

**IN THE COURT OF APPEALS OF IOWA**

No. 6-412 / 04-1588  
Filed November 16, 2006

**NICOLE BOK,**  
Petitioner-Appellee,

**vs.**

**MUNICIPAL FIRE AND POLICE  
RETIREMENT SYSTEM OF IOWA,**  
Respondent-Appellant,

**CITY OF IOWA CITY, IOWA,**  
Intervenor-Appellant.

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

Respondent and intervenor appeal from a district court ruling reversing the denial of disability benefits to petitioner. **REVERSED AND REMANDED WITH DIRECTIONS.**

Alice E. Helle and Douglas E. Gross of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for respondent-appellant.

Sarah Holecek, First Assistant City Attorney, Iowa City, for intervenor-appellant.

Robert Rush of Rush & Nicholson, P.L.C., Cedar Rapids, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MAHAN, P.J.**

The Municipal Fire and Police Retirement System of Iowa (System), respondent, and the City of Iowa City, intervenor, appeal from a district court ruling reversing the System's denial of disability benefits to former Iowa City police officer Nicole Bok, petitioner.

**I. Background Facts and Proceedings**

Bok began employment as a police officer for the City on April 14, 1997, and thus became a member of the Municipal Fire and Police Retirement System of Iowa on that date. *See generally* Iowa Code ch. 411 (2003). Prior to her employment with the City, Bok worked as an officer for the University of Iowa Department of Public Safety (UIDPS) from 1993 to 1996, and as a police officer with the City of Coralville from 1996 until she joined the Iowa City police department in 1997. Her positions prior to joining the Iowa City department were not covered by chapter 411.

In March 1996 Bok experienced right shoulder pain while lifting weights. Dr. Michael M. Durkee diagnosed "subluxation with secondary impingement, right shoulder," and recommended physical therapy. Bok had two physical therapy sessions. The discharge summary listed her prognosis as "good," but indicated the goals of treatment "were not met." Bok testified she stopped physical therapy after two sessions because "my shoulder felt fine after two times." She did not return to see Dr. Durkee because the shoulder pain had resolved. A doctor conducting a pre-employment medical examination in 1997 concluded Bok was medically qualified to perform the essential job functions of a police officer.

Following commencement of her employment with the City, Bok suffered injuries to her right shoulder on three occasions, in the course of specific work activities. On October 14, 1998, she injured her right shoulder while shooting a shotgun during range qualification training. On January 26, 1999, she injured her right shoulder during defensive tactics training. On May 15, 2000, Bok again injured her right shoulder while shooting a shotgun during range qualification training.

On October 16, 2002, Bok's treating surgeon, Dr. James Nepola, performed a right shoulder "anterior capsulorrhaphy" for purposes of treating instability of the shoulder.<sup>1</sup> Dr. Nepola released Bok to restricted duty a few weeks later. Bok was never able to return to full duty, and in April 2003 Dr. Nepola assigned permanent restrictions. It is undisputed that Bok is unable to perform the duties of a police officer.

Bok filed an application for a disability pension on April 23, 2003. See Iowa Code § 411.6. In a letter dated July 10, 2003, the executive director of the System informed Bok her application was denied based on the pre-existing condition limitation of section 411.6(5).<sup>2</sup> Bok filed a timely appeal of the denial. An evidentiary hearing was held before the Disability Appeal Committee (Committee) of the Board of Trustees of the Municipal Fire and Police Retirement

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<sup>1</sup> Dr. Nepola described the procedure as similar to darning a sock, or "tighten[ing] up" the front of her shoulder, which "had stretched and frayed and was loose."

<sup>2</sup> Section 411.6(5) limits accidental disability benefits as follows:

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. Section 411.6(3) includes the same language to limit ordinary disability benefits.

System of Iowa (Board) in November 2003. The Committee affirmed the denial of disability retirement benefits, concluding,

The record supports a finding that Bok's disability would not exist but for a medical condition that was known to exist on the date of hire. Since she became a member of the retirement system after July 1, 1992, she is therefore ineligible for a disability pension under either section 411.6(3) or section 411.6(5).

The Board ratified the Committee's decision on January 8, 2004. Bok timely filed a petition for writ of certiorari in the district court on January 22, 2004, asserting that the Board's failure to grant her retirement disability benefits was "contrary to the law including being arbitrary, capricious and/or unreasonable." The district court granted the City's motion to intervene.

The district court filed its ruling on September 8, 2004. The court first concluded substantial evidence supported a finding that Bok suffered from a pre-existing condition at the time her membership in the System commenced. The court went on to interpret the phrase "known to exist" in section 411.6(5) to mean "the record must show petitioner had actual or constructive knowledge of a pre-existing condition that is undeniable and objective." Specifically, the court stated, "The record must show that [Bok] actually or constructively knew of her condition of unremitting subluxation with secondary impingement, and not simply show facts that retrospectively indicate the possibility that her condition existed but are not conclusive." Due to "overwhelming evidence" in the record, the court concluded, "no reasonable person could find that [Bok] had actual or constructive knowledge of a pre-existing condition at the time of her hire." Therefore, the court reversed the Board's finding that Bok knew she had a pre-existing condition. The district court remanded the case to the Board for a determination

of whether Bok was “totally and permanently incapacitated for duty as the natural and proximate result of an injury incurred or aggravated by the actual performance of duty at some definite time and place.” See Iowa Code § 411.6(5).

The City and the System appeal, arguing the district court erred in (1) reviewing Bok’s certiorari action as a judicial review of a final agency action and applying the standards of Iowa Code chapter 17A; (2) concluding the statutory exclusion for pre-existing conditions in sections 411.6(3) and (5) requires actual or constructive knowledge of the medical condition at the time membership commenced; and (3) finding the Board’s determination that Bok suffered from a medical condition known to exist at the time membership commenced is not supported by substantial evidence in the record.

## **II. Standard of Review**

Because Iowa Code chapter 411 provides no appeal procedure, “a certiorari action is the appropriate vehicle for challenging the actions of a pension board.” *Chiafos v. Municipal Fire & Police Ret. Sys. of Iowa*, 591 N.W.2d 199, 201 (Iowa 1999). For a writ of certiorari to be sustained,

the plaintiff must show that the board acted ‘illegally’ in that it failed to act in accordance with a statute or that its decision was not supported by substantial evidence. Evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings. Evidence is still substantial even though it would have supported contrary inferences.

*Id.* (citations omitted); see also Iowa R. Civ. P. 1.1401 (“A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior . . .

board . . . exercising judicial functions, is alleged to have exceeded proper jurisdiction or otherwise acted illegally.”).

The district court captioned its ruling a “ruling on petition for judicial review” and set forth the standards of Iowa Code section 17A.19 for review of final agency action. In its procedural history, the court indicated, “This is a *certiorari* action challenging the decision of the [System] . . . .” To the extent the district court applied the standard of review for chapter 17A judicial review of agency action, the court clearly erred. On appeal, we will review the matter in light of the appropriate *certiorari* principles. Our review is for correction of errors at law. See Iowa R. Civ. P. 1.1412; *O’Malley v. Gundermann*, 618 N.W.2d 286, 290 (Iowa 2000).

### **III. Discussion**

The primary issue on appeal is the district court’s interpretation of the statutory exclusion for pre-existing conditions found in sections 411.6(3) and (5). Our rules for interpreting statutes are well established. The primary goal “is to give effect to the legislature’s intent, as expressed by the language used in the statute.” *Lange v. Iowa Dep’t of Rev.*, 710 N.W.2d 242, 247 (Iowa 2006). “We give words their usual and ordinary meaning, and we try to avoid impractical or absurd results.” *Id.*

The statute precludes eligibility for disability 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.” Iowa Code §§ 411.6(3), (5). As mentioned, the district court concluded the statute requires proof of actual or constructive knowledge of a specific pre-existing condition at the time

membership commenced. The City and the System argue the district court's interpretation of the statute is overly restrictive. We agree. By concluding a retrospective analysis cannot satisfy the knowledge requirement, the district court essentially forecloses any potential knowledge by the System, thereby creating a standard wherein only the member's knowledge is considered. The requirement imposed by the district court that the member had actual or constructive knowledge of a particular condition at a particular point in time renders the statute unworkable, as proof of actual knowledge at a given point in time would be difficult to establish.<sup>3</sup>

We agree with the appellants that a plain and rational reading of the statute requires an objective, informed analysis of all information available at the time the member applies for disability benefits. Substantial evidence must show a causal connection between a pre-hire medical condition and the eventual disability to preclude eligibility. In other words, if during the disability application process an objective review of medical documentation produces substantial evidence that a medical condition causally related to an eventual disability was known to be in existence at the time of hire, the member is not eligible for disability pension benefits.

Our interpretation of the statute is supported by recent legislation. House File 2245 added the following language to section 411.6(5)(a):

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<sup>3</sup> In fact, the district court noted this difficulty, stating that:

Where reasonable minds could disagree about whether a medical condition existed at a particular time, such as in this case, it would take *extraordinary evidence* within the record for [the System] to conclude that the member knew of the existence of the medical condition at the time.  
(Emphasis added.)

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.

H.F. 2245 § 13 (2006 Iowa Acts ch. \_\_, § 13).<sup>4</sup>

Applying our interpretation of the statute to the facts in this case, we conclude substantial evidence supports the Board's determination that Bok had a pre-existing medical condition that was known to exist at the time her membership commenced, thereby rendering her ineligible for a disability pension under sections 411.6(3) or (5). Accordingly, we reverse and remand to the district court for entry of an order annulling the writ.

**REVERSED AND REMANDED WITH DIRECTIONS.**

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<sup>4</sup> The amendment to section 411.6(5)(a) tracks closely with the System's rule 9.6(5):  
A medical condition shall be deemed to have been known on the date that membership commenced if it is reflected in any record or document completed or obtained pursuant to this rule 9.6, or in any other record or document obtained pursuant to an application for disability benefits from the System, if such document existed prior to the membership commencement date.