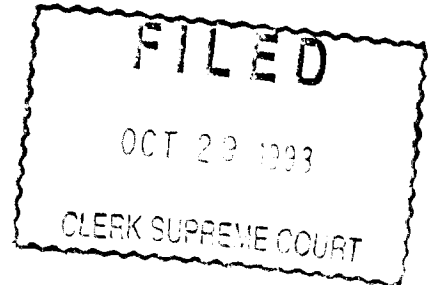


IN THE COURT OF APPEALS OF IOWA

No. 8-328 / 97-0660
Filed October 29, 1998



ROBERT D. CHIAFOS,
Appellant,

vs.

MUNICIPAL FIRE & POLICE RETIREMENT SYSTEM,
Appellee.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Robert Chiafos, a retired police officer, appeals from a district court decision on certiorari review affirming the defendant system's decision refusing to award him accidental disability benefits. **REVERSED AND REMANDED.**

Patricia M. Hulting and Charles E. Gribble of Roehrick, Hulting, Blumberg, Kirlin & Krull, Des Moines, for appellant.

Alice Helle and James H. Gilliam of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellee.

Heard by Cady, C.J., and Streit and Vogel, JJ., but decided by Streit, P.J., and Vogel and Mahan, JJ.

STREIT, P.J.

Robert Chiafos appeals the trial court's denial of his writ for certiorari contending the Pension Board erred in affirming the system's award of ordinary, rather than accidental, pension benefits. The Board applied an incorrect standard of legal causation when determining whether Chiafos had proven his condition was work related. For this reason the decision is not supported by substantial evidence and we reverse.

I. Background Facts & Proceedings.

Robert Chiafos was a police officer in Marion, Iowa, from December 1968 until March 1995. During his employment he experienced seven significant physical altercations:

1. On December 21, 1972, Ciafos fell backwards onto a frozen snow bank with a two-hundred-pound man on top of him.
2. In 1974, Chiafos suffered a severe leg injury and an upper back injury as the result of a foot pursuit.
3. In 1973 or 1974, Chiafos was hit in the shoulders by a heavy object while trying to break up a bar room brawl.
4. In 1973 or 1974 , Chiafos was put into a headlock by a suspect involved in a high-speed pursuit.
5. On November 14, 1975, Chiafos was assaulted by a woman who hit him very hard on the right rear of his head. During this incident Chiafos's wedding ring was knocked off by the force used.
6. On January 18, 1976, Chiafos was punched in the face with closed fists by a suspect and suffered a black eye, split lip, and fractured sinuses.

7. In May 1985, while attending the FBI Academy in Quantico, Virginia, as a part of his job training, Chiafos was hit at the base of his skull by an elbow and, though he didn't recollect any pain or discomfort, he remembered the distinct sound of his vertebrae cracking.

In March 1995, Chiafos had surgery to repair a herniated disk. After the surgery, his doctor would not release him to full-duty employment as a police officer because he was susceptible to future neck injury. Chiafos filed an application for an accidental disability pension from the Municipal Fire and Police Retirement System. On January 30, 1996, the executive director of the retirement system awarded Chiafos ordinary disability pension benefits. Chiafos appealed.

The Board denied Chiafos' appeal, finding he failed to prove his disability was caused by the actual performance of duty at a definite place and time. Chiafos filed a petition for writ of certiorari to the Polk County District Court. The court denied Chiafos' petition and affirmed the Board's decision. The court reasoned Chiafos could not prove more likely than not that job-related incidents had caused his injury. The court also found a crucial element missing from Chiafos' case was he could not pinpoint one incident as the cause of his disability. Chiafos appeals.

II. Standard of Review.

There are no statutory provisions to appeal decisions by the Board of Trustees of the Municipal Fire and Police Retirement System. *See* Iowa Code ch. 411 (1993). A party who desires to challenge a decision by the Board may seek judicial review by

filing a petition for writ of certiorari. *City of Cedar Rapids v. Mun. Fire & Police Retirement System*, 526 N.W.2d 284, 286 (Iowa 1995).

Our review in certiorari actions is limited. We consider whether the Board acted within its statutory authority and whether substantial evidence supports its decision. *Id.* at 287. Evidence is substantial when a reasonable mind would accept it as adequate to reach the findings, even though the evidence would support contrary inferences. *Id.* It is not our function to pass on the wisdom or soundness of the Board's discretion. *Butler v. Pension Bd. of Police Dept.*, 259 Iowa 1028, 1035, 147 N.W.2d 27, 30 (1966).

III. Disability Benefits.

The statutory retirement system for police officers includes “ordinary” and “accidental” disability benefits.¹ Iowa Code § 411.6(3), (5). “Accidental” disability

¹ Iowa Code section 411.6(3) covers ordinary disability retirement benefits and provides in part:

Ordinary disability retirement benefit. Upon application to the system, of a member in service or of the chief of 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

Iowa Code section 411.6(5) covers accidental disability benefits and provides in part:

Accidental disability benefit.

a. Upon application to the system, 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, or while

benefits are greater than “ordinary” disability retirement benefits. *City of Cedar Rapids v. Bd. of Trustees of Mun. Fire & Police Retirement System of Iowa*, 572 N.W.2d 919, 922 (Iowa 1998). There may also be certain tax advantages. *Id.*; see also *Moon v. Board of Trustees Mun. Fire & Police Retirement Sys.*, 548 N.W.2d 565, 568 (Iowa 1996).

Three conditions must exist for a police officer to be entitled to accidental disability benefits: (1) permanent incapacity; (2) causation by a work duty; and (3) “injury” or “disease.” “Disease” is defined in section 411.6(5)(c)² and is not at issue here. An “injury” for purposes of accidental pension benefits is the same as an injury under the workers’ compensation laws. See *City of Cedar Rapids*, 572 N.W.2d at 922. To be considered an injury, the injury must arise out of and in the course of the employment. *Id.* This causation element requires two determinations—causation in fact and legal causation. *Id.* Factual causation means medical causation—the employee’s injury must be causally connected to the employee’s employment. *Id.* Legal causation is a policy question of how far the law will extend liability for the consequences produced by the injury. *Id.*

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

² Iowa Code section 411.6(5)(c) defines “disease” to “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”

IV. Was There Substantial Evidence Supporting the Board's Decision that Chiafos Was Entitled to Ordinary Rather Than Accidental Benefits?

It is undisputed Chiafos is permanently incapacitated from further performance as a police officer due to his back and neck injuries. He is entitled to either ordinary or accidental disability pension benefits under chapter 411. The question is whether the Board's decision he is entitled only to ordinary benefits is supported by substantial evidence.

The Board reasoned Chiafos had not met the second or third conditions needed to prove entitlement to accidental disability benefit—causation by a work duty; and “injury” under the meaning of the statute. Within the decision of whether Chiafos had an “injury” as defined by the statute, the Board found Chiafos had proved neither factual or legal causation. The Board found no factual causation due to insufficient evidence Chiafos' disability was causally connected to his employment. The Board found no legal causation reasoning the law did not extend to cover the consequences of injuries not related to one definite place and time.

The Board offered no testimony, expert or otherwise, to prove Chiafos' injuries were not causally linked to his employment. Rather, the Board argues Chiafos' evidence is insufficient because his doctor did not testify it was more likely than not Chiafos' injuries were caused by his employment.

Dr. Mouw testified Chiafos had multiple episodes of trauma which had caused physical discomfort. He also testified multiple injuries had caused Chiafos a

degenerative spine condition. He testified the “history of repetitive episodes in which [Chiafos] had documented spine pain or neck pain . . . probably [is] the key” to Chiafos’ condition. Chiafos testified to multiple injuries he had received to his neck and back while performing his duties as a police officer.

We are mindful the question we face is not whether the evidence might support a different finding, but whether substantial evidence supports the findings actually made. *Etchen v. Holiday Rambler Corp.*, 574 N.W.2d 355, 359 (Iowa App. 1997); *Tim O’Neill Chevrolet v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). We must evaluate whether there is substantial evidence to support the conclusion Chiafos failed to prove his injury was causally related to his employment.

Dr. Mouw testified it was a possibility Chiafos’ condition was caused by work-related injuries. He testified the repeated neck and spine injuries probably caused Chiafos’ condition. Chiafos testified he did not have neck or back problems before he began working as a policeman and he did not injure his neck or back other than in work-related accidents. Our cases generally hold the probability standard is met by expert testimony that causation is probable or by expert testimony that causation is possible coupled with other testimony that the condition of which complaint is made did not exist before the alleged causative facts. *Bushman v. Cuckler Bldg. Systems, a Div. of Lear Siegler, Inc.*, 421 N.W.2d 145, 148 (Iowa App. 1988). If the Board found Dr. Mouw and Chiafos’ testimony credible, the evidence was sufficient to

prove Chiafos' claim. There was no finding Dr. Mouw's or Chiafos' testimony was not credible.

We hold the Board did not apply the correct legal standard of causation when determining whether Chiafos' injuries were work related. For this reason, the Board's decision was not supported by substantial evidence in the record. Because we reverse on this ground, we do not address Chiafos' contention the Board erred by requiring Chiafos to pinpoint a specific incident or injuries which caused his disability to recover accidental pension benefits. We reverse and remand for the Board to determine if Chiafos is entitled to accidental pension benefits while applying the correct legal standard of causation.

REVERSED AND REMANDED.