

RESOLUTION No. 243

Resolution adopting Findings of Fact, Opinion, Conclusion of Law and a Determination relative to the application of Daniel L. Clouser for service-connected disability benefits.

WHEREAS, Daniel L. Clouser, a Captain in the Bureau of Fire, has filed an application requesting service-connected disability benefits from the Fire and Police Disability and Retirement Fund, and

WHEREAS, the Board of Trustees of the Fire and Police Disability and Retirement Fund has considered the circumstances surrounding Captain Clouser's claim and has concluded that said claim should be denied, and

WHEREAS, an appropriate document containing Findings of Fact, an Opinion, Conclusions of Law and a Determination denying said claim is attached hereto as Exhibit "A" and by this reference made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Board of Trustees of the Fire and Police Disability and Retirement Fund that the Findings of Fact, Opinion, Conclusion of Law and Determination appearing in Exhibit "A" be adopted by the Board of Trustees.

ADOPTED this 14th day of May, 1984.

JEWEL LANSING, SECRETARY, FIRE  
AND POLICE DISABILITY AND  
RETIREMENT FUND

By David E. Cook  
Deputy Secretary

In the Matter of the Application for )  
Service Connected Disability Benefits ) FINDINGS AND  
 ) DETERMINATION  
of )  
 )  
DANIEL L. CLOUSER, )  
 )  
Claimant. )

## FINDINGS OF FACT

- ## 1 - FINDINGS AND DETERMINATION

1 while he was working at Engine 11. As a result of this  
2 injury Captain Clouser was unable to work at his assigned  
3 duties from April 28, 1984 until May 16, 1984 and this Board  
4 awarded him service-connected disability benefits from the  
5 Fire and Police Disability and Retirement Fund for that  
6 period of time.

7 3. On August 2, 1984, Captain Clouser was relieved from his  
8 duties by his superiors at the Bureau of Fire and placed in  
9 a leave with pay status (i.e., he was, in effect, suspended  
10 with pay) pending a hearing relative to allegations that he  
11 had violated certain rules and regulations of the Bureau of  
12 Fire. Clouser remained in this leave with pay status  
13 through September 5, 1984.

14 4. On August 20, 1984, Captain Clouser and his wife went out  
15 for the evening and when they returned home, Clouser rein-  
16 jured his groin during the process of parking and exiting  
17 from his personal vehicle in his own driveway.

18 5. Dr. John D. Welch, M.D., the Board physician, examined  
19 Captain Clouser on August 21, 1984 and referred him to  
20 Dr. Jay B.V. Butler, M.D. for further evaluation.  
21 Dr. Butler examined Clouser and made a diagnosis of a right  
22 abductor groin strain based on clinical and historical  
23 grounds. Dr. Butler also reported that Clouser would be  
24 unable to work for a period of one to four weeks unless he  
25 was placed in a light duty assignment.  
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1 6. On September 6, 1984, a hearing was held before the Chief of  
2 the Bureau of Fire relative to the allegations that Captain  
3 Clouser had violated certain rules and regulations of the  
4 Bureau of Fire. After the hearing, the Chief of the Bureau  
5 of Fire concluded that Captain Clouser had, in fact,  
6 violated the rules and regulations he was accused of  
7 violating and consequently he suspended Clouser from the  
8 Bureau of Fire for a period of 45 days, without pay,  
9 effective September 6, 1984.

10 7. Captain Clouser did not appeal the decision of the Chief of  
11 the Bureau of Fire to suspend him for 45 days and conse-  
12 quently he received no salary from the Bureau of Fire for  
13 the period commencing September 6, 1984 to and including  
14 October 20, 1984. Captain Clouser was reinstated to his  
15 position in the Bureau of Fire effective October 21, 1984  
16 and he returned to duty on that date and was assigned to  
17 work in the Office of the Chief of the Bureau of Fire.

18 8. Section 5-115 of the Charter of the City of Portland, Oregon  
19 provides, in relevant part:

20 Upon duly verified application of a member  
21 and a finding by the Board that through  
22 injury suffered in line of duty, or sickness  
23 caused by the performance of duty, the member  
24 is or has been unable to perform his required  
25 duties, said member shall be paid service-  
26 connected disability benefits equal to but  
not in excess of his full salary from the  
Fund until such member recovers or for a  
period of one (1) year, whichever period is  
shorter.

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OPINION

As indicated by the language of Section 5-115 of the Charter of the City of Portland, Oregon, service-connected disability benefits may be awarded to a member of the Bureau of Fire only if the member "is or has been unable to perform his required duties" as a result of an injury suffered in the line of duty. As we construe Section 5-115, the in-lieu-of-salary benefits authorized by that section are payable to a member of the Fire Bureau only if the member would have been working and earning a salary from the Bureau of Fire during the period for which benefits are requested but was prevented from working and earning such a salary because of an incapacitating injury suffered in the line of duty. In this case, the record reveals that Captain Clouser was relieved from his duties with the Bureau of Fire on August 2, 1984 and he was not reinstated until October 21, 1984. Since he had been relieved from all duties with the Bureau of Fire on August 2, 1984 and was not reinstated until October 21, 1984, it follows that Captain Clouser had no "required duties" which his groin injury of August 20, 1984 could have prevented him from performing during that period and consequently he is ineligible to receive disability benefits for that period of time.

In view of our conclusion that Captain Clouser's groin injury did not prevent him from performing any duties required of him by the Bureau of Fire we need not decide the issue of whether his recent groin injury was suffered in the line of duty or not.

ULTIMATE FINDINGS OF FACT

1. Daniel L. Clouser is a member of the Bureau of Fire and the Fire and Police Disability, Retirement and Death Benefit Plan.
2. Daniel L. Clouser, a captain in the Bureau of Fire, was relieved from all duties with the Bureau of Fire by his superiors, effective August 2, 1984 and placed in a leave with pay status pending a hearing relative to allegations that he had violated certain rules and regulations of the Bureau of Fire. He remained in a leave with pay status to and including September 5, 1984.
3. On September 6, 1984, the Chief of the Bureau of Fire held a hearing regarding the allegations which had been made against Clouser and concluded that Clouser had, in fact, violated certain rules and regulations of the Bureau of Fire. The Chief then suspended Clouser from the Bureau of Fire for the period commencing September 6, 1984 to and including October 20, 1984. On October 21, 1984, Captain Clouser was reinstated in the Bureau of Fire and he returned to duty at that time.
4. On August 20, 1984, Daniel L. Clouser suffered a groin strain (right abductor strain) but this injury did not prevent him from performing his required duties and earning his regular salary from the Bureau of Fire during the period from August 20, 1984 to and including October 20, 1984, because he had been relieved of all duties with the Bureau

1 of Fire on August 2, 1984 and he was not reinstated until  
2 October 21, 1984.

3 CONCLUSION OF LAW

- 4 1. Daniel L. Clouser, a captain in the Bureau of Fire, is  
5 ineligible to receive service-connected disability benefits  
6 pursuant to Section 5-115 of the Charter of the City of  
7 Portland, Oregon for the period commencing August 20, 1984  
8 to and including October 20, 1984 because he had no duties  
9 or responsibilities with the Bureau of Fire during that  
10 period.

11 BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSION OF  
12 LAW it is hereby

13 ORDERED that the application of Daniel L. Clouser for  
14 service-connected disability benefits be and the same hereby is  
15 denied.

16 Adopted by the Board of Trustees on May 14, 1985.

17 JEWEL LANSING, Secretary,  
18 Fire and Police Disability  
and Retirement Fund

19 By David E. Cook  
20 Deputy Secretary  
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