant applied for accidental disability benefits due to numerous injuries to his back, hip, knee, shoulder, neck, foot, calf, eardrum, and eyes, as well as an exposure to Hepatitis C while working on the job, heart issues, and mental and emotional trauma. **Ex. 1.3-1.4.** Applicant submitted his application on or around June 13, 2023. **Ex. 1.20.** Des Moines Fire Department Chief John TeKeppe certified that Applicant was not a member in good standing. **Ex. 1.5.**

3. The System issued a decision denying Applicant's application for accidental disability benefits on June 23, 2023 because Applicant was not a member in good standing. **Ex. 2.1.** Applicant's appeal was timely filed with the System on July 10, 2023. **Ex. 3.2.** The City did not appeal the decision. After filing his appeal, Applicant requested that his appeal be continued indefinitely pending the resolution of other legal matters relating to his employment with the City. Upon resolution of those matters, a hearing was scheduled for October 1, 2025. The only issues on appeal are (1) whether the Applicant was a member in good standing at the time he applied for benefits, and (2) if the Applicant was not a member in good standing, whether that requirement should be waived by the System for good cause.
4. As of the date of the hearing, Applicant was receiving service retirement benefits.
5. At the outset of the hearing, Applicant requested that the hearing be held in closed session under Iowa Code Chapter 21. Applicant did not identify a specific basis for the request, and finding no available justification for moving into closed session under Iowa Code Section 21.5, the Committee denied Applicant's request.
6. Also at the outset of the hearing, Applicant presented new exhibits to the Committee and the City, substantially after the deadline for submitting exhibits under Rule 6.12(1) of the System's Administrative Rules. The City objected to the introduction of the additional exhibits on the basis that (1) they related primarily to the propriety of Applicant's termination of employment with the City and, as a result, are not relevant to the appeal; and (2) they were submitted after the deadline for submitting exhibits, which deprived the City of an opportunity to thoroughly review the exhibits prior to the hearing. The Committee noted the City's objections and accepted the exhibits, acknowledging that they would be given the appropriate weight based on the contents and timeliness of filing.
7. Throughout the hearing, the City objected to testimony provided by Applicant on several occasions, on the basis that the testimony focused on personnel actions taken by the City, which are not at issue in this appeal. The Committee allowed Applicant to continue providing such evidence, but repeatedly encouraged Applicant to keep evidence and testimony related to the issues on appeal.
8. On October 29, 2021, the City of Des Moines issued Applicant a letter it labeled the "Last Chance Warning." **City Ex. 1.** In part, it stated, "any further violation of the City of Des Moines workplace policies, including any type of retaliation towards any members of the fire department or the City of Des Moines, will subject you to immediate termination." **City Ex. 1 – 004.**
9. On June 2, 2023, Applicant commented on a colleague's public Facebook post while at work. **City Ex. 2 – 001.** The City concluded that the comment was offensive, inappropriate, and a violation of the City's workplace policies. On June 6, 2023, the City placed Applicant on paid leave. **City Ex. 3 – 005.** District Fire Chief Kerry Schneider communicated to Applicant that he was not to report to work and would be receiving written notice of a pre-determination hearing (PDH), at which he could

explain why the post had not violated his Last Chance Warning. *Id.* On June 13, 2023, Applicant received notice of the PDH. **City Ex. 4 – 014.** On the same date, Applicant submitted his application for disability benefits. The portion of the application Applicant submitted requiring information from the City was blank. That portion of the application was completed and submitted on June 20, 2023. At the hearing before the Committee, Applicant testified that he applied for disability benefits as an alternative way of resolving the disciplinary issues and investigation he was facing. The PDH was held on June 16, 2025. **City Ex. 4 – 001.** Following the PDH, the City notified Applicant that his employment with the City was terminated immediately. **City Ex. 5.**

CONCLUSIONS OF LAW

1. At the time Applicant applied for benefits, Iowa Code § 411.6(3) stated:

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 in good standing 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 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. 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. At the time Applicant applied for benefits, Iowa Code section 411.6(5) stated (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.***

(Emphasis added.)

3. At the time Applicant applied for benefits, a "member in good standing" was defined as "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) (2013).
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. Based on this statutory scheme, Applicant has the burden to establish good cause to support the waiver of the member-in-good-standing requirement. The Board, in evaluating Applicant's appeal, has discretion to determine whether Applicant's

evidence is sufficient to establish good cause to waive the member-in-good-standing requirement.

6. Applicant did not present any evidence to establish he was a member in good standing at the time he applied for benefits. At the time Applicant applied for benefits, the evidence shows he was the subject of an investigation that ultimately resulted in his termination. Based on the evidence presented, the Committee upholds the determination that Applicant was not a member in good standing at the time he applied for disability benefits.
7. Applicant asked the Committee to find that he was eligible to apply for disability benefits despite the fact that he was not a member in good standing at the time he applied. The Committee considered this as a request to find that good cause exists to waive the member-in-good-standing requirement in this situation.
8. Applicant argued against the determination that he is not a member in good standing on the basis that he believed other members of the Des Moines Fire Department had been treated differently by the Fire Department in the past. Applicant testified that it is his belief the different treatment he received results, at least in part, from the perception that his moral and religious beliefs differ from those of his colleagues.
9. Applicant submitted a Des Moines Register article dated September 12, 2018 reporting that some members of the Des Moines Fire Department had been allowed to remain employed by the Department and receive benefits from the System notwithstanding disciplinary or criminal issues. **See Member Ex. G-1 – 2.** The article is not persuasive to the Committee for a number of reasons. First, the Committee does not have before it independent verification of the facts presented in the article or other facts relevant to the determination of benefits for the individuals identified in the article. Second, the disciplinary action or leniency imposed by the City and how it compares with other similar situations is not the issue in this appeal. The issue in this appeal is whether Applicant is a member in good standing, as defined by Iowa Code Iowa Code § 411.1(14), or whether good cause exists to waive that requirement. To the extent Applicant takes issue with the personnel decisions made by the City and variability in those decisions, this appeal is not the forum for resolving those issues. Third, while not itself determinative for the Committee, the Committee notes that the article was one of the exhibits provided by Applicant at the hearing, which did not allow the City time to consider its contents in preparation for the hearing.
10. Applicant argues that there were procedural defects involving the disciplinary action taken by the City, entirely unrelated to Applicant's application and eligibility for benefits from the System. Applicant provided one specific example of these defects. He testified that he requested specific documentation during the investigation of his behavior that was not provided to him. Those challenges and their defects, if any, are not before the Committee in this appeal. If the City's disciplinary action, including termination, were improper, Applicant had other venues to pursue appropriate remedies for those errors.

11. Applicant further argues that the discipline he received, termination of employment after 33 years of service, which resulted in a disqualification for disability benefits from the System, outweighs the severity of his conduct. The investigative or disciplinary action completed by the City is not within the System's control or before the System in this appeal. The only issue on this appeal is whether Applicant was a member in good standing, taking into consideration the actions taken by the City, and if not, whether that requirement should be waived for good cause.
12. The System has previously waived the member-in-good standing requirement in a handful of situations. System decisions describing situations in which the member-in-good standing requirement was or was not waived were provided to the Applicant and the City of Des Moines prior to this hearing.
13. In the first situation, a suspect attempted to shoot the member. The suspect's weapon failed, saving the member's life. Shortly following the event, the member suffered from post-traumatic stress disorder (PTSD) and experienced symptoms such as crying spells, nightmares, flashbacks, isolation, and relationship problems. During this time, the member had an argument with his partner that escalated to a physical altercation. Domestic abuse charges were filed against the member, which resulted in an internal affairs investigation. The Chief of Police for the member's city certified that the member was not a "member in good standing" according to the System's definition. Separately, the Chief of Police wrote a letter to the System supporting the member's application for disability benefits and requesting a good cause waiver because the member's disability likely played a role in his actions that led to the investigation. Because the Committee found that the member's actions leading to investigation were symptomatic of the member's disabling condition (PTSD), the Committee found there was good cause to waive the member-in-good-standing requirement.
14. In the second situation, a member suffered from a verified heart condition. The condition required him to arrive at work late or leave early, and sometimes he could not go to work at all due to his health issues. The member ultimately applied for disability benefits. The record did not contain any evidence that the member had been subject to discipline or an investigation prior to the time he applied for benefits. The Chief of Police for the member's city certified that he was not a member in good standing due to a combination of attendance issues and being unable to meet personal financial obligations, which the Chief attributed to the cost of his medical care and time off from work due to his heart condition. The Committee found that the member was a member in good standing at the time he applied for benefits, but even if he was not, there was good cause to waive the member-in-good standing requirement. Like the situation described in the prior paragraph, the member's Chief acknowledged that any disciplinary issues the member may have had were the direct result of his disabling medical condition.
15. In the third situation, the member and his partners were involved in a shooting while on the job. The member and his partner both fired their weapons at an armed suspect. The suspect was critically wounded and later died. The shooting was investigated by the Iowa Division of Criminal Investigation, but ultimately the investigation was

closed and the shooting was determined to be justified. Following the event, the member developed anxiety and ultimately applied for disability benefits. Prior to applying for disability benefits, the member signed a Resignation of Employment and Release Agreement with the employing city. The member testified, and the city did not dispute, that the member had signed the Agreement before applying for disability benefits based on the advice of the city that signing the Agreement would not cause him to forfeit his right to proceed with his disability pension application. For this reason, the Committee found there was good cause to waive the member-in-good-standing requirement.

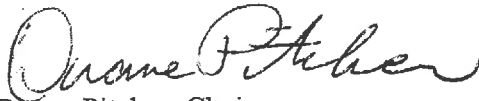
16. In other situations, the System has not found justification to waive the member-in-good-standing requirement, finding that the member has not satisfied the “good cause” standard. In one such case, a member was granted injury leave in September of 2012. The member subsequently violated the injury leave policy, which resulted in a recommendation of termination. On July 23, 2013, the member appealed that decision to the Civil Service Commission. On August 30, 2013, while the member’s appeal with the Civil Service Commission was pending, the member applied for disability benefits. The Chief of Police for the member’s city indicated the member was not in good standing. The Committee concluded in this appeal that the member had not presented sufficient evidence to demonstrate good cause to waive the member-in-good standing requirement.
17. In another case denying a waiver of the member-in-good standing requirement, a member was placed on administrative leave after the employing city received complaints that (1) the member was not available for calls while working; and (2) the member pursued a romantic relationship during working hours. The member ultimately resigned, and the investigation concluded that, had the member not resigned, his conduct would have warranted termination. The member applied for a disability benefit the day after receiving notice he was being placed on administrative leave while the investigation continued. The member argued that there was not sufficient evidence to demonstrate the member was not available during the work day and nothing in city policy prohibited personnel from pursuing an intimate relationship during the work day. The Committee concluded in this appeal that the member had not presented evidence demonstrating good cause to waive the member-in-good-standing requirement.
18. In these situations where the System did not find good cause to waive the member-in-good-standing requirement, doing so would have provided additional compensation and benefits to individuals who had made some (or, in some cases, many) positive contributions to their departments over the duration of their tenure and ease their transition from the profession, just as Applicant argues it would here. The Committees concluded that prior positive conduct is not alone good cause for waiving the member-in-good-standing requirement. Fiduciary duties and federal law applicable to qualified retirement plans prevent the System from awarding benefits richer than those dictated by statute based on what the Committees believes to be fair and equitable.

19. The System has historically 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. In each case, the successful waiver applicants introduced ample evidence and argument to support waiving the member-in-good-standing requirement. The System notes that these are not the only circumstances in which good cause may be found. In each case where the System has found good cause, the successful waiver applicants introduced ample evidence and argument to support waiving the member-in-good-standing requirement, meeting their statutory burden.
20. The Committee notes significant concerns about a request for a "good cause" waiver of the member-in-good-standing requirement being used as an opportunity to re-litigate personnel or disciplinary action taken by employing cities. Accordingly, the Committee disfavors finding good cause in situations where the only arguments made by an appealing member are that the employing city was incorrect in its decisions or processes involving personnel matters.
21. Applicant's evidence fails to establish good cause to waive the member-in-good-standing requirement. The evidence demonstrates that the facts of this case are similar to scenarios where the System has not found good cause in the past, despite the additional benefit it would provide to a long-tenured member of the System. This case is not similar to the prior situations where the System has found good cause, including situations where a member's disqualifying actions were caused by the member's disabling condition or where the member made personnel decisions at the direction of the employing city that cost the member his or her benefits. 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 David Bernal under chapter 411 is hereby denied, and the System's initial decision is upheld.

Dated this 2nd day of October, 2025.



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 8 day of October, 2025.

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

Signature 