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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-267 / 89-1420

463

MICHAEL MIHALOVICH,

Plaintiff-Appellant,

vs.

DES MOINES FIRE RETIREMENT SYSTEM and BOARD OF TRUSTEES OF THE DES MOINES FIRE RETIREMENT SYSTEM,

Defendants-Appellees.

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Appeal from the Iowa District Court for Polk County, Jack Levin, Judge.

In this review of a writ of certiorari, we affirm the action of the Board of Trustees of the Des Moines Fire Retirement System and annul the writ. **WRIT ANNULLED.**

Becky S. Knutson of Sayre & Gribble, P.C., Des Moines, for plaintiff-appellant.

Nelda Barrow Mickle, City Solicitor, Des Moines, for defendants-appellees.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

**SACKETT, J.**

This is a certiorari action challenging the decision of the Board of Trustees of the Des Moines Fire Retirement System denying Michael Mihalovich an accidental disability benefit. We affirm the trial court in affirming the board. We annul the writ.

Mihalovich had served twenty-two years as a Des Moines fire fighter when he was relieved of his duties because he developed a paranoid condition. The parties agree Mihalovich is totally and permanently mentally incapacitated and is unable to continue to perform duties as a fire fighter. The issue is whether the disability is the result of an accident.

Mihalovich's contention is that his condition was triggered by a situation in June 1987. He was driving a pumper truck to a fire and collided with a car. Mihalovich reported the accident to his supervisor. He was asked to make changes or additions to his report. Mihalovich contends the circumstances of the accident and the report elevated his stress level to the point he could no longer adequately function as a fire fighter. Mihalovich has been granted ordinary disability benefits. He claims he is entitled to accidental disability retirement benefits under section 411.6(5).

Mihalovich contends the board acted illegally in determining his disability is a delusional disorder rather

than an aggravation, or reinjury of a pre-existing disorder.

The Board of Trustees of the Des Moines Fire Retirement System is the body charged under Iowa Code section 411 (1987) with the administration of the retirement pension system for the city. The statute directs the board to arrange for an applicant to be examined by a medical board of three physicians. The findings are presented to the board, which then makes the decision on awarding benefits. Judicial review of the pension board's action is by certiorari. Benson v. Fort Dodge Police Pension Board, 312 N.W.2d 548, 550 (Iowa 1981). Relief is generally limited to questions of jurisdiction or illegality of the acts of which complaint is made. See State v. Cullison, 227 N.W.2d 121, 126 (Iowa 1975). If there is substantial evidence to support the decision, we are bound by the board's findings. See Mercy Health Center v. State Health Facilities Council, 360 N.W.2d 808, 811 (Iowa 1985), Butler v. Pension Board, 259 Iowa 1028, 1035, 147 N.W.2d 27, 31 (1966). This is true even if we might have reached a different conclusion on the merits of the decision. Mercy Health Center, 360 N.W.2d at 812.

The relevant evidence before the medical board was:

> [W]e believe Mr. Mihalovich suffers a delusional disorder, persecutory type. We consider this illness to be definitely disabling. As to whether or not it is job-related, it is impossible to tell. No one knows the exact cause of any mental illness at this time so no statement can be made regarding causes of the illness.

Mihalovich contends the failure of the medical board to make a determination as to whether the triggering condition was accidental leaves the record without substantial evidence to support the board's decision.

The applicable law set forth in Iowa Code section 411.6(5) (1989), provides:

> **Accidental disability benefit.** Upon application of a member in service or of the chief of the police or fire departments, respectively, any member 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 . . . shall be retired by the respective board of trustees, provided that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, and that such incapacity is likely to be permanent and that such member should be retired.
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> Disease under this section 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.

Upon a finding an applicant meets the requirements for accidental disability benefits, the applicant is entitled to receive a retirement allowance consisting of a pension equal to sixty-six and two-thirds percent of the member's average final compensation under Section 411.6(6). Ordinary retirement benefits of fifty percent of the member's average final compensation are awardable in the presence of permanent incapacity for duty, which is not caused by injury, disease or aggravation of either. Iowa Code sections 411.6(3) and (4) (1987).

The statutory definition is exclusive. Benson v. Fort Dodge Police Pension Board of Trustees, 312 N.W.2d 548, 551 (Iowa 1981); see also Reisner v. Board of Trustees, 203 N.W.2d 812, 814-15 (Iowa 1973).

Plaintiff introduced the evidence of a Dr. Turner. Turner agreed plaintiff suffered a delusional disorder, persecutory type. Turner, however, was of the opinion the June 1987 accident was the incident that triggered the disability. Plaintiff contends there was no competent evidence contradicting Turner's opinion, thus Turner's opinion should have been accepted. A fact-finder is generally justified in rejecting opinion evidence even if uncontroverted. See Sondag v. Ferris Hardware, 220 N.W.2d 903, 907 (Iowa 1974). There is substantial evidence to support the board's decision.

Having so decided, we need not address Mihalovich's second claimed error.

**WRIT ANNULLED.**