

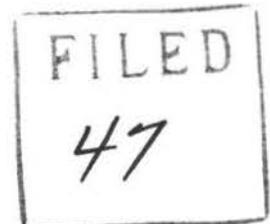
FIREMEN:

A physical examination, in order to qualify as an examination raising the statutory presumption of evidence provided in Section 87.006, RSMo 1969, must be a medical examination given by a qualified physician which is directed to the detection of disease of the lungs or respiratory tract, hypotension, hypertension or disease of the heart, such that the examination, with reasonable medical certainty, will reveal the absence of disease of the lungs or respiratory tract, hypotension, hypertension or disease of the heart.

OPINION NO. 47

February 19, 1974

Honorable Kenneth J. Rothman
Representative, District 77
Room 309, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Rothman:

This opinion has been prepared in response to your recent request. The question you presented in that request was:

"What would constitute a proper physical examination for the purposes of House Bill 240 . . . as required by lines 6 and 7 of said bill, so as to make a person covered by the bill eligible for its benefits?"

Attached to your request was a copy of House Bill No. 240 which was enacted by the 75th General Assembly and included in the Revised Statutes of Missouri of 1969 as Section 87.006. That section provides:

"1. Notwithstanding the provisions of any law to the contrary, and only for the purpose of computing retirement benefits provided by an established retirement plan, after five years' service, any condition of impairment of health caused by any disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart resulting in total or partial disability or death to a uniformed member of a paid fire department, who successfully passed a physical examination within five years prior to the time a claim is made for such disability or death, which examination failed to reveal

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any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

"2. This section shall apply to paid members of all fire departments of all counties, cities, towns, fire districts and other governmental units."

Although we could find no previous judicial constructions of Section 87.006, RSMo 1969, the same language as to presumption in Section 87.005, RSMo 1969, was construed in McCarthy v. Board of Trustees of the Firemen's Retirement System of St. Louis, 462 S.W. 2d 827 (St.L.Ct.App. 1970). Section 87.005 provides as follows:

"1. Notwithstanding the provisions of any law to the contrary, after five years' service, any condition of impairment of health caused by any disease of the lungs or respiratory tract, hypertension, or disease of the heart resulting in total or partial disability or death to a uniformed member of a paid fire department, who successfully passed a physical examination within five years prior to the time a claim is made for such disability or death, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

"2. This section shall apply only to the provisions of chapter 87, RSMo 1959."

McCarthy v. Board of Trustees of the Firemen's Retirement System of St. Louis involved an appeal from an affirmance by the circuit court of a decision of the Board of Trustees of the Firemen's Retirement System of St. Louis denying the plaintiff's claim for an additional annual pension which the plaintiff sought on the ground that his disability was service connected. The plaintiff had presented evidence of having successfully passed a physical examination within five years prior to the time of his claim for disability due to heart disease, and because the examination did not reveal evidence of heart disease, the appellant argued that his disabling heart condition was presumed to have been suffered in the line of duty under Section 87.005, RSMo. The St. Louis Court of Appeals construed the operative words of that section in its opinion holding that the physical examination upon which

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plaintiff-appellant McCarthy relied was insufficient to raise the presumption under Section 87.005, RSMo. The St. Louis Court of Appeals stated:

". . . the words 'physical examination' in § 87.005 are not to be interpreted out of context but in relation to the statute as a whole. State ex rel. Wright v. Carter, Mo., 319 S.W.2d 596 [7]. And, as said in Rutter v. Carothers, 223 Mo. 631, 122 S.W. 1056, at l. c. 1059: '* * * the practical administration of the law through the courts would quite miss refined and elevated justice in many instances if the naked and cold words of the statute were not warmed into life and good sense by seeking, finding, and reading into the law its true spirit and intentment.' In interpreting a statute we must presume that the legislature intended a logical and reasonable result. Igoe v. Slaton Block Co., Mo.App., 329 S.W.2d 39 [6]; Globe-Democrat Pub. Co. v. Industrial Commission, Mo.App., 301 S.W.2d 846 [3-5].

"The 'physical examination' prescribed in § 87.005 is clearly related to the absence of heart disease. We must assume that in using those words the legislature did not mean any physical examination for that would produce an illogical result; instead we interpret the words 'physical examination' as applied to this case to mean one that did, with reasonable medical certainty, reveal the absence of heart disease." (462 S.W.2d at 831)

The court arrived at this construction after having noted that the power of the legislature to make an evidentiary rule of presumptive evidence is subject to the requirement that in statutes creating an evidentiary presumption there must be a rational connection between the fact proved and the ultimate fact to be established. Thus, in Section 87.005, a logical connection between the successful passing of a medical examination and the fact that subsequent disability was suffered in the line of duty exists only if the physical examination was one which, with reasonable medical certainty, should have revealed the absence of heart disease. In the McCarthy case, because the medical examination was only a general physical examination, rather than one directed to the inquiry of whether heart disease was present, it was insufficient as a physical examination prescribed in Section 87.005 because it was not a

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physical exam which, with reasonable medical certainty, would reveal the absence of heart disease.

Applying this construction to the identical operative language of Section 87.006, RSMo 1969, a physical examination sufficient to raise the presumption created by this section should be a physical examination directed to the detection of any disease of the lungs or respiratory tract, hypotension, hypertension, and disease of the heart, such that the examination will, with reasonable medical certainty, reveal the absence of diseases of the lungs or respiratory tract, hypotension, hypertension or disease of the heart.

A second problem implied in your request is the question of by whom an examination qualified to raise the presumption under Section 87.006 must be given. Several of the sections of Chapter 87, RSMo 1969, provide for the designation of a medical officer or medical board to examine and determine the physical and mental condition of applicants for benefits. See Sections 87.045, 87.160, and 87.435, RSMo 1969. Thus, it could be argued that an examination which qualifies to raise the presumption of Section 87.006 must be made by the medical officer or medical board designated to make other physical examinations under this statutory scheme. However, this clearly was not the construction in McCarthy v. Board of Trustees of the Firemen's Retirement System of St. Louis, supra. There, the examination which the plaintiff argued was an examination under Section 87.005 was given by the plaintiff-appellant's private physician. The appellate court's opinion holding that the physical examination did not qualify to raise the statutory presumption clearly relied on the scope of the examination as the determinative factor. Had the court believed a physical examination by private physician did not qualify to raise the statutory presumption, the appellate court opinion would not have reached the question concerning the scope of the examination. Therefore, an examination under Section 87.005, in order to qualify to raise the statutory presumption, need not be given by the medical officer or medical board designated by the Board of Trustees under the various statutory schemes to examine persons applying for benefits. Likewise, the same conclusions should be drawn concerning the identical operative language of Section 87.006, RSMo 1969.

CONCLUSION

It is the opinion of this office that a physical examination, in order to qualify as an examination raising the statutory presumption of evidence provided in Section 87.006, RSMo 1969, must be a medical examination given by a qualified physician which is directed to the detection of disease of the lungs or respiratory

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tract, hypotension, hypertension or disease of the heart, such that the examination, with reasonable medical certainty, will reveal the absence of disease of the lungs or respiratory tract, hypotension, hypertension or disease of the heart.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Stephen D. Hoyne.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General