

Retirement allowance was available only for those months after filing application for retirement. *Kamin v. Retirement System*, 93 N.J.A.R.2d (TYP) 249.

Employee with diminished mental capacity due to alcoholism not entitled to retroactive effective retirement date. *Young v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 53.

Agreement with employer did not entitle employee to retroactive requested effective date of retirement. *Eppe v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 45.

Applicant not entitled to change effective date of service retirement so as to qualify for early retirement incentive program with effective date after her retirement. *Pykon v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 144.

Absent a showing of a decedent's incompetence, mutual mistake, fraud or other compelling equitable considerations, a retirement application shall not be reformed; petition to change pension payment option denied. *Schaeffer v. Bd. of Trustees, Public Employees' Retirement System*, 8 N.J.A.R. 427 (1984).

17:2-6.4 Outstanding loan

(a) A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with accrued interest, as follows:

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:2-6.2; or
2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with accrued interest, is repaid as authorized by P.L. 1999, c.132 (N.J.S.A. 43:15A-34.1). If the member does not request repayment in full, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(b) If a retirant dies before the loan balance, with accrued interest, is repaid, the remaining balance is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments or the balance of the Option 1 reserves or the balance of the retirant's accumulated deductions and regular interest that are due to the beneficiary or estate. If the retirant designated multiple beneficiaries to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

Amended by R.1999 d.409, effective December 6, 1999.
See: 31 N.J.R. 2519(a), 31 N.J.R. 4119(a).

In (a), rewrote 2i, and added 3; deleted former (b) and (c); and recodified former (b) as (d).

Amended by R.2002 d.267, effective August 19, 2002.
See: 34 N.J.R. 1599(a), 34 N.J.R. 2970(b).

In (a), deleted existing 2 and recodified former 3 as 2.
Amended by R.2005 d.75, effective February 22, 2005.
See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), amended the N.J.A.C. reference in 1 and added the N.J.S.A. reference in 2; in (b), substituted "I" for "I" following "Option"; inserted "accrued" preceding "interest" throughout.

17:2-6.5 Willful negligence

(a) Willful negligence is defined as:

1. Deliberate act or deliberate failure to act; or,
2. Such conduct as evidences reckless indifference to safety; or,
3. Intoxication, operating as the proximate cause of injury.

17:2-6.6 (Reserved)

Recodified to N.J.A.C. 17:2-4.5 by R.2004 d.226, effective June 21, 2004.

See: 36 N.J.R. 620(a), 36 N.J.R. 3066(b).

Former N.J.A.C. 17:2-6.6, Retirement credit, recodified.

17:2-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by his employer, or by one acting in behalf of the member, will be retired on an ordinary disability retirement allowance if the Board finds that:

1. The applicant was considered a member at the time of filing the application for a disability retirement allowance or is covered by the provisions of N.J.A.C. 17:2-6.15;
2. The member is physically or mentally incapacitated for the performance of duty; and
3. The member is not eligible for accidental disability since the incapacity is not a direct result of a traumatic event occurring during and as a result of the performance of the member's regular or assigned duties; and
4. The member meets the service requirement for ordinary disability.

(b) Once the Board approves a member for a disability retirement allowance, the member's retirement application shall not be withdrawn or canceled, or amended to a later retirement date than the date specified in the approved retirement application.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (a), rewrote 1, and neutralized a gender reference in 3.

Amended by R.2005 d.393, effective November 21, 2005.

See: 37 N.J.R. 1927(a), 37 N.J.R. 4459(a).

Added (b).

Case Notes

To be eligible for accidental disability retirement benefits where disability involved combined effect of traumatic event and underlying disease, traumatic source must constitute the essential significant or substantial contributing cause of resultant disability; employee's slip and fall against automobile tailgate held a traumatic event; remand to Appellate Division to determine whether traumatic event was of such nature as to allow benefits eligibility under enunciated standard (citing former rule). *Korelnia v. Bd. of Trustees, Public Employees Retirement System*, 83 N.J. 163, 416 A.2d 308 (1980).

Initial Decision (2007 N.J. AGEN LEXIS 724) adopted, which determined that a public employee was not entitled to ordinary disability after he was cleared for work upon injuring his shoulder at work and undergoing surgery for its repair. The employee showed neither that he was physically incapable of performing the general duties of a boiler operator nor that he was physically incapable of performing his specific jobs when he was cleared for full work duty and when he applied for ordinary disability. In re Rivera, OAL Dkt. No. TYPPE 03403-2006N, 2007 N.J. AGEN LEXIS 940, Final Decision (December 13, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 268) adopted, which found that an employee of the Department of Transportation was not entitled to accidental disability retirement benefits because the accident that brought about her permanent disability — tripping over carpet with the toe of her shoe — was not a “traumatic event”; the source of petitioner’s injury was not a great rush of force or uncontrollable power. In re Mickolas, OAL Dkt. No. TYPPE 04984-06S, 2007 N.J. AGEN LEXIS 518, Final Decision (June 21, 2007).

Bus driver failed to establish that her injuries were the result of a traumatic event because the injury occurred when she strained her shoulder while attempting to hold a wheelchair in place, not from an external force or power; there was no impact on the driver’s body and she was not struck by a falling patient and/or wheelchair. In re Blount, OAL Dkt. No. TYPPE 08114-2005S, 2007 N.J. AGEN LEXIS 872, Final Decision (February 23, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 308) adopted, which found that a public employee was not entitled to accidental disability retirement benefits from either of her two “injuries” because the first injury was a slip and fall in a car dealership and was neither work-related nor a traumatic event, and because the second injury was a “psychic injury” for which the employee was unable to substantiate her claim that her psychological problems were caused by the mental stress of her employment. In re Melendez, OAL Dkt. No. TYPPE 07332-2001N, 2006 N.J. AGEN LEXIS 598, Final Decision (May 18, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 443) adopted, which found that a cooking instructor for the Department of Corrections was properly denied accidental disability retirement benefits where the evidence failed to show that either of two accidents he suffered in the kitchen directly resulted in his arthritis becoming symptomatic, more progressive or acute, and culminated in bilateral knee replacements; rather, the evidence supported a finding that his disability resulted from knee replacement surgery and the complications relating thereto and that the underlying degenerative disease was the causative factor of his disability. Although the evidence supports that the accidents may have perhaps aggravated petitioner’s underlying condition, it did not suffice for the traumatic event to only aggravate or ignite an underlying condition without constituting a medically sufficient cause thereof. In re Raub, OAL Dkt. No. TYPPE 05452-03N, 2005 N.J. AGEN LEXIS 1335, Final Decision (September 22, 2005).

Nurse entitled to accidental disability pension due to traumatic injury at work. Mullen v. Board of Trustees of the Public Employees’ Retirement System, 97 N.J.A.R.2d (TYP) 110.

Incident’s lack of traumatic event defeats application for accidental disability retirement benefits. Ming v. Board of Trustees, Public Employees’ Retirement System, 97 N.J.A.R.2d (TYP) 90.

Denial of accidental disability benefits due to employee’s failure to establish total and permanent disability affirmed. Oliver v. Board of Trustees of the Public Employees’ Retirement System, 97 N.J.A.R.2d (TYP) 77.

Electrical installer suffering personal injury from falling air conditioner unit entitled to accidental disability pension. Zillante v. Board of Trustees of the Public Employee’s Retirement System, 97 N.J.A.R.2d (TYP) 44.

Permanent injuries not arising from great rush of force or uncontrollable power fail to meet test to receive accidental disability benefits.

DiBlashi v. Public Employee’s Retirement System, 97 N.J.A.R.2d (TYP) 36.

Failure to prove great rush of force or uncontrollable power defeats claim for accidental disability benefits. Pino v. Public Employee’s Retirement System, 97 N.J.A.R.2d (TYP) 21.

Ordinary disability retirement benefits granted bus driver who sustained shoulder injury after fall in parking lot. Hessler v. Public Employees’ Retirement System, 97 N.J.A.R.2d (TYP) 13.

Bus driver who sustained lower back injury when stack of tires fell on him did not suffer traumatic event and thus was not entitled to accidental disability retirement benefits. Pino v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 298.

Motor vehicle operator who sustained arm and shoulder injuries when van door malfunctioned, and who later reinjured her arm while maneuvering client’s wheelchair, was not entitled to accidental disability retirement benefits; neither incident constituted qualifying traumatic event. McDaniel v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 284.

Survivors of maintenance worker whose blood alcohol level was in excess of legal limit at time he died in work-related automobile collision could not recover accidental death benefits; employee who drives automobile while intoxicated is willfully negligent and thus ineligible to receive such benefits. Komiskey v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 271.

Housing inspector who experienced chest pains after climbing eight flights of stairs did not suffer traumatic event, and thus was not eligible for accidental disability retirement benefits. Cartagena v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 266.

Clerk who tripped and fell down flight of stairs failed to establish that injuries she suffered rendered her unable to perform her regular employment duties, and thus she was not eligible for accidental disability retirement benefits. Bonomo v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 261.

Injuries sustained by clerk stenographer when she fell over several boxes after being frightened by rat in workplace lunchroom were not caused by requisite “great rush of force or uncontrollable power,” and thus clerk was not entitled to accidental disability retirement benefits. Hunter v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 252.

Laborer who injured himself while attempting to lower entire manhole casing by himself was not entitled to accidental disability retirement benefits; injury was not caused by requisite “great rush of force or uncontrollable power.” Tomasi v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 239.

Public works employee injured in slip and fall on bus steps did not suffer traumatic event entitling him to accidental disability retirement benefits. Yodice v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 210.

Slipping on running board of van and lifting potted plants were not traumatic events for purposes of accidental disability retirement benefits. Malvossi v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 179.

Accidental disability retirement benefits were properly denied to warehouseman whose disability resulted from willful negligence due to intoxication. Dale v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 172.

Dispatcher who was hit in the head when file cabinet toppled over on her did not suffer traumatic event entitling her to accidental disability retirement benefits. Scholl v. Public Employees’ Retirement System, 96 N.J.A.R.2d (TYP) 150.

System's actuaries in each calendar year of retirement to the retirant's final year's salary.

2. If the retirant can prove through written verification from the former employer that the salary for the position from which the member retired is higher than that assumed under the provisions of (a)1 above, the Division shall use that salary to determine what reduction in benefits should be made.

(b) Earnings from employment in New Jersey shall be obtained through the New Jersey Department of Labor and Workforce Development. For all other earnings, the disability retirants shall be required to file a report with the System, which may include copies of the retirant's IRS 1040 forms and W-2 forms and any other proofs of employment requested of a specific retirant indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of the prior year. The Division may also require the retirant to complete Federal Form 4506-T, Request for Transcript of Tax Return.

(c) If the Department of Labor and Workforce Development or a retirant reports employment and earnings, then the following tests shall be made by the Division:

1. If the retirant is engaged in employment, and the gross earned income for the preceding calendar year exceeds the sum of the pension portion of the retirement benefit and the salary the retirant would have been receiving had the retirant continued to work for the former employer, the retirant shall be billed for the amount of the excess earnings, limited to the pension portion of the retirement allowance. Further, the Division shall assume that the retirant continues to be employed at the same level of salary for the current year. Therefore, a dollar for dollar reduction shall be made in anticipation of excess earnings in the current year. After proof is submitted in the subsequent year, if it is determined that the salary earned in the previous year was higher, appropriate repayment to the System shall be requested by the Division. If the salary earned was less, then a refund shall be made minus any outstanding amounts owed. If the gainful employment ends, the retirant must notify the Division in order to have the amount of reduction recalculated.

2. If it is found by the Division that gross earned income for the prior calendar year exceeded the difference between the pension portion of the retirement benefit and the salary of the retirant's former position and if the retirant does not refund the excess pension to the System within 30 days of notification of the difference, the pension portion of the retirement allowance shall be further reduced in order to recover the overpayment. If the remaining pension portion of the retirement benefit is not large enough to recover the amounts owed after a dollar for dollar reduction has been taken, then the annuity portion of the benefit as well as any death benefits or survivor's benefits shall be reduced by the amounts owed.

3. System interest shall be assessed on any repayment schedules.

(d) Retirants who retired on or before October 1, 1992, and who are age 60 or older, shall be exempt from the above earnings test beginning with the calendar year in which they attain the age of 60. Retirants who retired on or after November 1, 1992 are subject to the earnings test for their lifetime.

Amended by R.1998 d.323, effective July 6, 1998.

See: 30 N.J.R. 1026(b), 30 N.J.R. 2514(b).

Rewrote the section.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote (b)3.

Amended by R.2005 d.40, effective January 18, 2005.

See: 36 N.J.R. 4023(a), 37 N.J.R. 293(a).

Rewrote the section.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In the introductory paragraph of (a), substituted "PERS" for "Public Employees' Retirement System"; in (a)1, deleted "of Pensions and Benefits (Division)" following "Division"; in (b), inserted a comma following "System" and inserted the last sentence; and rewrote (c)1.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 182) adopted, which found that a former road inspector was required to repay some of his ordinary disability benefits because he was subsequently hired as a county freeholder aide — a job that mandated re-enrollment in PERS; therefore, he was subject to the earnings test, although he was over 60 years of age. In re LaRocca, OAL Dkt. No. TYPPE 9323-05N, 2008 N.J. AGEN LEXIS 698, Final Decision (March 20, 2008).

17:2-6.15 Disability retirements; filing after more than two years' discontinuance of service

(a) Following the filing of a disability retirement application, a vested member, who has not withdrawn contributions from the retirement system, and has discontinued service for more than two consecutive years, and who was otherwise eligible for disability retirement at the time service was discontinued, shall be approved to receive disability retirement benefits by the Board, if:

1. The applicant demonstrates to the satisfaction of the Board that the applicant was physically or mentally incapacitated for the performance of duty at the time service was discontinued and continues to be so incapacitated, with the same disability or disabilities, at the time of filing; and

2. The applicant factually demonstrates to the satisfaction of the Board that service was discontinued because of the disability or disabilities.

(b) A disability retirement application that is filed under this rule may take effect, in accordance with the laws and rules applicable to effective dates for disability retirements, only on or after the date the application is filed.

New Rule, R.1999 d.36, effective February 1, 1999.

See: 30 N.J.R. 3375(b), 31 N.J.R. 458(a).

Amended by R.2003 d.391, effective October 6, 2003.

See: 35 N.J.R. 2408(a), 35 N.J.R. 4734(a).

Deleted (c) and (d).

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In the introductory paragraph of (a), and in (a)1 and (a)2, deleted “of Trustees” following “Board”; in the introductory paragraph of (a), deleted “his or her” following “withdrawn”; and in (a)1, substituted “the applicant” for “he or she”.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 791) adopted, which determined that a former county employee was not entitled to receive a disability pension because she was unable to fit within the narrow exception of N.J.A.C. 17:2-6.15 for PERS members who were disabled at the time of discontinuance of service and who discontinued service because of that disability. Although given ample opportunity to submit additional information, the employee failed to provide any evidence that she satisfied these requirements and instead, the employee showed only that she was not totally and permanently disabled from the performance of her regular and assigned duties when she terminated PERS-covered employment. In re Reid, OAL Dkt. No. TYP 1304-06, 2007 N.J. AGEN LEXIS 986, Final Decision (December 13, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 308) adopted, which found that a public employee was not entitled to ordinary disability retirement benefits because she was not physically or mentally incapacitated from the performance of her duties at the time her service was discontinued; the employee had been on medical leave for a non-work related accident and, when she was ready to return to work, she was let go from her position due to a reduction in force. In re Melendez, OAL Dkt. No. TYPPE 07332-2001N, 2006 N.J. AGEN LEXIS 598, Final Decision (May 18, 2006).

17:2-6.16 Compulsory retirement; Law Enforcement Officers (LEO)

(a) Members classified as “Law Enforcement Officers” shall be retired automatically by the Board as of the compulsory retirement date established pursuant to N.J.S.A. 43:15A-99.

(b) Should a member classified as a Law Enforcement Officer fail to file an application with the Division before the member’s compulsory retirement date, the member shall be granted the maximum allowance payable on the member’s account; however, no retirement checks will be disbursed until the member files the required application.

(c) If an application is not filed with the Division before a period of 30 days has elapsed after the Board has acted on the member’s retirement, the member shall not be eligible to exercise any of the available retirement survivorship options and the member’s retirement on maximum allowance shall stand as approved.

(d) When such a member files an application with the Division, the member shall be eligible to receive retirement benefits for the months that have elapsed since the date of the member’s compulsory retirement, provided satisfactory evidence is received to show that the member terminated employment as of the member’s compulsory retirement date.

(e) No retirement benefits shall be paid for any period the member continued in service beyond the compulsory retirement date, nor shall the member receive any credit for retirement purposes for salary received or service rendered beyond the compulsory retirement date.

(f) A LEO member who is also enrolled as a non-LEO member cannot continue the LEO membership or employment in the LEO capacity beyond age 65 should the member continue membership on the basis of the non-LEO position per N.J.S.A. 43:15A-99.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Neutralized gender references and substituted references to the Division for references to the system throughout; and in (f), added N.J.S.A. reference.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

17:2-6.17 Approved allowance

When a retirement allowance becomes effective pursuant to N.J.A.C. 17:2-6.2, the type of retirement benefit and option elected shall stand as approved.

Amended by R.2002 d.268, effective August 19, 2002.

See: 34 N.J.R. 1600(a), 34 N.J.R. 2971(a).

Substituted “retirement benefit and option” for “allowance (maximum or option)”.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Inserted “pursuant to N.J.A.C. 17:2-6.2”.

17:2-6.18 Option 1 benefit

The reserve established under the provisions of Option 1 shall be a form of reducing term insurance, as the reserve shall reduce in value by the amount of the retirant’s regular monthly allowance, whether received or not, for each month that the retirant survives after the effective date of retirement.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Substituted a reference to regular monthly allowance for a reference to monthly allowance, and neutralized gender references throughout.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

17:2-6.19 (Reserved)

Repealed by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Section was “Maximum allowance prescribed”.

17:2-6.20 Final compensation; 10 and 12-month members reported monthly

(a) In order to determine the final compensation (three-year average) for benefits of a member reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made to the System for the member’s final 30 months, or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(b) In order to determine the final compensation (three-year average) for benefits of a member reported on a monthly

basis under a 12-month contract, the creditable salaries upon which contributions were made to the system for the member's last 36 months or the highest three fiscal years of pensionable service, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(c) If a member was reported on any combination of ten and 12-month contract years in such three-year period, the final average compensation shall be determined on a proportional basis.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a) and (b), substituted "benefits of a member" for "benefits on a member", deleted "use" preceding "the creditable salaries" and inserted "shall be used" following "group of employees".

Case Notes

Full amount of pension; requiring former employer to submit retroactive payment into retirement system reserve fund. *Muzzarelli v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 214.

17:2-6.21 Determination of last year's salary; veterans paid on a monthly basis

(a) In order to determine the last year's salary for a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made in the member's final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(b) In order to determine the last year's salary with a veteran with 35 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract, the creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(c) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 10-month contract, the creditable salaries upon which contributions were made in the member's final 10 months of pensionable service preceding retirement or in the consecutive 10-month period in which the member achieved the greatest earnings,

including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(d) In order to determine the last year's salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a monthly basis under a 12-month contract, the member's creditable salaries upon which contributions were made in the member's final 12 months of pensionable service preceding retirement or in the consecutive 12-month period in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used.

(e) In order to determine the last year's salary for a veteran reported on any combination of 10 and 12-month contract years in such months, the last year's salary shall be determined on a proportional basis.

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Amended by R.2002 d.269, effective August 19, 2002.

See: 34 N.J.R. 1365(a), 34 N.J.R. 2971(b).

In (a) and (b), substituted "55" for "60"; in (c) and (d), substituted "60" for "62" and inserted "or a veteran with 25 or more years of creditable service, age 55 or older," preceding "reported"; in (e), substituted "In order to determine the last year's salary for a veteran" for "If a member was".

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Rewrote the section.

17:2-6.22 Waiver

(a) If for any reason a retirement allowance or portion thereof has been waived by a retired member or beneficiary, the benefit waived shall remain in the retirement reserve fund.

(b) Such retired members or beneficiaries may cancel the waiver effective as of the first day of any month subsequent to the receipt of the notice of cancellation; however, they may not make a claim for retroactive payment of any benefits waived prior thereto.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (b), substituted a reference to retired members and beneficiaries for a reference to persons, neutralized a gender reference, and substituted a reference to retroactive payment for a reference to payment.

17:2-6.23 (Reserved)

Amended by R.1971 d.71, effective May 18, 1971.

See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

Repealed by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Section was "Additional contributions".

17:2-6.24 Final compensation; biweekly salary computation for employees reported on a biweekly basis

(a) In computing “final compensation” upon which pension contributions were based, in the case of a 12-month employee reported on a biweekly basis, a total of 78 biweekly pensionable pay periods will be used, including any retroactive salary payments that are attributable to the covered period.

(b) In computing (a) above, the total salary will be adjusted by the factors supplied by the actuary to convert biweekly salaries to compensate for biweekly payroll schedules. Application of the factors to the salaries reported for pension purposes will develop “final compensation.”

(c) In computing (a) above in the case of employees reported on a 10-month basis, the total biweekly pay periods will include those pay periods in the third quarter of each year in which the member does not receive a salary. The adjustment as specified in (b) above shall not be made.

(d) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the final average compensation prior to retirement shall be determined on a proportional basis.

R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.1978 d.138, effective May 1, 1978.

See: 10 N.J.R. 38(a), 10 N.J.R. 265(c).

Amended by R.1990 d.377, effective August 6, 1990.

See: 22 N.J.R. 1348(a), 22 N.J.R. 2342(c).

Benefits based on salary attributable to the prescribed period.

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Deleted “State” throughout; in (a), substituted “pensionable pay periods” for “pays” following “biweekly”, and substituted “covered” for “prescribed” preceding “period”; in (c), substituted “pay periods” for “pays” following “biweekly” in the first sentence; and in (d), deleted a former second sentence.

17:2-6.25 Determination of last year’s salary; veterans reported on a biweekly basis

(a) In order to determine the last year’s salary for a veteran with 35 or more years of creditable service, age 55 or older reported on a biweekly basis under a 12-month contract, the member’s creditable salaries upon which contributions were made in the member’s final 26 biweekly pay periods of pensionable service preceding retirement, or in the 26 consecutive pay periods in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used. The total salary will be adjusted by factors supplied by the actuary to compensate for biweekly payroll schedules.

(b) In order to determine the last year’s salary for a veteran with 35 or more years of creditable service, age 55 or older reported on a biweekly basis under a 10-month contract, the total 26 biweekly pay periods will include those pay periods

in the third quarter of each year in which the member does not receive salary, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees. The adjustment as specified in (a) above shall not be made.

(c) In order to determine the last year’s salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a biweekly basis under a 12-month contract, the member’s creditable salaries upon which contributions were made in the member’s final 26 biweekly pay periods of pensionable service preceding retirement, or in the 26 consecutive pay periods in which the member achieved the greatest earnings, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees shall be used. The total salary will be adjusted by factors supplied by the actuary to compensate for biweekly payroll schedules.

(d) In order to determine the last year’s salary for a veteran with 20 or more years of creditable service, age 60 or older, or a veteran with 25 or more years of creditable service, age 55 or older, reported on a biweekly basis under a 10-month contract, the total 26 biweekly pay periods will include those pay periods in the third quarter of each year in which the member does not receive salary, including any retroactive salary payments that are attributable to the covered period and paid as part of a salary agreement with a group of employees. The adjustment as specified in (a) above shall not be made.

(e) In order to determine the last year’s salary for a veteran reported on a biweekly basis on any combination of 10 and 12-month contract years, the last year’s salary prior to retirement shall be determined on a proportional basis.

R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.1978 d.138, effective May 1, 1978.

See: 10 N.J.R. 38(a), 10 N.J.R. 265(c).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Amended by R.2002 d.269, effective August 19, 2002.

See: 34 N.J.R. 1365(a), 34 N.J.R. 2971(b).

In (a) and (b) substituted “55” for “60”; in (c) and (d), substituted “60” for “62” and inserted “ or a veteran with 25 or more years of creditable service, age 55 or older,” preceding “reported”; in (e), substituted “In order to determine the last year’s salary for a veteran” for “If a member was”.

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Rewrote (a); in (b), substituted “the total 26 biweekly pay periods will include” for “include in the total of 26 biweekly pay periods” and substituted “(a)” for “(a)1”; in (c), deleted “use” preceding “the member’s creditable salaries” and inserted “shall be used” following “group of employees”; in (d), substituted “(a)” for “(a)1”.

Case Notes

Determination of retirement allowance on basis of last 26 pay periods as figure for last year of compensation was proper. *Rossi v. Public Employees’ Retirement System*, 95 N.J.A.R.2d (TYP) 9.

17:2-6.26 Medical examination; physician

N.J.S.A. 43:15A-42 requires the Board to designate physicians to perform medical examinations. When an applicant provides sufficient medical documentation as set forth in N.J.A.C. 17:2-6.1 and the Medical Review Board concurs, then no further evaluation is necessary. However, if the medical documentation is not sufficient to establish total and permanent disability after a review by the Medical Review Board, then an independent medical evaluation shall be required.

Amended by R.1977 d.148, effective April 27, 1977.

See: 9 N.J.R. 142(b), 9 N.J.R. 295(a).

Amended by R.1981 d.515, effective January 18, 1982.

See: 13 N.J.R. 748(a), 14 N.J.R. 105(a).

Deleted "in order to . . . fund" and substituted therefor "in the cases ... obtained."

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.

Administrative correction.

See: 34 N.J.R. 936(a).

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

Rewrote the section.

17:2-6.27 Work-related travel; accidental disability retirement and accidental death benefit coverage

(a) A member whose duties include regular or occasional travel in the course of employment will be considered in the "performance of the member's regular or assigned duties" for the purposes of accidental disability retirement or "in the actual performance of duty" for the purposes of accidental death benefits during employment-related travel as provided in this section. For the purposes of this section, "in performance of duty" means and includes both "performance of regular or assigned duties" and "in the actual performance of duty."

(b) If a member's duties require or authorize the member to travel between a regularly assigned office or workplace and other locations, or among other locations, the member is in performance of duty during travel between a regularly assigned office or workplace and other locations, or among other locations.

(c) If a member's duties require or authorize the member to travel between the member's place of residence and a location other than an office or workplace of the employer to which the member is regularly assigned or near to the regularly assigned office or workplace to perform the duties of the employment, the member is in performance of duty when the member completely leaves the property of the member's residence and begins to travel to the other location, or until the member begins entry to the property of residence after travel from the other location, and all expenses of the travel are paid for by the employer. A member's duties are considered to authorize or require travel from the place of

residence to a location other than a regularly assigned office or workplace of the employer in the following situations:

1. The member's regular or assigned duties involve field work which requires or authorizes the member to travel to locations other than a regularly assigned office or workplace of the employer to perform his or her duties and do not require the member to report to a regularly assigned office or workplace before or after traveling to other locations. Travel by the member between a regularly assigned office or workplace of the employer and the place of residence of the member is not considered part of the member's duties.

2. The member's regular or assigned duties are usually performed at an office or workplace of the employer to which the member is regularly assigned but occasionally require or authorize travel to other locations.

3. The member is authorized or required by the member's employer to respond to an emergency situation outside of the member's regularly scheduled work hours, regardless of whether the member goes to a regularly assigned office or workplace or another location, or whether the expenses of the travel are paid for by the employer or the member.

4. The member is attending a meeting, seminar, convention or a similar type of work-related activity as authorized or required by the employer at a location other than a regularly assigned office or workplace, regardless of whether the expenses of the travel are paid for by the employer or the member. Where there are social or recreational activities associated with the work-related activity or attendance requires living accommodations, only travel to and from the general activity and participation in and travel to and from the work-related functions of the activity are considered part of the duties of the member. Activities related to social or recreational functions or living accommodations are not considered part of the duties of the member.

(d) In all cases, a certification from the employer is required and must include a copy of the member's job description, a statement of the member's work schedule on the day of the travel in question, and proof of or a statement by the employer that the travel was authorized or required by the employer and was paid for by the employer.

New Rule, R.1989 d.422, effective August 7, 1989.

See: 21 N.J.R. 1285(a), 21 N.J.R. 2300(b).

Amended by R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

In (a), neutralized a gender reference; and in (c)1, substituted a reference to duties for a reference to dues at the end.

Case Notes

Public prosecutor's conduct in attempting to traverse balconies on eighth floor of building under poor lighting conditions while intoxicated constituted willful negligence precluding award of accidental death benefits. Estate of Greene, 96 N.J.A.R.2d (TYP) 215.

Housing inspector's fall while exiting car at end of day not caused by traumatic event, and not in course of regular assigned duties, and thus no eligibility for accidental disability retirement benefits. *Delunas v. Board of Trustees of the Public Employees' Retirement System*. 93 N.J.A.R.2d (TYP) 42.

SUBCHAPTER 7. TRANSFERS

17:2-7.1 Honorable services; interfund transfers; State-administered retirement systems

(a) The receipt of a public pension or retirement benefit is expressly conditioned upon the renderings of honorable service by a public officer or employee. Therefore, the Board of the new State-administered retirement system shall disallow the transfer of all or a portion of prior service of any member of the former State-administered retirement system for misconduct occurring during the member's prior public service, which renders that prior service, or part thereof, dishonorable.

(b) A member is eligible to transfer the former membership in a State-administered retirement system into the retirement system that covers the new eligible employment, if the member has first ended employment with the former employer, and has not taken another position subject to coverage in the State-administered retirement system of the former account which would have the same effective date as the membership in the new State-administered retirement system.

(c) The System will transfer membership to any State-administered retirement system as follows:

1. A member, desiring to transfer service credit and contributions from one State-administered retirement system to another, must file an "Application for Interfund Transfer" and an "Enrollment Application" in place of the customary "Application for Withdrawal." This application will void all possible claims against the former system when approved and the new membership is commenced in the new system.

2. The member's accumulated contributions, full interest included, less any outstanding loan, shall be transferred to the new system for the account of the respective member. Any outstanding loan, back deductions or arrears obligation will be scheduled for repayment.

3. A statement reflecting the member's status as of the date of transfer shall be prepared by the Withdrawal Section of the Division and a copy forwarded to the former account.

4. The member's service credit established in the former system shall be transferred into the new system.

5. The member is not eligible to transfer service credit if any of the following conditions apply:

- i. The member has withdrawn the former membership;

- ii. The member has credit in the former system for service earned after the date of enrollment in the new system (concurrent service) unless the member meets the criteria established by P.L. 2001, c. 341 (N.J.S.A. 43:15A-14). P.L. 2001, c. 341 provides that a member of the TPAF at the time of enrollment in the PERS may transfer the non-concurrent TPAF service if the member ceased to be an active contributing member of the TPAF three or less years from the date of enrollment in the PERS. The member must apply to transfer this service no more than two years from the date of the last contribution to the TPAF, unless the member is vested in the TPAF, or the member's TPAF account has not expired due to the provisions of N.J.S.A. 18A:66-8. A member who transfers service under this provision shall receive credit for the salaries earned in both the TPAF and PERS during the period of concurrent service; or

- iii. The account is inactive; that is, it has been more than two years from the date of the last contribution nor has the member's account remained active due to the provisions of N.J.S.A. 43:15A-8.

6. A data sheet shall be created for the member's new account that will indicate an interfund transfer from the member's former retirement system and the service credit transferred into the new membership account.

7. The member's original enrollment date established in the former system shall be transferred into the new system.

(d) The reserves accrued in the former system will be valued and compared to the reserves required in the new system.

1. If the reserves accumulated or provided for in the former system are less than those required in the new system, the full reserve will be transferred.

2. If the reserves accumulated or provided for in the former system are more than those required in the new system, only the amount required to establish the credit will be transferred.

(e) Years of credit will be subject to the benefit formula of the new system after transfer.

As amended, R.1979 d.399, effective October 9, 1979.
See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

As amended, R.1983 d.7, effective February 7, 1983.
See: 14 N.J.R. 1150(a), 15 N.J.R. 162(d).

Subsection 17:2-7.2 deleted, combined with 7.1, language added.
Amended by R.1988 d.141, effective April 4, 1988.
See: 19 N.J.R. 2386(a), 20 N.J.R. 812(a).

Substantially amended (a)5 and (d).
Amended by R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Rewrote the section.
Amended by R.2001 d.258, effective August 6, 2001.
See: 33 N.J.R. 1341(a), 33 N.J.R. 2677(a).

Rewrote (b)(5)(ii); in (b)(5)(iii), added "the member is not vested, nor has the member's account remained active due to the provisions of N.J.S.A. 43:15A-8" and deleted "there was not enough service credit to be eligible for a deferred retirement".

Amended by R.2002 d.266, effective August 19, 2002.

See: 34 N.J.R. 1366(a), 34 N.J.R. 2972(a).

In (b)5ii, substituted "c.341" for "c. 6" throughout and substituted "three" for "two".

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Rewrote the section.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In (a), deleted "of Trustees" following "Board", and inserted a comma following the third occurrence of "service"; in the introductory paragraph of (c), substituted "System" for "system"; in (c)5ii, substituted "c. 341" for "c.341" twice, substituted the first occurrence of "TPAF" for "Teacher's Pension and Annuity Fund (TPAF)", substituted the first occurrence of "PERS" for "Public Employees' Retirement System (PERS)", and inserted a comma following the fourth occurrence of "TPAF"; in (c)5iii, substituted "is inactive" for "has expired" and deleted "and the member is not vested," following "contribution"; and added (c)7.

Cross References

Interfund transfers, accumulated interest, see N.J.A.C. 17:1-12.5.

Case Notes

Teacher not entitled to reverse withdrawal from pension fund in order to obtain interfund transfer of service time. *Long v. Public Employees' Retirement System Board of Trustees*, 93 N.J.A.R.2d (TYP) 112.

17:2-7.2 Intrafund transfers; State-administered retirement systems

(a) Members who leave one public employer and take a position with another public employer covered by the same pension system are immediately eligible to transfer their membership to their new employers, as long as the following conditions are met:

1. The member has not withdrawn their contributions;
2. It has not been more than two years since the date of the last contribution or the member's account has remained active due to the provisions of N.J.S.A. 43:15A-7e and 8; and
3. The account has not been canceled due to Board action. It is the responsibility of the employer to establish the employee's status. For accounts that are withdrawn, expired or canceled, an enrollment application is needed, and the standard enrollment rules are again in effect.

(b) To transfer the member's account to the new employer, the new employer should file a Report of Transfer with the Division within 10 working days of the date employment begins. If more than one year elapses between the date that the member was required to contribute to the retirement system and the date contributions were first certified, the employer shall be assessed a late enrollment employer liability penalty plus delayed appropriation costs.

New Rule, R.2000 d.26, effective January 18, 2000.

See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Amended by R.2005 d.75, effective February 22, 2005.

See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

In (a), rewrote 2.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

Rewrote (a)2; in (a)3, deleted "of Trustees" following "Board"; and in (b), deleted "of Pensions and Benefits" following "Division".

SUBCHAPTER 8. PROSECUTORS PART

17:2-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Annual salary" means the compensation received by a member of the Prosecutors Part in the last 12 months of creditable service preceding retirement or death.

"Average annual compensation" means the annual salary as defined above.

"Combined service" means service credit in both the regular PERS and in the Prosecutors Part."

"PERS" means the Public Employees Retirement System.

"Regular Public Employees' Retirement System service" means all service credited as a public employee not meeting the definition of "service" as defined below.

"Service" as a prosecutor as defined by N.J.S.A. 43:15A-155 shall include service as the following. For members employed as prosecutors on January 7, 2002, service shall also include any PERS service credited to a member's account on January 7, 2002. Pursuant to P.L. 2003, c. 140, for an individual nominated and appointed pursuant to Article VII, Section II, paragraph 1 of the New Jersey Constitution to the position of a county prosecutor after January 7, 2002, service shall also include regular PERS service credited as of the date of appointment.

1. A county prosecutor, first assistant prosecutor, or assistant prosecutor as defined in N.J.S.A. 2A:158-1 et seq.;

2. The Director of the Division of Criminal Justice in the Department of Law and Public Safety; any assistant director, deputy director, assistant attorney general or deputy attorney general employed by that Department and assigned to that Division on or after January 7, 2002; and

3. A criminal investigator (as defined by N.J.S.A. 52:17B-100.1) in the Division of Criminal Justice who was ineligible for enrollment in the Police and Firemen's Retirement System on or after January 7, 2002.

"Special retirement" as defined in N.J.S.A. 43:15A-159 means a retirement election by a prosecutor who has established at least 25 years of creditable service in the Prosecutors Part regardless of age, for which the pension, when added to the prosecutor's annuity, will provide a total retirement allowance of 65 percent of final compensation, plus one

percent of final compensation multiplied by the number of years of creditable service over 25 but not over 30.

Amended by R.2007 d.382, effective December 17, 2007.

See: 39 N.J.R. 1642(a), 39 N.J.R. 5367(a).

In the introductory paragraph of definition "Service", substituted "c. 140" for "c.140"; in paragraph 2 of definition "Service", substituted "Department" for "department" and "Division" for "division" and inserted "and" at the end; in paragraph 3 of definition "Service", substituted a period for "; and" at the end; and deleted paragraph 4.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In the introductory paragraph, inserted a comma following "meanings"; and in definition "Service", substituted "PERS" for "Public Employees' Retirement System" twice.

17:2-8.2 (Reserved)

Repealed by R.2007 d.382, effective December 17, 2007.

See: 39 N.J.R. 1642(a), 39 N.J.R. 5367(a).

Section was "Criteria for determining eligibility for enrollment for employees of the Department of Law and Public Safety".

17:2-8.3 Contribution rate

(a) The rate of contribution to the Prosecutors Part of the Public Employees' Retirement System shall be a percent of base salary as established by the Board of Trustees. The amount of the members' contribution rate shall be established upon recommendation of the actuary using consistent and generally-accepted actuarial standards, as established by the Governmental Accounting Standards Board.

(b) The rate of contribution shall be reviewed by the System's actuaries periodically and adjusted by the Board as necessary. The Board of Trustees shall review the contribution rate at every three-year period as part of the valuation by the PERS System's actuary and whenever the PERS, PFRS, TPAF or SPRS rate is adjusted by the Legislature. A notice of any change in the rate shall be published through a notice in the New Jersey Register and shall become effective on the date authorized by the Board.

Amended by R.2009 d.351, effective December 7, 2009.

See: 41 N.J.R. 3040(a), 41 N.J.R. 4462(a).

In (a), substituted "a percent of base salary" for "7.5 percent", and inserted the last sentence; and in (b), inserted the last two sentences.

17:2-8.4 Ineligibility for credit in the Prosecutors Part

A person who was not employed as a prosecutor on January 7, 2002 is not eligible to have any portion of his or her Public Employees' Retirement System account credited to the Prosecutors Part except as provided under the definition of "service" in N.J.A.C. 17:2-8.1.

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 1016) adopted, which found that PERS member who was not employed as an assistant prosecutor on the January 7, 2002 effective date of chapter 366 of the Laws of 2001, later codified at N.J.S.A. 43:15A-155 to 43:15A-161, could not transfer prior PERS service credit into the Prosecutor's Part because N.J.A.C. 17:2-8.4 and N.J.A.C. 17:2-8.5 allowed only those prosecutors who were actually employed as of January 7, 2002 to receive credit for prior established PERS service; the regulations were not at odds with the plain meaning of the statutory language. *Redden v. Public Employees*

Ret. Sys., OAL Dkt. No. TYP 5436-03, 2006 N.J. AGEN LEXIS 1016, Initial Decision (November 21, 2006), adopted (PERS Bd. of Trustees December 20, 2006), *aff'd per curiam*, No. A-2926-06T3, 2008 N.J. Super. Unpub. LEXIS 484 (App.Div. March 7, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 1016) adopted, which found that, although N.J.A.C. 17:2-8.4, N.J.A.C. 17:2-8.5 and N.J.A.C. 17:2-8.11 clearly singled out those who were not employed as prosecutors on January 7, 2002 from being eligible for the transfer of prior service credit, or, alternatively, from eligibility for a refund of excess contributions made to the Prosecutors Part of PERS, the separate classes that were treated differently arose from legislative and regulatory mandates, and not from agency application of the rules; since the challenge to the regulations did not allege an improper application of the regulations, but challenged the very regulations themselves, it was beyond the jurisdiction of the OAL. *In re Redden*, OAL Dkt. No. TYP 5436-03, 2006 N.J. AGEN LEXIS 1016, Initial Decision (November 21, 2006), adopted (PERS Bd. of Trustees December 20, 2006), *aff'd per curiam*, No. A-2926-06T3, 2008 N.J. Super. Unpub. LEXIS 484 (App.Div. March 7, 2008).

17:2-8.5 Interfund transfers

(a) A person who contributes to another State-administered retirement system and was not employed as a prosecutor on January 7, 2002 is not eligible to have any portion of his or her State-administered defined benefit retirement system credit transferred into the Prosecutors Part. The State-administered defined benefit retirement system credit shall become regular PERS credit.

(b) The service credit of a member of the Prosecutors Part who transfers into another State-administered retirement system pursuant to N.J.S.A. 43:2-1 shall be converted into service credit in the new retirement system. If the member later transfers back into the Public Employees' Retirement System, service that was previously credited in the Prosecutors Part shall be credited as Prosecutors Part service, while all other service shall be credited as regular PERS service.

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 1016) adopted, which found that PERS member who was not employed as an assistant prosecutor on the January 7, 2002 effective date of chapter 366 of the Laws of 2001, later codified at N.J.S.A. 43:15A-155 to 43:15A-161, could not transfer prior PERS service credit into the Prosecutor's Part because N.J.A.C. 17:2-8.4 and 17:2-8.5 allowed only those prosecutors who were actually employed as of January 7, 2002 to receive credit for prior established PERS service; the regulations were not at odds with the plain meaning of the statutory language. *In re Redden*, OAL Dkt. No. TYP 5436-03, 2006 N.J. AGEN LEXIS 1016, Initial Decision (November 21, 2006), adopted (PERS Bd. of Trustees December 20, 2006), *aff'd per curiam*, No. A-2926-06T3, 2008 N.J. Super. Unpub. LEXIS 484 (App.Div. March 7, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 1016) adopted, which found that, although N.J.A.C. 17:2-8.4, 17:2-8.5 and 17:2-8.11 clearly singled out those who were not employed as prosecutors on January 7, 2002 from being eligible for the transfer of prior service credit, or, alternatively, from eligibility for a refund of excess contributions made to the Prosecutors Part of PERS, the separate classes that were treated differently arose from legislative and regulatory mandates, and not from agency application of the rules; since the challenge to the regulations did not allege an improper application of the regulations, but challenged the very regulations themselves, it was beyond the jurisdiction of the OAL. *In re Redden*, OAL Dkt. No. TYP 5436-03, 2006 N.J. AGEN LEXIS 1016, Initial Decision (November 21, 2006), adopted (PERS Bd. of Trustees December 20, 2006), *aff'd per curiam*, No. A-2926-06T3, 2008 N.J. Super. Unpub. LEXIS 484 (App.Div. March 7, 2008).

17:2-8.6 Purchase of service

(a) Any active member of the Prosecutors Part may make an optional purchase of service as authorized by N.J.A.C. 17:2-5.5

(b) Any purchase requested after January 7, 2002 shall be credited as regular PERS service in the calculation of benefits except for the following three types of service which shall be credited as Prosecutors Part service. The cost of this Prosecutors Part service shall be determined using Prosecutors Part actuarial purchase factors:

1. Temporary service after January 7, 2002 as a prosecutor leading directly to permanent employment as a prosecutor;
2. Service properly credited in the Prosecutors Part on or after January 7, 2002 as to which contributions had been withdrawn in accordance with N.J.S.A. 43:15A-8b; and
3. Leaves of absence without pay after January 7, 2002 from service as prosecutor. A prosecutor may purchase the period of a leave of absence pursuant to N.J.A.C. 17:2-5.5(a)4.

(c) An active member who wishes to purchase service credit shall file an application with the Division. The cost shall be calculated in accordance with N.J.A.C. 17:2-5.5. The member must pay into the annuity savings fund, the amount required by applying the factor, supplied by the actuary, to the member's age at the time of purchase and to the member's salary at that time or to the highest annual compensation for service in this State during any fiscal year, including a fiscal year for which credit is purchased, whichever is the highest. Such purchase may be made in regular installments, equal to at least one-half the full normal contribution to the retirement system over a maximum period of 10 years.

Amended by R.2010 d.149, effective July 19, 2010.
See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In (c), deleted "of Pensions and Benefits" following "Division", inserted a period following "17:2-5.5", and inserted a comma following "fund".

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 187) adopted, which determined that a public employee's purchase of service for her maternity leaves could not be credited towards eligibility for the Prosecutors Part of PERS benefits where the employee's purchase of time necessary to give her 25 years of service in the PERS was made subsequent to the January 7, 2002 deadline imposed by N.J.A.C. 17:2-8.6(b). The employee's reliance on the New Jersey Family Leave Act and the federal Family and Medical Leave Act's protections was misplaced and nothing about the conduct of the Division of Pensions and Benefits amounted to the provision of any misinformation or wrong advice; thus, the employee was correctly advised of the time she needed to purchase to give her 25 years of creditable PERS time, and the employee was entitled to regular PERS benefits commensurate with her salary and years of service. In re Newman, OAL Dkt. No. TYPPE 02568-2003S, 2006 N.J. AGEN LEXIS 593, Final Decision (April 20, 2006).

17:2-8.7 Eligibility for a loan

Active, contributing members of the Prosecutors Part with at least three years of service credit may exercise the privilege

of obtaining a loan pursuant to the provisions of N.J.S.A. 43:15A-34 and IRS regulations. The monthly or biweekly payment amount shall be at least equal to the member's rate of contribution to the Prosecutors Part and cannot exceed 25 percent of the member's compensation. Not more than two loans may be granted to any member in any calendar year. The member's total outstanding loan balance shall not exceed the lesser of 50 percent of the accumulated deductions posted to the member's account or \$50,000. Should a prosecutor retire or die with an outstanding loan balance, repayment shall be made according to the provisions of N.J.S.A. 43:15A-34.1 and N.J.A.C. 17:2-6.4.

17:2-8.8 Vesting

(a) A prosecutor with service in both the Prosecutors Part and the regular PERS may use the combined noncurrent service in order to meet the 10-year vesting requirement found at N.J.S.A. 43:15A-38 for a member of the PERS.

(b) If the prosecutor begins receipt of a Prosecutors Part retirement benefit prior to the date of eligibility to receive a PERS retirement benefit, the Prosecutors Part service credit shall be subtracted from the member's active account and any credited regular PERS service would remain. A retired member of the Prosecutors Part who does not have 10 or more years of credited regular PERS service remaining in the active account after the Prosecutors Part service is subtracted, and whose regular PERS account will not be active pursuant to N.J.S.A. 43:15A-7e when the member attains the age of 60 or the age of 62 for those members who enroll on or after November 2, 2008, cannot collect a benefit based on that service. An application for return of contributions made on the basis of such other public service, if no part of the service was used in the calculation of a retirement allowance or to qualify for payment of health benefits, may be approved.

Amended by R.2010 d.149, effective July 19, 2010.
See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In (a), substituted "PERS" for "Public Employees' Retirement System"; and in (b), inserted "or the age of 62 for those members who enroll on or after November 2, 2008".

17:2-8.9 Withdrawal from Prosecutors Part or regular PERS service

(a) A prosecutor, upon termination of service as a prosecutor, may elect to receive the return of the accumulated contributions in accordance with the provisions of N.J.S.A. 43:15A-41 and N.J.A.C. 17:2-4.10 and 4.11.

(b) If a prosecutor is a member of the PERS on the basis of other public service, no application for a return of contributions shall be approved until the prosecutor has terminated all service covered by the System and makes application for a return of all contributions made to the System. An application for return of contributions made on the basis of such other public service, if no part of the service was used in the calculation of a retirement allowance or to qualify for payment of health benefits, may be approved.

(c) A prosecutor cannot withdraw from the regular PERS unless retired or withdrawn from the Prosecutors Part.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In (b), substituted "PERS" for "Public Employees' Retirement System".

17:2-8.10 Retirement effective date

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

17:2-8.11 Election of largest possible retirement allowance

(a) At the time of retirement, a member enrolled on the basis of service as a prosecutor, or on a combination of service as a prosecutor and regular PERS service, shall be permitted to elect the largest possible retirement allowance, if the member qualifies for benefits under both the provisions of P.L. 2001, c.366 and N.J.S.A. 43:15A-1 et seq. and the combined service provides a higher benefit. The member may elect any PERS retirement benefit for which the member qualifies, including early retirement pursuant to N.J.S.A. 43:15A-41, veterans retirement pursuant to N.J.S.A. 43:15A-61 and service retirement pursuant to N.J.S.A. 43:15A-48. A prosecutor who elects to receive a regular PERS retirement benefit instead of a prosecutor's benefit, and has 10 or more years of service credit, will have a death benefit equal to 3/16 of the last 12 months of salary upon retirement.

(b) A prosecutor electing to receive a retirement allowance under the Prosecutors Part shall be ineligible to receive a retirement allowance or pension for the same service under any other law of the State.

(c) There will be no refund of Prosecutors Part employee contributions if a regular PERS benefit is elected; nor, will there be a refund of the difference in employee contribution rates between the Prosecutors Part and regular PERS.

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 1016) adopted, which found that N.J.A.C. 17:2-8.11(b), which prohibited a refund of Prosecutors Part employee contributions if a regular PERS benefit was elected or a refund of the difference in employee contribution rates between the Prosecutors Part and regular PERS, was facially valid; an employee's contribution need not be returned upon cessation of employment, but may be retained for the common benefit of all. In re Redden, OAL Dkt. No. TYP 5436-03, 2006 N.J. AGEN LEXIS 1016, Initial Decision (November 21, 2006), adopted (PERS Bd. of Trustees December 20, 2006), aff'd per curiam, No. A-2926-06T3, 2008 N.J. Super. Unpub. LEXIS 484 (App.Div. March 7, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 1016) adopted, which found that, although N.J.A.C. 17:2-8.4, 17:2-8.5, and 17:2-8.11 clearly singled out those who were not employed as prosecutors on January 7, 2002 from being eligible for the transfer of prior service credit, or, alternatively, from eligibility for a refund of excess contributions made to the Prosecutors Part of PERS, the separate classes that were treated differently arose from legislative and regulatory mandates, and not from

agency application of the rules; since the challenge to the regulations did not allege an improper application of the regulations, but challenged the very regulations themselves, it was beyond the jurisdiction of the OAL. In re Redden, OAL Dkt. No. TYP 5436-03, 2006 N.J. AGEN LEXIS 1016, Initial Decision (November 21, 2006), adopted (PERS Bd. of Trustees December 20, 2006), aff'd per curiam, No. A-2926-06T3, 2008 N.J. Super. Unpub. LEXIS 484 (App.Div. March 7, 2008).

17:2-8.12 Service retirement

(a) If a prosecutor is a member of the PERS on the basis of other public service, no application for retirement shall be approved until the prosecutor has terminated all service covered by the System.

(b) A member who was employed as a prosecutor on January 7, 2002 may retire with 20 or more years of creditable Prosecutors Part service at any age by filing a retirement application, duly attested, stating at what time subsequent to the execution and filing thereof the member desires to be retired.

(c) A member who was not employed as a prosecutor on January 7, 2002 may retire at age 55 by filing a retirement application, duly attested, stating at what time subsequent to the execution and filing thereof the member desires to be retired.

(d) The service retirement allowance shall consist of:

1. An annuity which shall be the actuarial equivalent of the prosecutor's aggregate contributions; and

2. A pension in the amount, when added to the annuity, would provide a total retirement allowance of 1/60th of average final compensation multiplied by the number of years of creditable prosecutor's service, or two percent of average final compensation multiplied by the number of years of creditable prosecutor's service up to 30 plus one percent of average final compensation multiplied by the number of years of creditable prosecutor's service over 30, or 50 percent of final compensation if the prosecutor has established 20 or more years of creditable prosecutor's service, whichever is greatest.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In (b) and (c), substituted "retirement" for "written".

17:2-8.13 Eligibility for disability and accidental death retirement benefit

(a) A prosecutor who has a total of 10 years of nonconcurrent New Jersey service in the Prosecutors Part, regular PERS, or a combination thereof, may be eligible for an ordinary disability retirement allowance as provided by N.J.S.A. 43:15A-42. The benefit shall be the same as that provided by N.J.S.A. 43:15A-45.

(b) A prosecutor who is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of the prosecutor's regular or assigned duties may be eligible for an accidental disability

retirement allowance as provided by N.J.S.A. 43:15A-43. The benefit shall be the same as that provided by N.J.S.A. 43:15A-46.

(c) Should a prosecutor die in active service as a result of an accident met in the actual performance of duty and not as the result of willful negligence, an accidental death benefit may be payable subject to the provisions of N.J.S.A. 43:15A-49.

(d) A prosecutor who is awarded a disability benefit as stated in (a) and (b) above, cannot receive an additional Prosecutors Part retirement benefit or death benefit as defined in N.J.S.A. 43:15A-158, 159 and 160 or any additional PERS benefit. There will be no refund of Prosecutors Part employee contributions if a PERS disability benefit is elected; nor will there be a refund of the difference in employee contribution rates between the Prosecutors Part and regular PERS service.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

In (a), substituted "PERS" for "Public Employees' Retirement System", and inserted a comma following "thereof".

17:2-8.14 Retirement date for prosecutors having both regular and Prosecutors Part PERS service

(a) If a prosecutor is a member of the PERS on the basis of other public service, no application for retirement shall be approved until the prosecutor has terminated all service covered by the System.

(b) A prosecutor who has both regular and Prosecutors Part PERS service may, after filing the necessary application, begin receipt of the Prosecutors Part benefit at age 55, or at any age with 20 or more years of service if the member was employed as a prosecutor as of January 7, 2002. The member may begin receipt of the remaining regular PERS benefit at age 60 or at age 62 for those members who enroll on or after November 2, 2008 based on the member's final average salary in the regular PERS covered position in accordance with the PERS retirement rules, so long as the member is vested in the regular PERS account, or the regular PERS account is still active pursuant to N.J.S.A. 43:15A-7e. The maximum amount of the PERS benefit shall be determined as of the effective date of retirement from the Prosecutors Part. Should a retired member of the Prosecutors Part return to employment prior to receipt of the regular PERS retirement benefit, that PERS benefit shall not increase and the provisions of N.J.A.C. 17:2-8.16 shall apply. If the member has 25 years or more of regular PERS service, the member may begin receipt of the regular PERS benefit at any age after filing the necessary application.

(c) A member must be enrolled in group life insurance as an active employee to be eligible to receive a death benefit in retirement from either the Prosecutors Part or the regular PERS. A member in receipt of a benefit provided under N.J.S.A. 43:15A-158 or 159 with 10 or more years of Prosecutors Part service at retirement, will receive a death benefit

equal to either 50 percent of the last 12 months of salary on which Prosecutors Part contributions were based or 3/16 of the last 12 months of regular PERS salary, whichever is greater. A member who is in receipt of a benefit based on 10 or more years of regular PERS service as well as another benefit based on 10 or more years of Prosecutors Part service, will receive a combined death benefit equal to 50 percent of the last 12 months of salary on which Prosecutors Part contributions were based as well as a benefit equal to 3/16 of the last 12 months of regular PERS salary.

Amended by R.2010 d.149, effective July 19, 2010.

See: 41 N.J.R. 4667(a), 42 N.J.R. 1612(b).

Section was "Retirement date for prosecutors having both regular and Prosecutors Part Public Employees' Retirement System service". In (b), inserted "or at age 62 for those members who enroll on or after November 2, 2008".

17:2-8.15 Options at retirement

(a) A member of the Prosecutors Part shall, on the retirement application, select one of the nine options to receive retirement benefits as provided at N.J.S.A. 43:15A-50 and N.J.A.C. 17:2-6.1.

(b) P.L. 2001, c.366 does not provide for a separate surviving spouse benefit. Members may elect survivor benefits under the provisions of N.J.S.A. 43:15A-50 and N.J.A.C. 17:2-6.1.

(c) A member of the Prosecutors Part who files for a retirement allowance from both the Prosecutors Part as well as the regular PERS, may select a different option and/or beneficiary under each retirement allowance.

(d) The cost-of-living adjustment as provided for in N.J.S.A. 43:3B-1 et seq. shall be calculated separately using the retirement date for each retirement allowance.

17:2-8.16 Return to employment

(a) Retired members of the Prosecutors Part, who return to Public Employees' Retirement System or Prosecutors Part covered employment, shall have their previous retirement allowances suspended and shall be reenrolled in the System in the same manner as provided by N.J.S.A. 43:15A-44 for those who retired on disability retirements or N.J.S.A. 43:15A-57.2 for those who retired on early, service, veteran, special or deferred retirements. A member who ceases covered employment and retires again must file a new retirement application with the Division in accordance with N.J.A.C. 17:2-6.1 to initiate payment of the retirement allowance. The previous retirement allowance shall then be reinstated, and the new retirement allowance, based on the member's subsequent covered employment, shall commence. The previous and subsequent retirement allowances shall be combined and paid in one monthly benefit check. The retirement allowance shall become effective on the first of the month following receipt of the application unless a future date is requested.

(b) Pursuant to N.J.S.A. 43:15A-57.2, in no event shall the total retirement allowance upon subsequent retirement be a greater proportion of final compensation than the proportion

to which the member would have been entitled had the member remained in service during the period of prior retirement.