

CHAPTER 2

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Authority

N.J.S.A. 43:15A-17.

Source and Effective Date

R.2005 d.75, effective January 24, 2005.
See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 2, Public Employees' Retirement System, expires on July 23, 2010. See: 41 N.J.R. 4667(a).

Chapter Historical Note

Chapter 2, Public Employees' Retirement System, was adopted and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 2, Public Employees' Retirement System, expired on October 9, 1984.

Chapter 2, Public Employees' Retirement System, was adopted as new rules by R.1984 d.562, effective December 17, 1984. See: 16 N.J.R. 2515(b), 16 N.J.R. 3479(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Public Employees' Retirement System, was readopted as R.1989 d.597, effective November 8, 1989. See: 21 N.J.R. 2439(a), 21 N.J.R. 3788(a). Pursuant to Executive Order No. 66(1978), Chapter 2, Public Employees' Retirement System, expired on November 8, 1994.

Chapter 2, Public Employees' Retirement System, was adopted as new rules by R.1995 d.91, effective February 21, 1995. See: 26 N.J.R. 4747(a), 27 N.J.R. 754(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Public Employees' Retirement System, was readopted as R.2000 d.26, effective December 17, 1999. See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a)

Subchapter 8, Prosecutors Part, was adopted as new rules by R.2004 d.227, effective June 21, 2004. See: 36 N.J.R.291(a), 36 N.J.R. 3068(a).

Chapter 2, Public Employees' Retirement System, was readopted as R.2005 d.75, effective January 24, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ADMINISTRATION

17:2-1.1 Board meetings

(a) The Board of Trustees shall meet on the third Wednesday of each month or at such other time as may be deemed necessary by the Board.

(b) The chairperson may call for special meetings when necessary.

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.2000 d.26, effective January 18, 2000.

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

Deleted former (b); and recodified former (c) as (b), and substituted a reference to chairpersons for a reference to chairmen.

17:2-1.2 Fiscal year

The transaction of business and control of finance shall be conducted from a July 1 to June 30 fiscal year.

Amended by R.2000 d.430, effective November 6, 2000.

See: 32 N.J.R. 2660(a), 32 N.J.R. 3996(a).

Rewrote the section.

17:2-1.3 Officers and committees

(a) The members of the Board shall elect a chairperson and vice chairperson, and a representative to the State Investment Council from its membership for the forthcoming year at its regular meeting held in July. A representative to the Pension System Actuary Selection Committee, as provided for by N.J.S.A. 43:4b-1, shall be elected by the Board whenever the selection of a new actuary is needed.

(b) The chairperson of the Board shall preside at all of its meetings, or in the absence of the chairperson, the vice chairperson shall assume the chairperson's responsibilities. In the absence of the chairperson and vice chairperson, another member selected by the majority of the members in attendance will preside for that single meeting.

(c) The chairperson and the Secretary of the Board shall have the power to act for the Board in any matter which may be referred to them by the Board of Trustees.

(d) There shall be one standing committee which is the finance committee pursuant to N.J.S.A. 43:15A-32. The committee shall be appointed by the chairperson at the July meeting for the forthcoming fiscal year. The finance committee shall review all investment transactions and financial reports referred to it by the Secretary for presentation to the Board at its regular monthly meetings. The committee shall consist of five members three of whom shall be elected members of the Board.

As amended, R.1971 d.71, effective May 18, 1971.

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

As amended, R.1976 d.383, effective December 6, 1976.

See: 8 N.J.R. 537(c), 8 N.J.R. 48(a).

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

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

Substituted references to chairpersons for references to chairmen throughout; in (a), inserted a reference to a representative to the State Investment Council and the Pension System Actuary Committee; and in (e), substituted "five members, three of whom shall be elected members of the Board" for "three members" at the end.

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.

17:2-1.4 Election of member-trustee

(a) The procedures for the election of a State, municipal, or county trustee representative to the Public Employees' Retirement System (PERS) Board of Trustees are set forth in this section.

(b) Eligible candidates shall include any active or retired member of the PERS. Only State members may seek State seats, only municipal members may seek municipal seats, and only county members may seek county seats on the Board of Trustees. All candidates shall comply with any and

all requirements as provided by law and these rules. Any candidate who fails to comply with the law and these rules is automatically disqualified as a candidate.

(c) The following apply to election notices:

1. At least nine months prior to the expiration of the term of each elected trustee or immediately upon a vacancy on the Board, a notice shall be prepared and distributed by the Secretary of the Board or a contracted vendor through the certifying officers to each member who is eligible to vote.

2. The election notice shall:

- i. Advise the member of the election;
- ii. State the position and term to be filled;
- iii. State that nominating petitions are required and that the petition forms are available from the Board Secretary at the Division of Pensions and Benefits;
- iv. State the date of the election;
- v. Identify all present members of the Board; and
- vi. Include any other information regarding a particular election as specified by the Board of Trustees.

3. Election notices shall be forwarded in bulk and in appropriate number to the certifying officer or other appropriate fiscal officer of each employing agency, together with instructions as to who is to receive the notices.

4. A confirmation form also shall be forwarded to each certifying officer or appropriate fiscal officer. Such form shall be returned to the Secretary or contracted vendor and shall include documentation of:

- i. Receipt of the notice by the certifying officer or other appropriate fiscal officer; and
- ii. The extent to which the certifying officer or other appropriate fiscal officer has distributed the notice to eligible members.

5. Election notices shall be distributed to each member who is eligible to vote, as shown on a master list of members that shall be recorded and stored at the Board Secretary's Office and made available for review to any candidate at the Division of Pensions and Benefits. Only active members of the PERS may vote in the election of member-trustees of the Board of Trustees of the PERS. Any challenges or questions concerning eligible voters shall be made prior to the close of the voting deadline. Failure to challenge the list or any part of it in writing prior to the voting deadline shall disallow any challenges or questions raised after the close of voting.

(d) The following apply to nominated petitions:

1. Nominating petition forms shall be available from the Secretary of the PERS.
2. Nominating petitions shall be forwarded to each active or retired member who requests them after the Division verifies the member's eligibility to run for such election.
3. The petition forms shall explain that:
 - i. For State trustee, at least 500 active State members, who are eligible to vote for the position, are required to sign the petition for the candidate.
 - ii. For municipal trustee, at least 500 active municipal members, who are eligible to vote for the position, are required to sign the petition for the candidate.

iii. For county trustee at least 500 active county members, who are eligible to vote for the position, are required to sign the petition for the candidate.

4. The petition form shall require the candidate's name and employer, and the pension membership or Social Security number of each petitioner.

5. The form shall explain that an active member shall sign only one petition, with State members petitioning for a State candidate, municipal members petitioning for a municipal candidate, and county members petitioning for a county candidate.

6. The dates for filing and returning the petitions shall be identified, as well as the approximate date that ballots shall be sent to employers for distribution to voters.

7. Candidates named on the petitions shall sign each petition in a designated space indicating their willingness to be a candidate.

8. If only one candidate is nominated for a position, the candidate shall be deemed elected to the position without balloting. A notice to the certifying officers shall be distributed for posting at the employing locations, indicating no contest since only one candidate was nominated by petition.

(e) The following applies to distribution of election packets:

1. The Board reserves the right to authorize a vendor to collect votes through one or more of the following election processes. All active eligible members shall have an opportunity to cast a ballot through one of the following:

- i. Telephone (voice retrieval system—electronic vote);
- ii. Internet access (electronic vote);
- iii. Fax server (electronic vote); or
- iv. Paper ballot (postage-paid, self-seal return mailer).

2. For each eligible voter, there shall be forwarded to the certifying officer individual member packets with instructions for balloting which shall include the following information:

- i. The eligible member's name, pension membership number, pension location number, ballot number and personal identification number (PIN);
- ii. The closing date of the election;
- iii. The name of each candidate nominated including a biographical sketch listing the candidate's background and employer;
- iv. Instructions on how to properly cast a paper ballot, including notification that shall advise the member that mutilated ballots, illegible ballots, ballots with

write-in votes, ballots with multiple votes or ballots where it cannot be determined for whom the member intended to vote shall be declared invalid and not considered in the final election count;

v. Instruction on how to properly cast an electronic vote;

vi. Instruction on proper use of the PIN number;

vii. Information stating that the candidate receiving a plurality of all the legal votes cast shall be declared elected to the position subject to approval by the Board;

viii. Information on how the first vote cast shall be counted as the official vote and subsequent votes will be rejected; and

ix. A statement regarding the confidentiality and security used by the vendor to protect the election process against fraudulent and/or multiple voting.

3. The ballot positions shall be determined by a drawing conducted at a time and place determined by the Board Secretary. All candidates may attend such drawing by contacting the Board Secretary's Office.

4. A receipt shall be signed by each certifying officer or representative, acknowledging the receipt and distribution of the election packets.

(f) The Board shall assess the percentage of returned votes after the conclusion of each respective election and determine whether or not the paper ballot should continue to be incorporated in the election packet as denoted in (e) above. The Secretary shall notify the vendor handling the election of the Board's decision regarding continued inclusion of the paper ballot in the initial election packet. If members cannot cast an electronic ballot, they shall have an opportunity to cast a paper ballot. If the Board determines that paper ballots no longer need to be included in the initial election packet, then the following apply to the distribution of paper ballots upon member request:

1. Active members may contact the vendor handling the election to request a paper ballot if the voter is unable to cast a ballot through any of the other electronic methods mentioned in (e) above. Members shall provide the vendor with their proper ballot/pension number and home address.

2. Upon proper notification or request by an eligible voter, the vendor shall mail a paper ballot to the voter's home address, together with instructions for casting the ballot, biographical information about the candidates, and a postage-paid return envelope.

3. Mutilated ballots, illegible ballots, ballots with write-in votes, ballots with multiple votes or ballots where it cannot be determined whom the member intended to vote for shall be declared invalid and not considered in the final election count.

(g) The following applies to biographical information:

1. An informational sheet of biographical information regarding each candidate shall be prepared by the candidate and submitted to the Secretary for approval.

2. The Secretary shall inform each candidate that the approved biographical information will be included with the ballot packet.

3. The biographical information shall be distributed to the certifying officer of each employing agency at the time of distribution of the election packets, or otherwise distributed as approved by the Board of Trustees. The employer should post this information at appropriate places throughout the workplace of each employing agency so that the members of the retirement system shall have a reasonable opportunity to read and consider the biographical information regarding the candidates.

(h) Vote tabulation shall be as follows:

1. Only a member's first vote shall be counted as the official electronic or paper ballot. All duplicate or subsequent votes shall be considered invalid and not included in the final election count.

2. The candidate receiving the highest number of all legal votes contained in (e), and (f) above shall be elected to the position.

3. The Secretary of the Board shall oversee the election process to ensure that the vendor complies with all of the requirements and to assure the validity of the final election count.

4. The eligible candidates for the election shall be informed as to the method and the date of counting the ballots and shall be invited to be present or to be represented at the counting of the ballots.

(i) The following applies to recount procedures:

1. Any candidate or member, who shall have reason to believe that an error has been made in counting or declaring the vote, may request, in writing, within 20 days of the certification of the results of the election, that the Board of Trustees, at its next regular meeting or at a special meeting, hold a hearing to consider the request and determine whether a recount shall be held. The Board shall notify all candidates of its decision within 10 days thereafter. At such hearing, any member of the Board who is a candidate on the contested ballot shall not vote in the Board's decision on the request. All candidates on the contested ballot shall be invited to attend the Board's meeting and may present evidence to support their beliefs.

2. If a candidate or other interested party requests a recount, in writing, within the prescribed time, this request shall be reviewed and granted by the Board of Trustees if a recount could possibly affect the results of the election. All ballots received then shall be recounted and the recount shall be supervised by the Board Secretary. The Secretary shall certify the results of the recount to the Board of Trustees. If a recount is not requested within 20 days, the ballots may be destroyed.

3. Upon election and the taking of an oath of office, the State, municipal or county member-trustees shall serve for a term of three years. In the event that no member is certified as the winner of an election, the incumbent trustee shall serve until a successor is certified by the Board of Trustees.

(j) If there are at least three candidates in an election for member-trustee and the victorious candidate dies or declines to serve as such member-trustee prior to the beginning of the candidate's term as trustee, the candidate who obtained the next highest number of votes in that election (that is, the first runner-up) shall be selected to fill the Board vacancy caused by the death or inability or unwillingness to serve of the successful candidate. If the Board selects the first runner-up in such election and that person is unable or unwilling to accept the position, then the Board shall select the candidate who obtained the next highest number of votes in that election. If there is no second runner-up, the Board shall conduct a new election to fill the Board vacancy. For purposes of this provision, a member-trustee's term begins upon the taking of the oath of office.

Amended by R.1973 d.118, effective April 30, 1973.

See: 5 N.J.R. 124(b), 5 N.J.R. 204(a).

Amended by R.1985 d.213, effective July 9, 1976.

See: 8 N.J.R. 260(a), 8 N.J.R. 407(c).

Amended by R.1985 d.590, effective November 18, 1985.

See: 17 N.J.R. 2238(a), 17 N.J.R. 2784(a).

(a)4 added text: "If only one ... only one nominee."; and added (b)9.

Amended by R.1987 d.157, effective April 6, 1987.

See: 19 N.J.R. 52(a), 19 N.J.R. 565(a).

Substantially amended.

Amended by R.1993, d.78, effective February 16, 1993.

See: 24 N.J.R. 3690(a), 25 N.J.R. 711(a).

Added new (i).

Amended by R.1994 d.259, effective June 6, 1994.

See: 25 N.J.R. 5113(a), 26 N.J.R. 2299(d).

Repeal and New Rule, R.2000 d.73, effective March 6, 2000.

See: 31 N.J.R. 3926(a), 32 N.J.R. 821(a).

Section was "Election of member-trustee".

Amended by R.2004 d.84, effective March 1, 2004.

See: 35 N.J.R. 4831(a), 36 N.J.R. 1198(a).

Rewrote (e)1iv and (e)2iv; in (f), deleted 3 and recodified 4 as 3.

Case Notes

Request for recount in election of trustees of Public Employees' Retirement System was properly denied where there was no evidence of miscalculations or serious errors in counting process. *McLaughlin v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 181.

Candidate was ineligible to run for reelection to PERS Board of Trustees; prior disciplinary suspension. *Buriani-DeSantis v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 63.

17:2-1.5 Certifying Officer (employer)

(a) The Chief Fiscal Officer or other officer duly designated via resolution of each county, municipality or public agency and the personnel officer of the Division, Bureau or Institution of the State locations shall serve as the Certifying Officer for that unit.

(b) The Certifying Officer shall be responsible for the duties described by N.J.S.A. 43:15A-67 and Section 80 and any other section which refers to the Department head.

(c) The Certifying Officer shall also be responsible for all other duties relating to matters concerning the System including providing requested documentation in a timely manner.

(d) Upon the request of the Board, the Certifying Officer shall be required to sign a statement, verifying that any information reported is accurate to the best of the Officer's knowledge, and conforms with the statutes and rules governing the retirement system.

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

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

Substituted references to Certifying Officers for references to Certifying agents throughout; and added (d).

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

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

In (c), inserted "including providing requested documentation in a timely manner" following "System".

Case Notes

PERS member's employer, not the Division of Pensions and Benefits or the PERS Board, had duty to keep employees apprised of all duties and obligations under the PERS statute. *Kramer v. Board of Trustees of Public Employees' Retirement System*, 291 N.J.Super. 46, 676 A.2d 1117 (N.J.Super.A.D. 1996).

Petition to purchase pension credit for prior temporary service after expiration of statutory filing limitation denied: *Public Employees' Retirement System* held without statutory obligation to disseminate to certifying agents amendatory legislation concerning the retirement system at the time of enactment. In re *Krah*, 130 N.J.Super. 366, 327 A.2d 248 (App.Div.1974).

17:2-1.6 Records

(a) In addition to the provisions of N.J.A.C. 17:1-1.2, the minutes of the Board are a matter of public record and may be inspected during regular business hours in the Office of the Board Secretary.

(b) The mailing addresses of all active and retired members are considered to be a part of the member's confidential files and shall not be released for any purpose.

(c) The designations of beneficiaries of all active and retired members are considered to be a part of the member's confidential files and shall only be released after the member's death.

(d) All medical testimony obtained in connection with an application for disability retirement shall be restricted for the confidential use of the Board of Trustees. The Division shall release a copy of the examining physician's medical report to the member, the member's attorney or any person authorized by the member in writing to receive a copy of such report. A copy of the Board appointed physician's medical report cannot be released until after the Board's initial determination. In no event shall the report be released to any individual not authorized in writing to receive the report.

(e) The annual report of the system's actuary shall not be released until it has been approved by the Board of Trustees.

(f) Original documents, if available, shall only be viewed by appointment at the Division of Pensions and Benefits.

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

Inserted a new (c); and recodified former (c) as (d), and added the second and third sentences.

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), substituted "In addition to the provisions of N.J.A.C. 17:1-1.2, the" for "The"; in (d), added the third sentence; added (e) and (f).

17:2-1.7 Appeal from Board decisions

The following statement shall be incorporated in every written notice setting forth the Board's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative:

"(a) If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

(b) The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(c) Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1.

(d) If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final determination which shall include detailed findings of fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division.

(e) If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law."

As amended, R.1971 d.71, effective May 18, 1971.
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).
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.

Case Notes

State agency's failure to give employee required notice of right to appeal adverse determination concerning substitution of survivor's ben-

efits beneficiary necessitated court's transfer of issue back to agency for final determination. *Rienzi v. Rienzi*, 300 N.J.Super. 355, 693 A.2d 129 (A.D.1997).

Employee who sustained back injury which, at most, contributed to progression of arthritic condition by aggravation, held not to have disability which was a direct result of a traumatic event so as to entitle the employee to disability retirement benefits. *Gerba v. Bd. of Trustees, Public Employees' Retirement System*. 83 N.J. 174, 416 A.2d 314 (1980).

Legislative positions held by employee as Assistant to Speaker of General Assembly, Assistant Secretary of Senate and Secretary of Senate held not within explicit exclusions for temporary or seasonal employees or employees whose salary was less than \$500, but were regular State employment positions qualifying employee for PERS benefits, notwithstanding twice yearly rather than quarterly salary payments. *Gladden v. Bd. of Trustees, Public Employees' Retirement System*, 171 N.J.Super. 363, 409 A.2d 294 (App.Div.1979).

Public employee's request for a formal hearing to challenge the Board of Trustees of the PFRS' determination in a May 16, 2000 letter that the employee had not suffered a "traumatic event" and thus was not entitled to an accidental disability pension was denied as untimely under N.J.A.C. 17:2-1.7. Despite the Board's confusion regarding the employee's address, from the documents presented and the employee's testimony, it appeared most probable that the employee did receive the May 16, 2000 letter denying the benefits within days of its date, especially where a letter from the employee's attorney on May 22, 2000 made it clear that a retainer between the attorney and the employee had been discussed regarding the denial of the pension. In re *Williams*, OAL Dkt. No. TYP 03483-05S, 2006 N.J. AGEN LEXIS 1060, Initial Decision (December 28, 2006), adopted (PFRS Bd. of Trustees February 5, 2007).

17:2-1.8 Suspension of pension checks

(a) The disbursement of pension checks shall be suspended under the following circumstances and such suspensions shall continue during the period in default:

1. If a disability retirant fails to appear for a medical examination;
2. If a disability retirant fails to timely file a report with the System of annual earned income if requested;
3. If a widow, widower, parent or guardian of a minor child(ren) fails to file a certificate of eligibility which is normally mailed to such beneficiaries on an annual basis;
4. If a retirant or beneficiary becomes mentally or physically incompetent. The disbursement of pension checks in this instance shall be suspended until a proper legal representative has been appointed; or
5. If a retirant does not complete a policy assignment of group life insurance as requested by the Board of Trustees.

As amended, R.1979 d.399, effective October 9, 1979.
See: 11 N.J.R. 411(a), 11 N.J.R. 596(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)2, deleted "under age 60" following "retirant".
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), inserted "if requested" following "annual earned income" in 2 and added 5.

17:2-1.9 Verified discrepancy in member's age

The member's account, active or retired, shall be reconstructed and all benefit entitlements and contributions shall be determined on the basis of the member's correct date of birth.

17:2-1.10 (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 "Travel".

17:2-1.11 Proof of age

(a) All members shall establish proof of their age with the System. Acceptable proofs of age include birth or baptismal certificates, passports, naturalization papers, Biblical records, affidavits of older members of the immediate family or primary school records.

(b) In the event a member dies before satisfactory evidence of the member's date of birth has been filed with the System, appropriate evidence may be required before any death claim is processed for settlement.

(c) In the event proof of age has not been filed with the System before retirement, such proof must be filed before any retirement benefits may be disbursed.

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

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

Rewrote (a); and in (b), neutralized a gender reference, and substituted "shall" for "may" following "evidence".

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

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

In (b), substituted "may" for "shall" preceding "be required".

17:2-1.12 State employees; biweekly salaries

(a) Retirement and death benefits as well as service credit will be determined on the basis of biweekly pay periods for employees whose employers report salary and contributions on a biweekly basis. This biweekly schedule should conform to the biweekly reporting schedule issued by the State's Centralized Payroll Office.

(b) In the event a member is reported on a combination of monthly and biweekly pay periods, the member's last year's salary or final compensation as well as the member's service credit will be computed 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.2000 d.26, effective January 18, 2000.

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

Rewrote (a); and in (b), neutralized gender references throughout.

17:2-1.13 Nearest attained age; enrollment; retirement

(a) Members who are six months or more past their most recent birthdate at the time of enrollment or retirement will have their pension contribution rate and retirement factor based upon their age on their next birthday.

(b) A flat five percent pension rate of contribution was enacted by P.L. 1994, c.62 for all employees enrolled on or after July 1, 1994. For members enrolled prior to July 1, 1994 whose previous full rate of contributions was six percent or more, the five percent contribution rate became effective on July 1, 1995. For members enrolled prior to July 1, 1994 whose previous full rate of contributions was less than six percent, their rate of contributions became four percent on July 1, 1995 and then five percent on July 1, 1996.

(c) The contribution rate was reduced to 4.5 percent effective January 1, 1998 under the provisions of P.L. 1997, c.115. P.L. 1999, c.415 further reduced the contribution rate to three percent of pensionable salary. The rate change was effective January 1, 2000, and remained in effect until July 1, 2004 for State employees and January 1, 2005 for local employees when the rates returned to five percent. Future reductions are possible if the System is fully funded.

New Rule, R.1991 d.115, effective March 4, 1991.

See: 22 N.J.R. 3707(a), 23 N.J.R. 712(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).

Added (c).

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 761) adopted, which found that the PFRS Board properly withheld \$3,979.09 from a police captain's initial retirement payment where an incorrect birth date on his PFRS enrollment application resulted in a contribution shortage. In re Shaffery, OAL Dkt. No. TYPF 08340-2006S, 2008 N.J. AGEN LEXIS 36, Final Decision (January 15, 2008).

No early retirement incentive benefits for employee who did not turn 50 until two months after retirement date specified in special retirement legislation. *Ryan v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 217.

SUBCHAPTER 2. ENROLLMENT**17:2-2.1 Enrollment eligibility**

(a) A position with a public employer must be covered by Social Security as a prerequisite for membership in the system. In the case of multiple employments, Social Security coverage is required in each position or employment for each to qualify for membership.

(b) Subsection (c) below shall only be applicable to individuals who become members of PERS on or after November 2, 2008.

(c) Pursuant to the provisions of N.J.S.A. 43:15A-7, the \$7,500 minimum annual base salary for participation in the retirement system shall be adjusted annually by the Director of the Division in accordance with changes in the Consumer Price Index, but by no more than four percent. For the calendar year beginning January 1, 2010, the minimum base

annual salary required for enrollment will be adjusted annually to reflect increases in the Consumer Price Index. For purposes of this calculation, "Consumer Price Index" means the average of the annual increase in the consumer price index for all urban consumers, not seasonally adjusted for all items, in the New York City and Philadelphia metropolitan statistical areas during the preceding calendar year as reported by the United States Department of Labor, Bureau of Labor Statistics.

1. The adjustment factor for a calendar year shall be calculated as a fraction, pursuant to the following:

i. The numerator shall be the annual Consumer Price Index for all urban consumers in the New York City metropolitan statistical area for the calendar year ending December 31 of the first year preceding the July 1 calculation date, plus the annual Consumer Price Index for all urban consumers in the Philadelphia metropolitan statistical area for the same time period; and

ii. The denominator shall be the annual Consumer Price Index for all urban consumers in the New York City metropolitan statistical area for the calendar year ending December 31 of the second year preceding the July 1 calculation date, plus the annual Consumer Price Index for all urban consumers in the Philadelphia metropolitan statistical area for the same time period.

2. If the value of the calculation in (c)1 above is less than zero for a calendar year, then the adjustment factor for the calendar year shall be equal to zero. If the value of that fraction is greater than 1.04 for a calendar year, then the adjustment factor for the calendar year shall be equal to 1.04.

3. The adjustment shall be calculated on or about July 1 each calendar year to become effective on January 1 of the subsequent calendar year.

4. Increases in the minimum annual base salary shall be made in multiples of \$100.00, except that any increase, which is not a multiple of \$100.00 will be rounded to the next lowest multiple of \$100.00. Each annual adjustment shall not be more than four percent when compared to the preceding year's minimum annual base salary.

(d) The calculation and any needed adjustments pursuant to (c) above shall be published via a notice of administrative change in the New Jersey Register revising the minimum annual base salary.

Amended by R.1981 d.58, effective February 20, 1981.
See: 12 N.J.R. 554(b), 13 N.J.R. 247(b).

(c) deleted.

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), deleted a reference to dual enrollments, and substituted "required" for "prescribed" following "coverage is".

Amended by R.2009 d.252, effective August 17, 2009.
See: 41 N.J.R. 1712(a), 41 N.J.R. 3110(a).

Section was "Social Security coverage". Rewrote the section.

Public Notice: August 28, 2009 Increase in the Minimum Annual Base Salary for Participation in the Public Employees' Retirement System.
See: 41 N.J.R. 3863(a).

17:2-2.2 Multiple employment's

(a) Any employee who has enrolled in a covered position must also enroll in any other position regardless of the employee's employment status in such other position if the employee meets the salary and Social Security qualifications for enrollment. However, if an employee who is ineligible for membership later accepts an additional position which makes the employee eligible for membership in that second position, the employee's ineligibility for membership in the earlier position is not altered by the employee's enrollment in the Public Employees' Retirement System.

(b) An elected official must also enroll on the basis of such office if the elected official is enrolled or is enrolling on the basis of other public employment. If the elected official was employed in the optional position first, the enrollment date for the optional position is established as the effective date of enrollment of the position which required the elected official to establish membership in the retirement system. If the individual has already established membership in the retirement system, the effective date of enrollment of the optional employment is established as the date of hire.

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.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

Amended by R.1988 d.351, effective August 1, 1988.

See: 20 N.J.R. 969(b), 20 N.J.R. 1953(c).

Deleted requirement that PERS employees be paid in four calendar quarters to be eligible for PERS membership.

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); and deleted a former (c).

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

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

17:2-2.3 Ineligible persons

(a) The following classes of persons are ineligible for membership in the system:

1. Motor vehicle agents and their non-State employees;
2. Licensing agents of the Fish and Game Division and their non-State employees;
3. Any person paid from State, county, local public, or Federal funds who is a member of or required to join the Federal Civil Service Retirement System on total salary;
4. Any employee who is provisionally appointed to a Civil Service position is considered as an employee with temporary employment status and is ineligible to establish membership until the employee receives a regular Civil Service appointment, or has one year of continuous service. This does not apply to anyone who is already enrolled as a member or is a retiree from the System. Breaks in service of less than 30 days do not negate the continuity of service;

5. Any employee who is employed on a seasonal basis. Seasonal employment is a category of occasional employment which the employer, consistent with past practices, does not expect to lead to permanent employment and is not a temporary position as defined under N.J.A.C. 17:2-2.4(c). To qualify as seasonal employment, work periods shall not extend beyond six consecutive months for locations that report contributions on a 12-month basis, or five consecutive months for locations that report contributions

on a 10-month basis, and severance of the employer/employee relationship shall occur during breaks in employment, and such breaks shall exceed 30 consecutive days;

6. Any person not in the career, senior executive and unclassified service, or a regular budgeted position, who is employed on an on-call basis and works on average less than 10 days a month throughout the regular work year of the employer. This type of employment is temporary employment which is not continuous;

7. Any retired member who returns to a PERS covered position or positions for which the aggregate compensation is less than the aggregate calendar year compensation limit for exclusion from membership pursuant to N.J.S.A. 43:15A-57.2b. Retired members shall notify their employer or employers when the aggregate calendar year compensation limit will be reached, so that the retired members may be reenrolled in the PERS. If the contractual or regularly budgeted compensation for the position or positions exceeds the calendar year compensation limit, the retired member shall be reenrolled in the PERS as of the beginning of their employment. A retired member who is employed on an hourly basis shall be reenrolled in the PERS as soon as the compensation received exceeds the calendar year compensation limit. For the purposes of this paragraph, a "retired member" is a former member who has terminated all employment covered by the retirement system, who has not received compensation from employment covered by the retirement system for at least 30 consecutive calendar days, who is not receiving a disability retirement allowance and whose retirement benefit has become due and payable as provided in N.J.A.C. 17:2-6.2;

8. Any person who is employed in an intermittent title. The designation "intermittent" shall be used for those titles in the career service in which work responsibilities are characterized by unpredictable work schedules and which do not meet the normal criteria for regular year-round, full-time or part-time assignments;

9. Any temporary employee hired under the Workforce Investment Act of 1998. Temporary employees hired under the Workforce Investment Act shall be deemed to be Job Training Partnership Act (JTPA) employees and, therefore, ineligible for PERS membership pursuant to N.J.S.A. 43:15A-7h;

10. Any retired member, as defined in (a)7 above, who returns to employment with an institution of higher education in a teaching position covered by the PERS pursuant to N.J.S.A. 43:15A-57.2; and

11. Any retired member, as defined in (a)7 above, who becomes employed by the State Department of Education in a position of critical need as determined by the State Commissioner of Education, or becomes employed by a board of education in a position of critical need as determined by the superintendent of the district on a contractual basis for a term of not more than one year pursuant to N.J.S.A. 43:15A-57.2. The retired member so reemployed may renew a contract for one additional year, pursuant to N.J.S.A. 43:15A-57.2, provided that the total period of employment with any individual board of education does not exceed a two-year period. The cancellation, reenrollment, and additional retirement allowance provisions and the compensation limitations shall apply if the retired member becomes employed within 120 days of retirement in a position with the employer from which the member retired.

Amended by R.1981 d.58, effective February 20, 1981.

See: 12 N.J.R. 554(b), 13 N.J.R. 247(b).

(a)4: delete "is not paid"; add "does not earn wages", "of a year", and "is considered ... community".

Amended by R.1983 d.7, effective February 7, 1983.

See: 14 N.J.R. 1150(a), 15 N.J.R. 162(d).

Treatment of provisional appointments and seasonal/occasional employment.

Amended by R.1989 d.312, effective June 19, 1989.

See: 21 N.J.R. 437(b), 21 N.J.R. 1743(a).

Added eligibility to establish membership in PERS with one year of continuous service, without regular Civil Service appointment, to (a)4. Temporary employment defined and excluded, at (a)6.

Amended by R.1998 d.321, effective July 6, 1998.

See: 30 N.J.R. 1025(a), 30 N.J.R. 2513(c).

In (a), added 7.

Amended by R.1999 d.290, effective August 16, 1999.

See: 31 N.J.R. 1580(a), 31 N.J.R. 2366(a).

In (a), substituted references to non-State employees for references to employees in 1 and 2, added the last sentence in 4, rewrote 5, substituted a reference to calendar year compensation for a reference to annual compensation in the first sentence, substituted "calendar days, who is not receiving a disability retirement allowance" for "days," following "consecutive" in the last sentence, and substituted references to calendar year compensation and calendar year compensation limits for references to compensation and compensation limits throughout 7, and added 8.

Administrative change.

See: 32 N.J.R. 2925(a).

Amended by R.2001 d.117, effective April 2, 2001.

See: 32 N.J.R. 4239(a), 33 N.J.R. 1114(a).

In (a), added 9.

Amended by R.2004 d.225, effective June 21, 2004.

See: 36 N.J.R. 619(a), 36 N.J.R. 3066(a).

In (a), inserted "or is a retiree from the System" at the end of the second sentence in 4, rewrote 7, added 10 and 11.

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 7.

Case Notes

Legislative positions held by employees as Assistant to Speaker of General Assembly, Assistant Secretary of Senate and Secretary of Senate held not within explicit exclusions for temporary or seasonal employees or employees whose salary was less than \$500, but were regular State employment positions qualifying employee for PERS benefits, notwithstanding twice yearly rather than quarterly salary payments. *Gladden v. Bd. of Trustees, Public Employees' Retirement System*, 171 N.J. Super 363, 409 A.2d 294 (App.Div.1979).

Seasonal continuing education college instructors not eligible for PERS enrollment as seasonal employees. *Josephs v. Board of Trustees, Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 87.

Regulation excluding teacher from purchase of prior service credit, on grounds that her sporadic substitute teaching during period in question constituted break in service, was inconsistent with N.J.S.A. 18A:66-14, and thus would not be applied to deny teacher eligibility for purchase. *Walling v. Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 107.

Retiree's temporary reemployment in public service rendered him ineligible for retirement benefits. *Bedell v. PERS*, 96 N.J.A.R.2d (TYP) 39.

Substitute teacher was temporary employee within meaning of statutory amendment including temporary public employees in retirement system. *Schulaner v. Board of Trustees*, 92 N.J.A.R.2d (TYP) 55.

17:2-2.4 Enrollment date

(a) New employees in the classified service shall be considered as beginning their service on the date of their regular appointments.

1. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose regular appointment date falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose regular appointment date falls between the 17th and the end of the month.

2. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period for an employee whose appointment date falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose appointment date falls on any subsequent date within that pay period.

(b) If an employee is an optional enrollee the employee shall be enrolled as of the first of the month for those whose employers report on a monthly basis or the first day of the next biweekly pay period for those whose employers report on a biweekly basis following the receipt of the enrollment application.

(c) An employee in the unclassified service or an elected position shall be considered as beginning service on the date of the original appointment, or the date when the employee assumed duties of the elective office, as the case may be.

1. For local employers not covered by Civil Service, a regular appointment shall constitute the date the employee originally accepted employment in a regular budgeted position.

2. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose beginning employment date falls between the first through 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose beginning employment date falls between the 17th and the end of the month.

3. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period for an employee whose date of hire falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose date of hire falls on any subsequent date within that pay period.

(d) An employee of a Civil Service employer who is not in a classified or unclassified position or an employee of a non-Civil Service employer who is not in a regular budgeted position may be considered a temporary employee by the employer for the 12-month period following the employee's date of hire, but if the employment continues into a second

year, the employee will be required to enroll immediately, as follows:

1. For employees whose employers report on a monthly basis, the compulsory enrollment date will be the first of the month following the end of the 12-month period.

2. For employees whose employers report on a biweekly basis, the compulsory enrollment date will be the first day of the pay period following the end of the 12-month period.

(e) An employee cannot receive credit in the retirement system for the initial pay period or month of employment if that employment began after the seventh day of the pay period or after the 16th day of the month.

Amended by R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

Amended by R.1987 d.144, effective April 6, 1987.

See: 18 N.J.R. 2320(b), 19 N.J.R. 565(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 (d), substituted references to the 12-month period for references to the one-year period; added (e).

Case Notes

Rule held a valid exercise of rulemaking authority, both reasonably and rationally related to purpose of enabling legislation: denial of death benefits to survivor of decedent public employee held proper where decedent died before his elected delay in pension enrollment expired and made no pension contributions. *Frew v. Bd. of Trustees, Public Employees' Retirement System*, 8 N.J.A.R. 16 (1984), affirmed per curiam Docket No. A-4071-83T6 (App.Div.1984).

Determination of non-temporary employee status requiring enrollment in PERS: equitable determination of monies to be repaid PERS for pension benefits received. *Vliet v. Bd. of Trustees, Public Employees' Retirement System*, 156 N.J.Super. 83, 383 A.2d 463 (App.Div.1978).

17:2-2.5 Optional enrollment

(a) Any employee, other than a veteran, who was considered an optional enrollee prior to July 1, 1966, under the previous rules of the board, shall continue to retain the option to enroll or not enroll if his employer does not change.

(b) Part-time employees who cannot be classified as veterans and who were hired prior to July 1, 1966, are considered optional enrollees.

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

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

17:2-2.6 Enrollment eligibility of professors and instructors employed on a temporary, provisional or adjunct basis by public institutions of higher education

(a) Professors and instructors, employed on a temporary, provisional or adjunct basis by public institutions of higher

education, who are not in regularly appointed teaching or administrative staff positions, in classified or unclassified positions with a Civil Service employer, or in regularly budgeted positions with a non-Civil Service employer, shall be eligible for enrollment if they:

1. Earn more than the minimum threshold salary required for enrollment;
2. Work for the entire normal school year; and
3. Have their services renewed for the succeeding school year.

(b) Professors and instructors employed on a temporary, provisional or adjunct basis by public institutions of higher education who are not in regularly appointed teaching or administrative staff positions, in classified or unclassified positions with a Civil Service employer, or in regularly budgeted positions with a non-Civil Service employer, shall not be eligible for enrollment on the basis of any course they teach which:

1. Provides no academic credit; or
2. Varies in length from the normal academic term.

New Rule, R.1999 d.61, effective March 1, 1999.

See: 30 N.J.R. 4146(b), 31 N.J.R. 668(b).

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

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

In (b), deleted "or salary or service credit" preceding "on the basis" in the introductory paragraph, substituted "or" for "and" in 1 and substituted "term" for "semester" in 2.

17:2-2.7 Enrollment following deferred retirement

(a) The membership account under which a member elected deferred retirement who resumes regular service prior to age 60 shall be reinstated.

1. The member shall be assigned the original rate of contribution if the member resumes service before a period of two years has elapsed since the member last made a contribution to the account.

2. If there has been a lapse of more than two years, a commuted rate shall be assigned. Such commuted rate of contribution shall be determined by adding the lapsed period to the member's age as of the date of original enrollment.

3. Members who return to employment after July 1, 1995 shall be assigned the contribution rate of five percent.

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 gender references throughout, and added 3.

Case Notes

Retired city employee who accepted city manager position with another city would be required to re-enroll in PERS and cancel his retirement benefits, even though employee and city which hired him considered employee to be independent contractor. *Murphy v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 235.

17:2-2.8 Enrollment eligibility of provisional or temporary employees occupying full-time police and fire titles

(a) Any full-time employee hired provisionally or on a temporary basis into an eligible Police and Firemen's Retirement System (PFRS) title who is under the age of 35 shall enroll in the Public Employees' Retirement System (PERS) after the completion of one year of continuous service.

1. For employees whose employers report on a monthly basis, the compulsory enrollment date shall be the first of the month following the end of the one-year (12-month) period.

2. For employees whose employers report on a bi-weekly basis, the compulsory enrollment date shall be the first of the pay period following the end of the one-year (12-month) period.

(b) Once appointed to a permanent PFRS title, the employee shall be required to enroll in the PFRS if all other eligibility requirements are met. The employee shall have the option of interfund transferring the PERS service into the PFRS.

(c) Any employee who has an active membership in the PERS and becomes employed provisionally or on a temporary basis in an eligible PFRS title and is under age 35 shall continue membership in the PERS until meeting the eligibility requirements for entry in the PFRS. This applies to both employees continuing employment with the same employer, and those leaving one public employer and taking a position with another.

1. State and county employees holding provisional or temporary PFRS titles who cannot meet the maximum age requirement for membership in the PFRS (age 35) shall remain in the PERS after attaining permanent appointments.

2. Municipal employees holding provisional or temporary PFRS titles who cannot meet the maximum age requirements associated with those positions shall not remain in the PFRS titles.

New Rule, R.2000 d.159, effective April 17, 2000.

See: 32 N.J.R. 392(a), 32 N.J.R. 1415(a).

Amended by R.2008 d.372, effective December 15, 2008.

See: 40 N.J.R. 4677(a), 40 N.J.R. 6991(a).

Deleted (d).

17:2-2.9 Eligibility and enrollment of employees of bi-state and multi-state agencies pursuant to P.L. 2003, c.263 (N.J.S.A. 43:15A-73)

(a) For the purposes of the resolution to adopt the provisions of the PERS for a bi-state or multi-state agency, the "category of officers or employees who may enroll in the retirement system" shall be defined as those employees:

1. Initially appointed or employed by the bi-state or multi-state agency on or after January 1, 2002;

2. Who are residents of the State of New Jersey at the time of appointment or employment with the agency; and

3. Who meet the PERS eligibility requirements found at N.J.S.A. 43:15A-6 et seq.

(b) Enrollment in the PERS is at the option of the employee. The employee must elect within 90 days of either the date of the modification of the State of New Jersey's agreement with the Social Security Administration, or the date of appointment for hire, whichever is later, to enroll in the PERS. If the PERS does not receive an enrollment form for the employee within that 90-day period, the employee shall be ineligible for enrollment in the PERS during their continued employment with the agency.

(c) The enrollment date of the employee shall be the first of the month after a completed enrollment application is submitted to the PERS.

(d) The employee may then purchase, at full cost as defined by N.J.A.C. 17:2-5.5(b), any service with the agency between the date that the employer designates as the effective date of the resolution and the employee's enrollment date, as long as the employee is not eligible for a present or future pension benefit with another retirement system for that same service. In no case would the employee receive credit for service with the agency prior to January 1, 2002. The agency may elect to pay for any portion of this purchase of service for the member, but any such employer payments shall be deposited in the PERS general fund and not the employee's account.

(e) Once an employee is enrolled in the PERS, that employee must remain a member of the retirement system during the entire period of continuous service with the agency. The employee cannot be enrolled or receive credit in the employer's retirement plan or the Pennsylvania, New York, Connecticut, Delaware or any other state or local retirement system during the same period of time as the PERS service with the agency. Should the employee terminate employment with the agency and then be reemployed by that agency or any other bi-state or multi-state agency that has adopted the provisions of PERS, that employee shall be required to continue enrollment in the PERS from that new position, as long as the employee is a New Jersey resident on the date of appointment or employment and has an active PERS account.

(f) An employee who opts not to enroll in the PERS when eligible at a bi-state or multi-state agency and then leaves the agency, has the option of enrolling in the PERS within 90 days of reemployment with a bi-state or multi-state agency if the employee meets the enrollment requirements found at (a) above.

(g) If an employee opts not to enroll in the PERS when eligible at a bi-state or multi-state agency and that employee becomes a PERS member in the future by virtue of employment with another public employer, or with the same agency after a break in service, the cost of the purchase of service credit for the earlier employment with the bi-state or multi-state agency which occurred between January 1, 2002 or the effective date established by the employer, whichever is later, and the employee's latest possible enrollment date from the previous employment, shall be calculated as a full cost purchase.

New Rule, R.2005 d.74, effective February 22, 2005.
See: 36 N.J.R. 4879(a), 37 N.J.R. 619(a).

17:2-2.10 Enrollment eligibility of on-call employees who have not established membership; including, but not limited to, substitute teachers, replacement teachers, and bedside or home instructors

(a) An individual who assumes a position as an on-call employee, such as a substitute teacher, or bedside or home instructor is eligible to enroll in the PERS at the beginning of the 13th month of continuous employment. On-call employees have unpredictable work schedules and their employment is usually temporary in nature. In determining eligibility for enrollment in the case of these employees, the following apply:

1. At employing locations where the regular work year is 12 months long, the employee must work at least 120 days within a 12-month period (10 days per month x 12 months) before becoming eligible for enrollment.
2. At employing locations where the regular work year is 10 months, the employee must work at least 100 days (10 days per month x 10 months) before becoming eligible for enrollment.
3. The date of eligibility for enrollment for on-call employees is the first day of the 13th month after the commencement of the 100 or 120 day period. For example, if the employment began on January 1st, then the enrollment date would be January 1st of the following year. If the employee worked 10 days a month for the requisite number of months (10 or 12), the employee would be eligible for enrollment, regardless of when in the year the 10 or 12 month period began. Enrollment is mandatory.

(b) A replacement teacher is an employee who assumes the duties of a teacher in a regularly budgeted position for the length of time that teacher is on an approved leave of absence. Replacement teachers are eligible for enrollment on the first day of the 13th month after the commencement of continuous service.

(c) A permanent, long-term substitute in a regularly budgeted position is eligible for PERS enrollment on the date of hire.

(d) An employee who has an active PERS membership based upon other employment shall be eligible to participate in the PERS in an on-call position on his or her date of hire provided the minimum salary provisions of N.J.A.C. 17:2-4.7 are met.

New Rule, R.2005 d.75, effective February 22, 2005.
See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:2-3.1 Compulsory and optional enrollment

(a) For the purpose of contributory insurance, all compulsory enrollees, including veterans, under age 60 at the time their enrollment application is filed, shall be required to participate in the contributory insurance program for one year (12 calendar months) from the date of enrollment, or the effective date of insurance premium deduction, whichever is later. Proof of insurability shall be required for all compulsory and optional enrollees, age 60 and older at the time their enrollment application is filed with the Division of Pensions and Benefits, in order to qualify for noncontributory and contributory insurance coverage.

(b) Optional enrollees under age 60 at the time their enrollment application is filed with the Division of Pensions and Benefits may qualify for noncontributory and contributory insurance coverage only if they were actively at work performing all of the duties that the position requires at the time they made application for enrollment, and such application was filed within one year from the date they first became eligible for enrollment in the system. If an application for an optional enrollee is not received within one year after the optional enrollee became eligible for enrollment, evidence of insurability will be required for the noncontributory and contributory coverage.

(c) When proof of insurability is required, the member's opportunity to prove such insurability shall expire one year (12 months) from the date the initial written notice is sent advising the member that the member must prove insurability by taking a medical examination and meeting the eligibility requirements of the Retirement System underwriter.

As amended, R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

Amended by R.1987 d.144, effective April 6, 1987.

See: 18 N.J.R. 2320(b), 19 N.J.R. 565(a).

Deleted (a) and renumbered (d) to (c).

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

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

In (c), added "and meeting the eligibility requirements of the Retirement System underwriter".

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), inserted "at the time their enrollment application is filed with the Division of Pensions and Benefits" following "age 60 and older" and "under age 60" respectively; in (b), substituted "the optional enrollee" for "he" preceding "became eligible for enrollment".

Case Notes

Life insurance benefits were properly denied where deceased was not public employee at time of his death. *Bossinger v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 170.

Member's estate not entitled to noncontributory death benefits where member resigned, chose deferred retirement, but died before reaching age 60. *Estate of Sant' Angelo v. Board of Trustees, Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 116.

Request to permit petitioner to prove insurability for life insurance purposes granted: statute and rule found to set no time limit for furnishing such proof. *Watson v. Bd. of Trustees, Public Employees' Retirement System*, 4 N.J.A.R. 380 (1980).

17:2-3.2 Computation of insurance benefits

(a) A member's insurance death benefit shall be based upon the base salary that is attributable to the 12 months or 26 biweekly pay periods immediately preceding the member's death upon which contributions to the annuity savings fund were made.

(b) For the purpose of calculating the benefit payable in (a) above, the salary, in a month or biweekly pay period in which no salary was paid, shall be counted as zero.

(c) Full salary credit will be given for the monthly or biweekly pay period in which a member dies, if the member was paid salary to date of death and the salary paid was sufficient to permit a full normal monthly or biweekly pension and insurance contribution deduction, provided such deduction was made by the employer.

(d) If a member dies during the first year following the member's date of enrollment, or if the member has contributed pension contributions for less than a year although the member's enrollment has been in effect for more than a year, the contributory insurance benefit shall be $1\frac{1}{2}$ times the member's annual base salary on which the member contributed or would have contributed immediately prior to death. The noncontributory insurance benefit shall be $1\frac{1}{2}$ times the actual base salary upon which contributions to the annuity savings fund were due from the date of enrollment to the date of death.

(e) Where post-audits establish the insurance benefits were underpaid, an additional check shall be sent to the beneficiary for the value of the underpayment.

(f) Refunds of a deceased member's pension contributions will be made to the member's designated beneficiary or the employer after written confirmation is received from the employer setting forth the reason for the refund of pension contributions to either the beneficiary or to the employer.

(g) Members who prove their insurability for the group life insurance benefits shall have their insurance benefit calculated on the basis of salary they received or salary upon which pension contributions were based during their last year (10 and 12 months) of service prior to death, regardless of their effective date of insurance coverage.

(h) In computing the salary upon which pension contributions were based during a member's last year of service, in the case of a 12-month employee reported 12 months a year on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made within the prescribed period. The total salary will be adjusted by multiplying the total by the factors supplied by the actuary; such adjustment will compensate for biweekly payroll schedules.

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

(j) If a member was reported on a biweekly basis or any combination of 10 and 12-month contract years, the last year's salary prior to death, shall be determined on a proportional basis.

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

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

As amended, 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).

Stylistic changes; benefits based on contributions attributable to 12 months preceding death of member.

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.

17:2-3.3 Contributory insurance rate

All participating members' contribution rate for contributory group insurance shall be one-half of one percent (.005) of the member's base or contractual salary, effective as of January 1, 1999.

As amended, R.1970 d.133, effective November 2, 1970.

See: 2 N.J.R. 86(d), 2 N.J.R. 102(b).

As amended R.1978 d.139, effective May 1, 1978.

See: 10 N.J.R. 127(b), 10 N.J.R. 265(d).

As amended, R.1982 d.343, effective October 18, 1982.

See: 14 N.J.R. 200(b), 14 N.J.R. 1164(b).

As amended, R.1983 d.7, effective February 7, 1983.

See: 14 N.J.R. 1150(a), 15 N.J.R. 162(d).

Rate change from one-half to three-quarters July 1, 1981.

As amended, R.1984 d.190, effective May 21, 1984.

See: 16 N.J.R. 358(a), 16 N.J.R. 1284(a).

Contribution rate changed from $\frac{3}{4}$ to $\frac{1}{2}$ of one percent, effective April 1, 1984.

Amended by R.1987 d.510, effective December 7, 1987.

See: 19 N.J.R. 1636(a), 19 N.J.R. 2373(c).

Contribution rate changed from $\frac{6}{10}$ to $\frac{55}{100}$ of one percent, effective January 1, 1988.

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 one-half of one percent for a reference to fifty-five one-hundredths of one percent, and substituted a reference to 1999 for a reference to 1988.

17:2-3.4 New enrollments and transfers; contributory insurance premiums

For new enrollees and transferees, contributory insurance premiums will be due from the date insurance is effective as shown on the certification, to the date payroll deductions are certified to begin. In no case will the retroactive premiums for more than 15 months be charged.

17:2-3.5 Leave for illness; life insurance coverage

(a) Life insurance coverage during a leave of absence due to illness shall apply only to the personal illness of the member.

(b) A leave of absence on account of another person's illness will not entitle the member to continued life insurance coverage.

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), substituted a reference to life insurance coverage for a reference to coverage; and in (b), substituted a reference to life insurance coverage for a reference to insurance coverage.

Case Notes

Beneficiary's claim for death benefit coverage denied; deceased not on approved leave of absence at time of death. *Davis v. Public Employees' Retirement System*, 95 N.J.A.R.2d (TYP) 1.

17:2-3.6 Survivor benefits

(a) Payment of benefits to eligible survivors shall become effective on the first of the month subsequent to the member's death and shall terminate on the first of the month subsequent to the date in which the survivor no longer qualifies for such benefits.

(b) In the instance of an active member who dies in the performance of duty (accidental death), the initial pension payment will be for the month following the month in which the member died, and the last payment will cover the month the survivor dies or ceases to qualify for the continuance of benefits.

Amended by R.1979 d.399, effective October 9, 1979.
See: 11 N.J.R. 411(a), 11 N.J.R. 596(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), substituted "subsequent to" for "of" following "month", and substituted "on the first of the month subsequent to the date" for "as of the month" following "terminate"; and in (b), deleted "immediately preceding the month" following "cover the month".

17:2-3.7 Withdrawal application; contributory insurance

A properly executed contributory insurance withdrawal application must be in the possession of the Retirement System before termination of the contributory coverage can be effected. Such withdrawal application cannot be retroactive.

Correction: The words "Retirement System" were inadvertently omitted from text.
See: 18 N.J.R. 2391(c).

17:2-3.8 Withdrawal and return; contributory insurance

Withdrawal from contributory insurance coverage shall apply only to the membership account under which the cancellation was exercised. Any person who has canceled his contributory insurance coverage and withdraws from membership in the System shall, upon his or her subsequent re-enrollment in the System, be subject to the provisions of N.J.A.C. 17:2-3.1.

Amended by R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).
Neutralized a gender reference.

17:2-3.9 Retired life insurance coverage

If a member's date of PERS enrollment was on or after July 1, 1971, noncontributory life insurance shall be payable after the death of a retired member, only if the member established 10 or more years of pension membership credit at the time of retirement, or retired on a disability retirement. The life insurance shall equal 3/16 of the retiree's last 10 months of salary if formerly employed on a 10-month basis, or 12 months of salary if formerly employed on a 12-month basis. No premium payments are required to continue the 3/16 coverage after retirement. Contributory group life insurance coverage ceases at retirement.

New Rule, R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

17:2-3.10 Contributory insurance premiums; leave of absence and workers' compensation

(a) Contributory insurance coverage will be in effect for up to two years while a member is on an official leave of absence without pay for the personal illness of the member without premiums paid by the member. The employer shall provide to the Division of Pensions and Benefits proof of the official leave of absence.

(b) Contributory insurance coverage will be in effect while a member is on an official leave of absence without pay for the following reasons, provided that insurance premiums are paid in advance by the member. It is the member's responsibility to make arrangements directly with the Division to continue these premium payments:

1. Up to one year to fulfill a residency requirement for an advanced degree; or as a full-time student at an institution of higher education; and
2. Up to 93 days on an official leave for any other reason.

(c) Contributory insurance coverage will be in effect for members who are receiving periodic benefits through workers' compensation provided that insurance premiums are paid in advance by the member. It is the member's responsibility to make arrangements directly with the Division to continue these premium payments.

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), inserted "without pay" preceding "for the personal illness" and added the second sentence; added (c).

17:2-3.11 Ten month members

A member employed on other than a 12-month contract year will continue to be insured during the summer vacation period provided a bona fide employee-employer relationship exists during this period.

Case Notes

Part-time adjunct professor who died during summer hiatus was still active member of Public Employees' Retirement System. *Estate of Hagel v. Board of Trustees, Public Employees' Retirement System*, 226 N.J.Super. 182, 543 A.2d 1010 (A.D.1988).

17:2-3.12 Beneficiary designation; pension contributions

(a) When a member establishes multiple status by becoming employed by one or more additional employers in an eligible position or positions and files an enrollment application, the beneficiaries designated on the most recently submitted enrollment application supersede any older designations of beneficiaries on file with the Division of Pensions and Benefits.

(b) All beneficiaries must be specifically named.

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

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

Amended by R.1983 d.6, effective February 7, 1983.

See: 14 N.J.R. 1151(a), 15 N.J.R. 163(a).

Clarification of "children" as beneficiaries.

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).

Rewrote (b).

Case Notes

Failure to fill out correct change of beneficiary form did not prevent payment of accumulated pension funds to decedent's intended beneficiary. *Estate of Phyllis Braginton v. Board of Trustees of the Public Employees' Retirement System*. 92 N.J.A.R.2d (TYP) 135.

17:2-3.13 Benefits payable under P.L. 1984, c.96, as amended by P.L. 1995, c.221

(a) For the purposes of P.L. 1984, c.96, section 1, as amended by P.L. 1995, c.221, section 2, (N.J.S.A. 43:15A-50), the person designated as the beneficiary of an optional settlement on the retirement application may re-

quest that a retirement become effective and that a selection of an optional settlement be made as authorized by the law. If there is no designated beneficiary for an optional settlement, the person designated as the beneficiary to receive the return of contributions or unpaid benefits due to a retiree at the date of death may make this request. If a beneficiary requests that an optional settlement be made, the death benefits payable on behalf of the member shall be the death benefits payable on behalf of a member who dies after retirement as otherwise provided in the Public Employees' Retirement System Act, N.J.S.A. 43:15A-1 through 141 as amended and supplemented.

(b) Where a beneficiary of a member requests that a retirement take effect and that a selection of an optional settlement be made as authorized under P.L. 1984, c.96, section 2, as amended by P.L. 1995, c.221, section 1 (N.J.S.A. 43:15A-50), an additional amount of insurance, not to exceed the amount of insurance that could be converted under the group policies for noncontributory and contributory death benefits, shall be paid as claims under the group policies only if the member files an application for conversion of the insurance upon retirement as provided under N.J.S.A. 43:15A-93 and pays the initial premium for the converted insurance. The premiums paid for the converted insurance shall be retained by the carrier and be applied to the premiums payable by the State and the retirement system for benefits provided under the group policies.

New Rule, R.1998 d.501, effective November 2, 1998.

See: 30 N.J.R. 1917(a), 30 N.J.R. 3970(a).

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 N.J.S.A. 43:15A-50 for a reference to N.J.S.A. 18A:66-47.

17:2-3.14 Acceptable designation of beneficiaries

(a) The beneficiary designation on a duly executed retirement application that is filed with and accepted by the Division supersedes any older designation of beneficiary on file. The designation is effective upon acceptance by the Division, even if the retirement date on the application is in the future or the member cancels the retirement.

1. The beneficiary or beneficiaries designated on the retirement application for the retirement allowance shall be the beneficiary or beneficiaries for the return of the member's accumulated contributions.

2. If no beneficiary designation is in effect at the time of the member's death, or if no one is named as beneficiary for the retirement allowance, the Division shall pay the benefit to the member's estate.

(b) The beneficiary or beneficiaries of the group life insurance designated on the retirement application shall be the beneficiary or beneficiaries of the group life insurance.

1. If no beneficiary designation is in effect at the time of the member's death, or if no one is named as beneficia-

ry for life insurance, the Division shall pay the benefit to the member's estate.

New Rule, R.2000 d.74, effective March 6, 2000.

See: 31 N.J.R. 3928(a), 32 N.J.R. 823(a).

Amended by R.2001 d.9, effective January 2, 2001.

See: 32 N.J.R. 3213(a), 33 N.J.R. 62(a).

Added "or the member cancels the retirement" to the end of (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 (b), deleted "active" preceding "group life insurance" at the end of the introductory paragraph.

17:2-3.15 Suspension

A member suspended without pay will have noncontributory life insurance coverage continued for a period of 93 days following the effective date of such suspension. A member will not be covered by contributory life insurance during a suspension without pay, but may convert the contributory insurance prior to 31 days after the effective date of the suspension.

New Rule, R.2005 d.75, effective February 22, 2005.

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

SUBCHAPTER 4. MEMBERSHIP

17:2-4.1 Creditable compensation

(a) The compensation of a member subject to pension and group life insurance contributions and creditable for retirement and death benefits in the system shall be limited to base salary, and shall not include extra compensation. For purposes of this section:

1. "Base salary" means the annual compensation of a member, plus the value of maintenance, if applicable, in accordance with contracts, ordinances, resolutions or other established salary policies of the member's employer for all employees in the same position, or all employees covered by the same collective bargaining agreement, which is paid in regular, periodic installments in accordance with the payroll cycle of the employer; and

2. "Extra compensation" means individual salary adjustments which are granted primarily in anticipation of a member's retirement or as additional remuneration for performing temporary duties beyond the regular workday or work year. Forms of compensation that have been identified as extra compensation include, but are not limited to:

- i. Overtime;
- ii. Pay for extra work, duty or service beyond the normal workday, work year (for 10 month employees) or normal duty assignment;
- iii. Bonuses;

iv. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;

v. Any compensation which the employee or employer has the option of including in base salary;

vi. Sell-backs, trade-ins, waivers, or voluntary returns of accumulated sick leave, holiday pay, vacation, overtime, compensatory time, or any other payment or benefit in return for an increase in base salary. An example of a trade-in is compensation added to a new contract that correlates with compensation on an excluded item in an old contract (for example, clothing allowance);

vii. Individual retroactive salary adjustments where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;

viii. Individual adjustments to place a member at the maximum of his or her salary range in the final year of service where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;

ix. Increments or adjustments granted for retirement credit;

x. Increments or adjustments in recognition of the member's forthcoming retirement;

xi. Any form of compensation which is not included in the base salary of all employees in the same position or covered by the same collective bargaining agreement who are members of the retirement system and who receive the compensation;

xii. Retroactive increments or adjustments made at or near the end of a member's service, unless the adjustment was the result of an across-the-board adjustment for all similarly situated personnel; and

xiii. Any form of compensation which is not included in a member's base salary during some of the member's service and is included in the member's base salary upon attainment of a specified number of years of service.

(b) The Board may question the compensation of any member or retiree to determine its creditability where there is evidence that compensation reported as base salary may include extra compensation.

(c) Extra compensation shall not be considered creditable for benefits and all contributions made thereon shall be returned without interest.

(d) With respect to all claims for benefits, the Division of Pensions and Benefits shall investigate increases in compensation reported for credit which exceed the reasonably anticipated annual compensation increases for members of the retirement system based upon either the increase in the Consumer Price Index for the time period of the increases and the table of assumed salary increases recommended by the actuary and adopted by the Board or based on the averages of the regular increases in the employees' compensation preceding the periods in which the extra compensation was received. Those cases where a violation of law is suspected shall be referred to the Board.

(e) In connection with an investigation of an increase in compensation, the Board:

1. May require that a notarized statement under oath be obtained from the member's employer that the reported compensation was not granted primarily in anticipation of retirement, and conforms with the statutes and rules governing the retirement system.

2. May require an employer to provide any record or information it deems necessary for the investigation, including, but not limited to, collective bargaining agreements, employment contracts, ordinances, resolutions, minutes of public meetings (closed or open), job descriptions, salary histories, promotional lists or notices or any other record or information related to the increase in compensation; and

3. May refer any suspected submission of false information in violation of N.J.S.A. 43:15A-55, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

(f) Failure to satisfactorily respond to a request by the Board for documents or information related to an increase in compensation may result in the denial of credit for the increase in compensation.

(g) A determination by the Board that a member's compensation for pension purposes includes extra compensation may result in:

1. A denial of credit for the extra compensation;
2. An audit of the retirees and the active employees of the employer to identify any additional cases of such extra compensation;
3. A return of pension contributions to the active members and retirees on the extra compensation without interest;
4. A recalculation of the retirement benefits of retirees to eliminate benefits based upon the extra compensation; and
5. Repayment to the system by the retiree of any benefits received based upon the extra compensation.

(h) Employer contributions shall not be revised or re-funded because of a determination by the Board that a denial of credit for increases in compensation is warranted under this rule.

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

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

Repeal and New Rule, R.1999 d.276, effective August 16, 1999.

See: 31 N.J.R. 1466(a), 31 N.J.R. 2366(b).

Section was "Creditable salary".

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), added the second sentence in 2vi; in (g), inserted "pension" preceding "contributions".

Case Notes

Board of Trustees of Public Employees' Retirement System, when reviewing administrative law judge's (ALJ) determination of physician's base salary for purposes of calculating his retirement pension for his employment as medical director for regional school district, could not reverse ALJ's factual findings which had been based upon ALJ's determination of credibility of lay witnesses, unless Board demonstrated that ALJ's findings were arbitrary, capricious, unreasonable, or not supported by sufficient, competent, and credible evidence in the record. *Cavalieri v. Board of Trustees of Public Employees Retirement System*, 847 A.2d 592.

An error in the determination of physician's base salary, for purposes of calculating his retirement pension for his employment as medical director for regional school district, could be corrected by Board of Trustees of the Public Employees' Retirement System, though physician was not yet receiving retirement benefits. *Cavalieri v. Board of Trustees of Public Employees Retirement System*, 847 A.2d 592.

Board of Trustees of the Public Employees' Retirement System would not be deemed to have adopted administrative law judge's (ALJ) determination of physician's base salary, for purposes of calculating his retirement pension for his employment as medical director for regional school district, though Board failed to file its final decision, rejecting ALJ's decision, within timeframe mandated by Administrative Procedure Act (APA), where Board had signaled its intent by voting, within the timeframe for filing the final decision, to reject ALJ's decision. *Cavalieri v. Board of Trustees of Public Employees Retirement System*, 847 A.2d 592.

Bond-financing activities by county utilities authority's director of finance and administration, were "temporary", not "extracurricular," and thus payment for those activities was not creditable compensation for pension purposes, as duties pertaining to bond issues were to arise only "in the event that the [utilities authority] undertakes any financing" and this were occasional. *Cortese v. Bd. Of Trustees*, 770 A.2d 1195 (2001).

The statutory bar to pension credit for temporary work does refer to the performance of temporary duties not to a temporary position. *Cortese v. Bd. Of Trustees*, 770 A.2d 1195 (2001).

Work for overtime, special assignments, and the like is "extracurricular" work of which pension credit is prohibited for public employees. *Cortese v. Bd. Of Trustees*, 770 A.2d 1195 (2001).

Income received by school employee for duties as clerk was pension creditable. *Chapel v. Board of Trustees of Public Employees' Retirement System*, Div. of Pensions, 258 N.J.Super. 389, 609 A.2d 1294 (A.D.1992).

Municipal court judge's salary paid for service as presiding judge was creditable compensation. *Rokos v. State*, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge serving as presiding judge was employee, not independent contractor. *Rokos v. State*, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge's duties as presiding judge were neither temporary nor extracurricular. *Rokos v. State*, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Municipal court judge's position as presiding judge even if temporary was not disqualification from pension creditability for presiding judge salary. *Rokos v. State*, Dept. of Treasury, Div. of Pensions, Public Employees' Retirement System, 236 N.J.Super. 174, 564 A.2d 1217 (A.D.1989).

Statutory exclusion of salary adjustments that are granted primarily in anticipation of a member's retirement from a government employee's compensation, pursuant to N.J.S.A. 43:15A-6(r), is not limited to salary increases granted in the year immediately preceding retirement; therefore, regulations implementing that statutory requirement. N.J.A.C. 17:2-4.1(e) and 17:1-4.18 can not be construed as restricting the Board of Trustees of the Public Employees' Retirement System and the staff of the New Jersey Division of Pensions to investigating only such increases that occur in an employee's last year of employment preceding retirement. *DiMaria v. Bd. of Trs.*, 225 N.J. Super. 341, 542 A.2d 498, 1988 N.J. Super. LEXIS 198 (App.Div. 1988).

Action of utilities authority and borough in creating positions, respectively, of general counsel and municipal prosecutor, and in appointing person to those positions, held not to constitute salary adjustments within the meaning of public employees' pension law excluding salary adjustments from compensation to be used as the basis for computing retirement pay. *Hiering v. Bd. of Trustees*, Public Employees' Retirement System, 197 N.J.Super. 14, 484 A.2d 20 (App.Div.1984).

Salary creditable; pension and veteran retirement benefits. *Berger v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 187.

Termination of fixed term position does not constitute discontinuation from service through no fault of employee within meaning of statute providing for extension of membership in retirement system. *D'Alessio v. board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 100.

Salary paid township counsel during three years before retirement was paid primarily in anticipation of retirement, and thus ineligible compensation for pension purposes. *Mangini v. Trustees of Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 43.

Petitioner's claim for inclusion for pension calculation of salary received as town sewer attorney denied as services rendered were of the type usually rendered by an independent contractor rather than an employee: claim for inclusion for pension calculation of vouchered fees received as town sewer attorney denied as such fees are outside the statutory definition of compensation (Board's Final Decision). *Fasolo v. Bd. of Trustees*, Public Employees' Retirement System, 6 N.J.A.R. 4 (1980), affirmed in part and reversed in part and remanded 181 N.J.Super. 434, 438 A.2d 328 (App.Div.1981).

17:2-4.2 Leave with pay

(a) If a member is granted a leave of absence with sufficient salary to cover a full normal contribution, including any arrears or loan payments, the privilege of the member to obtain credit on the basis of such salary shall not extend beyond six months from the date of the leave.

(b) If the leave with pay extends beyond six months, the member will be required to make contributions only if the member is receiving 50 percent or more of regular base salary.

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), neutralized a gender reference.

Case Notes

Salary paid township counsel during three years before retirement was paid primarily in anticipation of retirement, and thus ineligible compensation for pension purposes. *Mangini v. Trustees of Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 43.

17:2-4.3 School year members; 10 and 12 months

(a) Ten month members who are employed for the full normal school year, September through June, are entitled to receive service credit for July and August. Members will not receive service credit for months during the normal school year, September through June, when they do not work and are not on a paid leave of absence.

(b) A 12 month member is presumed to work each month of the fiscal year.

(c) Not more than one year's service credit will be given during any period of 12 consecutive months.

(d) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer or another employer that participates in the Public Employees' Retirement System and begins employment on or before the date that was established by the previous year's contract position, such member will receive service credit within the Public Employees' Retirement System for the period between the end of the previous contract and the new 12 month position.

Amended by R.1989 d.423, effective August 7, 1989.
See: 21 N.J.R. 979(a), 21 N.J.R. 2300(a).

Reference to 10-month employment as a minimum deleted.

Amended by R.1993 d.296, effective June 21, 1993.

See: 25 N.J.R. 908(a), 25 N.J.R. 2701(a).

Amended by R.1994 d.162, effective April 4, 1994.

See: 26 N.J.R. 108(a), 26 N.J.R. 1537(c).

Amended by R.1995 d.61, effective February 21, 1995.

See: 26 N.J.R. 3823(a), 27 N.J.R. 754(b).

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).

17:2-4.4 Loan tolerance

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$50.00, it will be written off. If the balance is equal to or greater than \$50.00, the member will be assessed.

New Rule, R.1987 d.511, effective December 7, 1987.

See: 19 N.J.R. 194(a), 19 N.J.R. 2303(d).

Old rule was loan revaluation.

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

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

Substituted "\$50.00" for "\$10.00".

17:2-4.5 Service and salary credit: awards of back pay

(a) A member shall receive service credit toward retirement for any month or biweekly pay period for which a full normal deduction is received by the system.

(b) A member who appeals the suspension or termination of the member's employment and who, by award or settlement, becomes entitled to back pay for all or a portion of that employment for the period of such suspension or termination shall receive service credit for the period covered by the award or settlement provided a full normal pension and contributory group life insurance contribution (if applicable) is received from the member or is deducted from the value of the award. The amount of the pension and group life insurance contribution will be determined by the provisions of the award or settlement. If the member receives full back pay, including normal salary increases before mitigation, then the contributions will be computed on the base salaries that the employee would have earned for the reinstated suspended or terminated period. When the award or settlement is less than the full back pay, the pension and group life insurance contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment, after mitigation, is insufficient to deduct the value of the normal pension contributions and contributory group life insurance due, such contribution shall be paid by the member.

(c) In no case shall service or salary credit be given if the award of back pay before mitigation is less than the value of the normal pension and group life insurance contributions due. If a member waives an award of back pay, then the member cannot receive service or salary credit for the period of the award.

(d) If the award or settlement is structured in such a way as to provide the member with a substantial increase of creditable salary at or near the end of the member's service, or a substantial increase in retirement benefits, the award or settlement shall be reviewed by the Board of Trustees. If the Board determines that the pension benefit was part of the negotiations for the award or settlement, or if the award or settlement includes extra compensation as defined by N.J.A.C. 17:2-4.1, the Board shall determine the compensation to be used to calculate the retirement allowance, and the member shall have the pension contributions for the salaries found not to be creditable refunded without interest.

(e) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

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

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

As amended, R.1981 d.274, effective August 6, 1981.

See: 13 N.J.R. 244(f), 13 N.J.R. 525(b).

(b) added.

Amended by R.1991 d.98, effective February 19, 1991.

See: 22 N.J.R. 3321(a), 23 N.J.R. 417(a).

Amount of pension contribution clarified.

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

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

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 "Approved leave".

Recodified from N.J.A.C. 17:2-6.6 and amended by R.2004 d. 226, effective June 21, 2004.

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

In (a), inserted "service" following "receive"; rewrote (b); added (c) and (d); recodified former (c) as (e).

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

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

Rewrote (d).

Case Notes

Conviction for crime involving continuing course of conduct and breach of public trust defeats application for service credit during time crime committed. *De Angelo v. Public Employee's Retirement System*, 97 N.J.A.R.2d (TYP) 34.

Pension credit; time of dishonorable employment with county. *Cavaliere v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 178.

17:2-4.6 Minimum adjustment

In order to facilitate the reconciliation of a member's account, no rebates or additional contributions shall be made where an adjustment involves an amount of \$2.00 or less during a calendar quarter.

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

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

Substituted "\$2.00 or less during a calendar quarter" for "\$3.00 or less" at the end.

17:2-4.7 Part-time hourly, on-call or per diem salary

(a) Deductions from the salary of a member who is paid on a part-time hourly, on-call or per diem basis and who does not have an annual contractual base salary shall be calculated using actual creditable salary earned. If a member's actual creditable salary should drop below one-twelfth of the minimum threshold salary required for enrollment into the PERS for 12-month employees or one-tenth of the minimum threshold salary required for enrollment into the PERS for 10-month employees, pension contributions shall not be deducted from that member's creditable salary, and pension credit shall not be earned, for that month.

(b) A member's creditable salary shall be reviewed by the employer at the end of each calendar year. If the minimum threshold salary has not been met for the previous year, and is not expected to be met in the commencing year, the member's status shall become that of an inactive member.

As 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.1999 d.433, effective December 20, 1999.

See: 31 N.J.R. 2297(a), 31 N.J.R. 4292(a).

Rewrote the section.

17:2-4.8 Military leave prior to August 1, 1974; employer contributions

(a) The following conditions apply to employer contributions for service during military leave prior to August 1, 1974:

1. Military leave contributions remitted by an employer on behalf of an employee, who does not return to the payroll for the minimum 90-day period required by N.J.S.A. 43:15A-41a, shall be retained by the System. Such contributions shall be transferred from the annuity savings fund to the contingent reserve fund.

2. Military leave contributions remitted by an employer shall be based on the employee's salary at the time the member entered military service.

3. Payroll as referred to above shall be interpreted to mean any public payroll in New Jersey, not necessarily the payroll of the employer where the member was employed when the member entered military service.

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.

17:2-4.9 Eligibility for loan

Only active contributing members of the System may exercise the privilege of obtaining a loan. 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. The loan is subject to Federal regulation.

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

Inserted "the lesser of" preceding "50" and "or \$50,000" following "account".

Amended by R.2005 d.75, effective February 22, 2005.
See: 36 N.J.R. 4682(a), 37 N.J.R. 619(b).

Added the last sentence.

17:2-4.10 Waiver of retirement benefits upon withdrawal

Any member, who makes application for withdrawal from the System, who may otherwise be eligible to make application for a retirement benefit, shall be required to execute and file a statement with the System setting forth the benefits the member is waiving in favor of withdrawal, before the member's application for withdrawal may be processed. If a member is eligible to begin receiving a monthly retirement allowance (age 60 or more, or 25 years or more of credited service), the Division shall inform the member of the estimated amount of the retirement allowance and shall require the member to sign a waiver of such benefits, should the member still wish to withdraw.

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.

17:2-4.11 Termination; withdrawal

(a) Under the terms of the statutes a member may withdraw from the System only if the member terminates all employment.

(b) No application shall be approved, if:

1. The member is on official leave of absence.

2. The member, or employer, certifies that employment has not ended or that the member has taken another position subject to coverage.

3. The member has been dismissed or suspended from employment. In this event, such a member will be eligible to withdraw if the member has formally resigned from the position and there is no legal action contemplated or pending and the dismissal has been adjudged final. If the member or employer does not advise the Division that there is an appeal and the withdrawal application is processed, the member must repay the retirement system the full amount of contributions with interest before the account may be reinstated.

4. A multiple member has not terminated employment in all covered positions.

5. The member has a claim pending for Workers' Compensation benefits unless the member signs a waiver indicating that the member still wishes to withdraw.

As amended by R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

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 throughout.

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

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

In (b), inserted "or employer," preceding "certifies" in 2, and rewrote 3 and 5.

Case Notes

Division of Unemployment and Disability Insurance Director held not to have surrendered his position in classified service when he was granted an unpaid leave of absence to serve an unclassified appointment as assistant commissioner, income security; demotion and layoff rules found not to adequately recognize rights inherent in a leave of absence; doctrine of incompatible offices held not to mandate loss of classified position, since there was no dual office holding. In re Viviani, 184 N.J.Super. 582, 446 A.2d 1239 (App.Div.1982), certification denied 91 N.J. 533, 453 A.2d 854 (1982).

Held that where State employee did not discontinue employment or terminate service until her resignation, which coincided with terminal date of her leave of absence, and where she was reemployed by State less than two consecutive years following her resignation, her membership in the State pension system never ceased. *Blinn v. Bd. of Trustees, Public Employees' Retirement System*, 173 N.J.Super. 277, 414 A.2d 263 (App.Div.1980).

Proceeds of group life insurance; deceased not active member of retirement system on date of death. *Johnson v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 204.

Employee with two years of consecutive discontinued service was not a member of system entitled to ordinary disability retirement. *Zakarias v. Retirement System*, 93 N.J.A.R.2d (TYP) 308.

Reactivation of retirement account not warranted once membership expired two years after cessation of covered employment. *Smartt v. Retirement System*, 93 N.J.A.R.2d (TYP) 260.

No public employee retirement system life insurance benefits for widower of employee terminated from employment four months earlier. *Estate of Stanton v. Board of Trustees, Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 220.

Former public employee voluntarily resigned from employment, and thus not entitled to extension of inactive membership in public employees' retirement system. *Perlmutter v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 140.

Application for veteran retirement benefits invalid as result of continued employment as municipal attorney, despite change in method of compensation. *Mastro v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 123.

Former member of retirement system not eligible for ordinary disability retirement benefits more than two years after he discontinued his employment. *Cartagena v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 12.

17:2-4.12 Deductions

(a) A full pension and contributory insurance deduction shall be taken for the Public Employees' Retirement System in any payroll period (monthly or biweekly) in which the member is paid a sufficient amount to make a full normal deduction, plus any other arrears or loan deductions then in effect.

(b) No deductions shall be taken, nor service credit given, in any pay period for employers who report on a biweekly basis or in any month, for employers who report on a monthly basis, in which the employee's salary is not sufficient to cover the required deductions for the Public Employees' Retirement System.

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.

Case Notes

Held that where State employee did not discontinue employment or terminate service until her resignation, which coincided with terminal date of her leave of absence, and where she was reemployed by State less than two consecutive years following her resignation, her membership in the State pension system never ceased. *Blinn v. Bd. of Trustees, Public Employees' Retirement System*, 173 N.J.Super. 277, 414 A.2d 263 (App.Div.1980).

17:2-4.13 Active employment; membership requirement

All employees, otherwise eligible, who are not actively employed on the date of their enrollment will not be covered by the group life insurance program until the day they return to service.

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).

Inserted "the day" following "until".

Case Notes

Held that no group life insurance death benefits were payable to deceased county employee's beneficiaries where employee was on leave without pay when PERS enrollment was to commence and employee died before going back on payroll. *Burns v. Div. of Pensions, Public Employees' Retirement System*, 180 N.J.Super. 1, 433 A.2d 778 (App. Div.1981).

17:2-4.14 Continuance of membership; transfer

Once an employee establishes membership in the retirement system, the member is eligible to continue such membership should the member be temporarily employed in a position covered by the system.

R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

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 throughout.

17:2-4.15 Ineligible service

(a) Members will not be granted, nor may they purchase, prior service or membership credit for the following employment:

1. Honorary positions, without salary;
2. Motor vehicle agents or as non-State employees of the agent; and
3. Licensing agent of the Division of Fish, Game and Shellfisheries or as non-State employee of the agent; or
4. As an employee of an employer that is ineligible to participate in the PERS, but who provides services to an employer who participates in the PERS.

Recodified from N.J.A.C. 17:2-5.9 and 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), deleted a former 2, recodified former 3 and 4 as 2 and 3, and substituted references to non-State employees for references to employees in the new 2 and 3.

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), inserted "nor may they purchase," preceding "prior service" in the introductory paragraph and added 4.

17:2-4.16 Creditable service; Law Enforcement Officers

Two percent service credit for Law Enforcement Officer members is that service rendered in the capacity of a Law Enforcement Officer, for which the member has paid at the Law Enforcement Officer rate of contribution unless as otherwise provided by the statute.

Recodified from N.J.A.C. 17:2-5.10 and amended by R.2000 d.26, effective January 18, 2000.

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

SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

17:2-5.1 Eligibility for purchase

(a) Only active members of the System shall be eligible to make application for purchase of credit. Active members, who are not currently contributing to the Retirement System, shall purchase their requested service in a lump sum.

(b) In order to be eligible to purchase service, a member must submit a written request to purchase service and such purchase must be authorized by the member before the expiration date indicated on the quotation letter.

(c) The receipt of a public pension or retirement benefit is expressly conditioned upon the rendering of honorable service by a public officer or employee. Therefore, the Board of Trustees shall disallow the purchase of all or a portion of former service it deems to be dishonorable in accordance with N.J.S.A. 43:1-3c.

Amended by R.1999 d.289, effective August 16, 1999.
See: 31 N.J.R. 1581(a), 31 N.J.R. 2368(a).
Rewrote the section.

Case Notes

Employee's request for information regarding purchase of temporary service credit made within one year period following commencement of pension contributions, which resulted in receipt of requested information by employee and timely submission of purchase request denied by Trustees, held to provide Trustees with the opportunity to exercise discretion as to whether to permit purchase of credit. *Handelson v. Bd. of Trustees, Public Employees' Retirement System*, 193 N.J. Super. 223, 473 A.2d 104 (App.Div.1984).

Seawage plant operator who was convicted of multiple counts of unlawful discharge of a pollutant was subject to partial forfeiture of his years of service. *Angelo v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 287.

Hospital cook was denied his request to purchase an additional year of service credit. *Long v. Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 184.

Employee was not eligible to purchase any portion of his former PERS membership service that arose with his employment at vocational school. *Smollok v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 340.

Retiree was not entitled to purchase additional months of temporary service in order to qualify for health care coverage. *Donofrio v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 336.

Res judicata blocked employee's later attempt to purchase pension credits for temporary service. *Lord v. Retirement System*, 93 N.J.A.R.2d (TYP) 252.

Employee with military pension not entitled to purchase prior military service credit. *Woodward v. Board of Trustees, Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 124.

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.

No right to purchase prior service credit for temporary employment with postal service where employee had already received full credit for those years through full time city employment. *Fornaro v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 105.

Public employee entitled to purchase temporary service credit after one year enrollment period, but price based on salary at purchase date. *Coyle v. Division of Pensions*, 93 N.J.A.R.2d (TYP) 72.

Employee not entitled to purchase prior service credit for on-call work for postal service despite alleged sex discrimination preventing her full-time employment. *Horzepa v. Board of Trustees of the Public Employees' Retirement System*. 93 N.J.A.R.2d (TYP) 32.

Doctrine of substantial compliance with statutory and regulatory requirements invoked to allow petitioner to purchase pension credits for time served out-of-state even though purchase not completed prior to retirement date. *White v. Bd. of Trustees, Public Employees' Retirement System*, 1 N.J.A.R. 334 (1980).

17:2-5.2 New enrollment purchase or rate adjustment

Upon enrollment or reenrollment, a veteran shall contribute at the percent rate applicable to the age resulting from the subtraction of his or her years of prior service (pre-1955) from the date he or she began his or her present employment or the date of enrollment, whichever is later, provided that the member submits satisfactory evidence of prior public employment in New Jersey.

Amended by R.1987 d.144, effective April 6, 1987.
See: 18 N.J.R. 2320(b), 19 N.J.R. 565(a).
Deleted (a).

17:2-5.3 Reestablishing military leave credit

Veterans who terminated membership before January 1, 1955, and whose withdrawal of contributions included contributions paid by their employers during a period of military leave, shall receive veteran prior service credit for only the periods during which they actually contributed. They can receive additional membership credits for the periods of military leave if they redeposit the amounts of employer contributions, plus regular interest to the date of their authorizations of such purchases.

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

17:2-5.4 Compulsory contributions (back deductions)

(a) An employee who was required to enroll and whose application was filed beyond his or her compulsory date of enrollment, will be required to make retroactive contributions to the date of compulsory enrollment. Contributions will be calculated on the basis of the member's current salary at the full pension rate of contribution assigned as of his or her compulsory date of enrollment with regular interest.

(b) Veterans, who were ineligible to establish membership in a local contributory pension fund and who elect to enroll in accordance with the provisions of P.L. 1966, c.71, must agree, prior to their enrollment, to purchase all continuous public employment with the same employer since January 1, 1955, or the date of their regular appointment. The purchase of service will be calculated on the basis of their current salary multiplied by the actuarial factor established for the member's age at the time of purchase.

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), substituted "make retroactive contributions" for "purchase membership credit retroactive" following "required to" in the first sentence, and substituted "Contributions" for "Purchases" at the beginning of the second sentence.

Case Notes

Waiver of interest payment assessments on petitioner's purchase of retroactive compulsory service credit was properly denied. *Montagna v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 119.

17:2-5.5 Optional purchases of eligible service

(a) A shared-cost purchase is one in which the member pays only the employee's share and not the employer's share of the purchase. A member may purchase all or a portion of such eligible service. A shared-cost purchase will be calculated on the basis of the actuarial purchase factor established for the member's age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The following types of purchases are shared-cost purchases:

1. Former membership credit in a New Jersey State-administered retirement system;

2. Former service with any other employer which was not certified for membership but which would have qualified on an optional or a compulsory basis at the time the service was rendered;

3. After August 6, 2001, continuous temporary service immediately preceding enrollment;

4. Leaves of absence without pay:

i. The period of the leave for personal reasons which does not exceed 93 days. Child care is considered leave for personal reasons;

ii. The period of the leave up to two years for personal illness. The Division may require proof from the employer that the illness existed for the length of the leave;

5. Non-veterans may purchase continuous service subsequent to the date their employer adopted the retirement system, provided the service was with the same employer to the date of enrollment;

6. Non-veterans, hired prior to July 1, 1966, whose employers have not adopted the retirement system, may enroll any time and purchase continuous service retroactive to July 1, 1966, provided the service was with the same employer to the date of enrollment;

7. Eligible out-of-State public employment, up to a total purchase of 10 years. As provided in N.J.S.A. 43:15A-42, out-of-State service cannot be used to qualify for an ordinary disability retirement;

8. Intermittent service, as defined by N.J.A.C. 17:2-2.3(a)8, which resulted, without interruption, in permanent employment with the same employer. The intermittent service shall have been in a position which satisfied, in whole or in part, the job's requirement for experience needed to qualify for the permanent title; and

9. Non-concurrent Teachers' Pension and Annuity Fund service if a dual member of TPAF and PERS pursuant to P.L. 2001, c.6 (N.J.S.A. 43:15A-14). All or a portion of non-concurrent service in the PERS from an expired or withdrawn account may be purchased.

(b) The types of purchases indicated in (b)1 through 3 below are considered to be full-cost purchases. A member may purchase all or a portion of such eligible service. The lump sum purchase cost shall be calculated on the basis of the actuarial purchase factor established for the member's nearest age at the time of the purchase request times the higher of either the member's current annual base salary or highest fiscal year base salary. The computed lump sum purchase cost shall then be doubled to establish the full cost to the member. This cost is calculated in this manner as N.J.S.A. 43:15A-73.1 provides that the employer shall not be liable for any costs of purchasing this service; therefore, the member must pay both the employee and employer share.

1. Active duty military service prior to enrollment. Active military service that is eligible for purchase means full-time duty in the active military service of the United States. Such term includes full-time training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It cannot include periods of service of less than 30 days. It does not include weekend drills or annual summer training of a national guard or reserve unit nor does it include periods when the member was on-call. It also does not include time spent in the Reserved Officers Training Corps or as a cadet or midshipman at one of the service academies. Military service before enrollment cannot be used to qualify for an ordinary disability retirement;

2. Employment with the Federal government. Pursuant to N.J.S.A. 43:15A-42, U.S. Government service cannot be used to qualify for an ordinary disability retirement;

3. Service established under a local municipal or county retirement system within the State of New Jersey.

(c) A member shall be eligible to purchase an aggregate of up to 10 years of out-of-State public employment, military service and Federal employment provided that the member is not receiving nor is entitled to receive a retirement allowance for such service from any other public retirement system and provides proof to the Division of Pensions and Benefits that the member has withdrawn from such other system. A qualified veteran shall be eligible to purchase an additional five years of military service rendered during periods of war for an aggregate of 15 years of such service.

(d) Rules concerning the purchase and/or conversion of Class A credit include the following:

1. The cost of Class B service credit is based on the actuarial factors and such factors provide a retirement benefit which is one-sixth greater than service credited as

Class A. If Class A credit is purchased, the cost will be six-sevenths of the amount computed for a Class B purchase. The computation is based on the member's present salary or highest fiscal year base salary multiplied by the actuarial purchase factor for the member's age at the time of purchase with regular interest.

2. If a Class A member converts to Class B, the member will contribute an additional one-sixth of the total contributions that would have been payable based on the member's full Class A contribution rate with regular interest.

Amended by R.1999 d.289, effective August 16, 1999.
See: 31 N.J.R. 1581(a), 31 N.J.R. 2368(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).

In (a), inserted "and" preceding "not the employer's"; in (a)1, substituted "in a New Jersey" for "with another"; in (a)3, substituted "After the effective date of this amendment, continuous" for "Continuous" and deleted "with the same employer"; added (a)9.

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), inserted "from the employer" following "may require proof" in 4ii; in (b), rewrote 1.

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 Division correctly advised the employee 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).

Denial of application to purchase additional service credit due to insufficient evidence affirmed. *Webb v. Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 83.

Retiree's request to cancel and obtain refund of previously purchased prior service credit in the retirement system denied. *Chmieloweic v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 73.

17:2-5.6 Methods of payment

(a) Methods of payment include the following:

1. Lump sum;
2. Partial lump sum; balance by extra payroll deductions;
3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years;
4. Extra payroll deductions will include regular interest for the term of the installment.

5. Direct rollover/trustee-to-trustee transfer of funds: Lump sum payments and partial lump sum payments can include the direct rollover or transfer of tax-deferred contributions from financial plans that qualify under terms specified by the Internal Revenue Service. All payments remitted to the Division must be accompanied by properly completed forms as specified by the Division. Checks remitted to the Division without the required forms shall be returned to the member. A lump sum rollover payment for a purchase cannot exceed the lump sum cost of that purchase. Checks in an amount greater than the lump sum cost of the purchase shall be returned to the member.

Amended by R.1991 d.281, effective June 3, 1991.

See: 23 N.J.R. 685(b), 23 N.J.R. 1800(a).

Mandatory age requirement eliminated.

Amended by R.2001 d.422, effective November 19, 2001.

See: 33 N.J.R. 2609(a), 33 N.J.R. 3907(b).

In (a)2, deleted "of \$250.00 or more".

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), added 5.

17:2-5.7 (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 "Military leave".

17:2-5.8 Per diem credit

For the purchase of granting prior service credit for service performed on a per diem, hourly, on-call, or as-needed basis, credit shall be prorated and granted on the basis of 10 days equal one month of credit.

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

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

Inserted a reference to hourly, on-call, or as needed basis, and substituted a reference to 10 days for a reference to 20 days.

17:2-5.9 (Reserved)

Recodified to N.J.A.C. 17:2-4.15 by R.2000 d.26, effective January 18, 2000.

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

17:2-5.10 (Reserved)

Recodified to N.J.A.C. 17:2-4.16 by R.2000 d.26, effective January 18, 2000.

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

17:2-5.11 Service ineligible for purchase

Service rendered outside of the United States, with the exception of eligible service rendered in certain instances in territories or possessions of the United States, Washington, DC and the Canal Zone, is not purchasable.

Amended by R.1999 d.289, effective August 16, 1999.

See: 31 N.J.R. 1581(a), 31 N.J.R. 2368(a).

Rewrote the section.

17:2-5.12 Correction of errors for prior service credit

Credit for all previous service established under the provisions of P.L. 1974, c.104 (N.J.S.A. 43:15A-54), and payment therefore, shall be calculated on the basis of salaries received during the period of such service with applicable regular interest. The pension rate of contribution will be determined as of the member's compulsory date of enrollment.

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

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

Inserted "and payment therefor," preceding "shall be" and added "with applicable regular interest" at the end of the first sentence, and deleted a former third sentence.

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

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

Added the N.J.S.A. reference.

17:2-5.13 Lump sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump sum payment. The service may be used for any purchase for which it is authorized under the Public Employees' Retirement System Act (N.J.S.A. 43:15A-1 et seq.) and the rules of the Retirement System.

New Rule, R.1989 d.516, effective October 2, 1989.

See: 21 N.J.R. 1820(b), 21 N.J.R. 3176(b).

Amended by 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).

SUBCHAPTER 6. RETIREMENT**17:2-6.1 Applications**

(a) Applications for retirement must be made on forms required by the System. Such forms must be completed in all respects and filed with the Division of Pensions and Benefits (Division) on or before the requested date of retirement. A member's retirement application becomes effective on the first of the month following receipt of application unless a future date is requested. Members enrolled at multiple PERS locations must retire from employment in all covered positions before a retirement shall become effective.

(b) In the event a member files an incomplete application, the deficiencies shall be brought to the member's attention and the member shall be required to file a completed application with the Division to enable processing.

(c) A member shall, on the retirement application, select one of nine ways (options) to receive retirement benefits. Each option provides the member with a lifetime monthly retirement benefit. Once a retirement benefit becomes due and payable as defined by N.J.A.C. 17:2-6.2, the option cannot be changed. Except under the Maximum Option and Option 1, once a member designates a beneficiary, that beneficiary can-

not be changed. P.L. 2001, c.120 provides for additional payment options that allow the member to choose an actuarially reduced retirement allowance in order to provide a beneficiary with an allowance equivalent to the full amount, three-quarters, one-half or one-quarter of the reduced allowance. If the beneficiary dies before the retiree, the retiree's allowance will increase to the maximum amount. These additional payment options shall be known as Options A, B, C, and D as defined below. The options, as established by N.J.S.A. 43:15A-50, include the following:

1. Maximum Option provides the largest allowance for the member but does not include a pension benefit paid to a beneficiary upon the member's death.

2. Option 1 provides a reducing retirement reserve to one or more beneficiaries. At retirement, a reserve amount is established to pay the member's lifetime retirement allowance. This reserve is reduced each month by the member's original monthly retirement allowance. Upon the member's death, the beneficiary or beneficiaries receive the balance of the reserve, if any.

3. Option 2 provides, upon the member's death, a lifetime monthly retirement allowance equal to 100 percent of the member's monthly retirement allowance to a beneficiary.

4. Option 3 provides, upon the member's death, a lifetime monthly retirement allowance equal to 50 percent of the member's monthly allowance to a beneficiary.

5. Option 4 provides, upon the member's death, a lifetime monthly retirement allowance to one or more beneficiaries. The member determines the retirement allowance which in the aggregate cannot be more than the Option 2 allowance.

6. Option A provides, upon the member's death, a lifetime monthly retirement allowance equal to 100 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

7. Option B provides, upon the member's death, a lifetime monthly retirement allowance equal to 75 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

8. Option C provides, upon the member's death, a lifetime monthly retirement allowance equal to 50 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

9. Option D provides, upon the member's death, a lifetime monthly retirement allowance equal to 25 percent of

the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

(d) Before an application for retirement may be processed, the Division must receive proof of the member's age, if none is already in the member's record, proof of the beneficiary's age, if the member elected Option 2, 3, 4, A, B, C, or D, and a completed Certification of Service and Final Salary form from the employer setting forth the employment termination date, and the salaries reported for contributions in the member's final year of employment.

(e) In addition to the foregoing requirements:

1. An application for a physical disability retirement must be supported by at least two medical reports, one by the member's personal or attending physician and the other may be either hospital records supporting the disability or a report from a second physician; and

2. An application for a mental health medical disability retirement must be supported by at least two medical reports, one by the member's personal or attending psychiatrist or psychologist and the other in the form of either hospital records supporting the disability or a report from a second psychiatrist or psychologist or from the member's personal or attending physician or licensed clinical social worker.

(f) Retired members, who return to public employment, shall have their previous retirement allowances cancelled and be reenrolled in the System pursuant to 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 or deferred retirements. A member who ceases covered employment and retires again must file a new retirement application with the Division in accordance with (a) through (d) above in order 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 then 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.

(g) If the total amount of retirement allowances received by a member or beneficiary under the option selected is less than the value of the member's contributions and interest on those contributions, the balance of contributions and interest shall be paid in a lump sum to the member's designated beneficiary or estate.

Amended by R.1986 d.432, effective October 20, 1986.
See: 18 N.J.R. 1451(a), 18 N.J.R. 2135(b).

Deleted subsections (b) and (d) and recodified accordingly.

Administrative Correction to (a): Deleted text "at least one month".

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.131, effective May 7, 2001.

See: 33 N.J.R. 372(a), 33 N.J.R. 1398(a).

In (d), substituted "a member's" for "an" and inserted "medical" preceding "reports"; and added (e).

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

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

Added new (c); recodified former (c) as (d) and inserted "A, B, C, or D," following "4,"; recodified former (d) and (e) as (e) and (f).

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

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

Added (g).

Amended by R.2007 d.11, effective January 16, 2007.

See: 38 N.J.R. 2997(a), 39 N.J.R. 237(a).

In the introductory paragraph of (e), substituted a colon for " a member's"; in (e), inserted designation 1; in (e)1, inserted "An" and "a physical", and substituted " and" for a period at the end; and added (e)2.

Case Notes

Employee who sustained back injury which, at most, contributed to progression of arthritic condition by aggravation, held not to have disability which was a direct result of a traumatic event so as to entitle the employee to disability retirement benefits. *Gerba v. Bd. of Trustees, Public Employees' Retirement System*, 83 N.J. 174, 416 A.2d 314 (1980).

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. *Korelnia v. Bd. of Trustees, Public Employees' Retirement System*, 83 N.J. 163, 416 A.2d 308 (1980).

Former director of public information could not collect retirement benefits because he continued to hold the additional appointed position of county clerk and was, therefore, not bona fide in accordance with N.J.A.C. 17:2-6.1, which required that members enrolled at multiple PERS locations must retire from employment in all covered positions before a retirement would become effective; the director could not continue receiving benefits while continuing in employment in any other position requiring PERS membership (rejecting 2007 N.J. AGEN LEXIS 270). In re *Cascaes*, OAL Dkt. No. TYPPE 8112-2005S, 2007 N.J. AGEN LEXIS 883, Final Decision (July 19, 2007), aff'd per curiam, No. A-6074-06T2, 2008 N.J. Super. Unpub. LEXIS 1420 (App.Div. July 24, 2008).

Special education teacher who suffered from numerous and unrelated ailments which rendered her unable to perform duties associated with her job was entitled to ordinary disability retirement allowance. *Daniels v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 292.

Tick bite was not traumatic event for purpose of awarding accidental disability benefits. *Ackerman v. PERS*, 96 N.J.A.R.2d (TYP) 42.

Retirement application had to be executed and filed prior to effective date of the retirement. *Knabner v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 85.

Former member was without standing to refile application for accidental disability retirement allowance. *Coleman v. Retirement System*, 93 N.J.A.R.2d (TYP) 265.

Breach of duty by city employees did not qualify nurse for modification of retirement date. *Kuehner v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 190.

Retirement application; effectiveness; arrival at New Jersey Public Employees' Retirement System. N.J.S.A. 43:15A-47. *Phillips v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 163.

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. *Epps v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 45.

Approval of tax assessor's application for service retirement rescinded where tax assessor's close corporation was awarded contracts for essentially the same tax assessment work. *Board of Trustees v. Atkinson*, 92 N.J.A.R.2d (TYP) 8.

Decedent's signing of application for retirement and filing of support documents prior to his death held to constitute substantial compliance with regulatory requirements, in light of Division's failure to act on documents' deficiency in a timely fashion; survivors held eligible for insurance benefits. *Giaconia v. Bd. of Trustees, Public Employees' Retirement System*, 2 N.J.A.R. 304 (1980).

17:2-6.2 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 the retirement, whichever is later.

New Rule, R.2000 d.26, effective January 18, 2000.
See: 31 N.J.R. 3229(a), 32 N.J.R. 304(a).

Former N.J.A.C. 17:2-6.2, Effective dates; change, recodified to N.J.A.C. 17:2-6.3.

17:2-6.3 Effective dates; change

(a) Except as provided by N.J.A.C. 17:2-6.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

(b) Except in the event of deferred retirement, if a member requests a change of retirement date or option selection before the member's retirement allowance becomes due and payable, said change will require approval of the Board and the revised retirement allowance shall not become due and payable until 30 days have elapsed following the effective date or the date the Board met and approved the change in the member's retirement application, whichever is later.

(c) A deferred retirement shall become effective on the first of the month following the member's 60th birthday. At the election of a member, if the member's 60th birthday falls on the first of a month, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 43:15A-38(b) and requests that date as the retirement date.

(d) In the case of deferred retirement, if an applicant desires to amend the retirement application, the amended

application must be filed with the Division a minimum of one month prior to the effective date of retirement.

(e) Should the member continue to receive a salary beyond the effective date of retirement, no retirement benefits shall be paid for the period where the member received salary and no salary or service credit shall be provided for the service rendered after the effective date of retirement.

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.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

Amended by R.1981 d.274, effective August 6, 1981.

See: 13 N.J.R. 244(f), 13 N.J.R. 525(b).

(f) added.

Recodified from N.J.A.C. 17:2-6.2 and 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. Former N.J.A.C. 17:2-6.3, Effective date; death prior thereto, repealed.

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

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

In (e), deleted "after approval of the retirement by the Board of Trustees" following "effective date of retirement".

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

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

In (a), substituted "Except as provided by N.J.A.C. 17:2-6.7, a" for "A"; in (e), deleted "approved."

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

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

In (a), updated the N.J.A.C. reference.

Case Notes

Board of Trustees of the Public Employees' Retirement System has the inherent authority, when good cause is shown, to reopen its own proceeding to consider a pension benefit change requested by a retiree after the benefit becomes due and payable, notwithstanding N.J.A.C. 17:2-6.3; good cause may be established by showing that reopening the proceedings would serve the ends of essential justice and the policy of the law. In re *Van Orden*, 383 N.J. Super. 410, 891 A.2d 1257, 2006 N.J. Super. LEXIS 57 (App.Div. 2006).

Retiree showed good cause for changing his pension payment option after the 30-day time period for making changes expired and after the retiree began receiving the retirement allowance, because the retiree was attempting to protect his full interest in the pension after a final divorce judgment established that the retiree's wife had relinquished all of her interest in the pension. In re *Van Orden*, 383 N.J. Super. 410, 891 A.2d 1257, 2006 N.J. Super. LEXIS 57 (App.Div. 2006).

Reversal and remand of denial of veteran's retirement benefits was warranted where initial approval of application was rescinded without notice. *Galvano v. Board of Trustees of Public Employees' Retirement System*, 225 N.J. Super. 388, 542 A.2d 926 (A.D.1988).

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. *Epps 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 "1" 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 man-hole 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.

Injuries sustained in slow-moving automobile did not constitute traumatic event entitling claimant to accidental disability retirement benefits. *Fawcett v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 138.

Physical education teacher's collision with two opening doors was not traumatic event entitling her to accidental disability retirement benefits. *Kamal v. Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 124.

School employee permanently injured by slip and fall on icy steps did not experience traumatic event entitling him to accidental disability retirement benefits. *Winslow v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 122.

Sudden attack on police officer by three assailants constituted traumatic event entitling officer to award of accidental disability retirement benefits. *Tribuzio v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 114.

Employee's fall down staircase was not traumatic event entitling her to either accidental or ordinary disability benefits. *Rankin v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 98.

Carpenter who dropped block of wood on his own hand did not qualify for accidental disability benefits because injury did not result from traumatic event. *Powell v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 97.

Car seat shooting was not "traumatic event" for purposes of accidental disability retirement benefits. *Hall v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 89.

Dispatcher's fall from table was not traumatic event warranting award of accidental disability retirement benefits. *Zaranka v. PERS*, 96 N.J.A.R.2d (TYP) 76.

State Police officer was properly denied accidental disability retirement benefits for migraine condition which was not direct result of traumatic injury. *Chippendale v. State Police Retirement System*, 96 N.J.A.R.2d (TYP) 70.

School bus driver disabled by tendinitis and carpal tunnel syndrome caused by stress and strain of normal work effort was not entitled to accidental disability benefits. *Smith v. PERS*, 96 N.J.A.R.2d (TYP) 67.

Fall from chair was not traumatic event for purpose of awarding accidental disability benefits. *Eglow v. PERS*, 96 N.J.A.R.2d (TYP) 60.

Neck injury sustained when elevator fell one foot was not traumatic event warranting accidental disability retirement benefits. *Knoster v. PERS*, 96 N.J.A.R.2d (TYP) 53.

Developmental center employee's severe health problems entitled her to disability retirement allowance. *Hawkins v. PERS*, 96 N.J.A.R.2d (TYP) 46.

Bus driver not eligible for accidental disability retirement benefits when disabling knee injury not result of traumatic event. *Santana v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 16.

Injury to corrections officer's back, resulting from fall in which he was landed on by three other men, constituted traumatic event for purposes of accidental disability retirement benefit eligibility. *D'Ippolito v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 9.

Multiple dwelling inspector struck by falling door entitled to accidental disability retirement benefits. *Salerno v. Public Employees' Retirement System*, 95 N.J.A.R.2d (TYP) 11.

Public employee is not entitled to accidental disability retirement; three and one half foot fall did not constitute traumatic event. *Flores v. Public Employees' Retirement System*, 95 N.J.A.R.2d (TYP) 6.

Clerk typist who failed to prove that she was unemployable due to carpal tunnel impairment was denied ordinary disability retirement. *Morgan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 212.

Failure to show that injuries were work related. *Catrambone v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 199.

Failure to prove chemical fumes at work place; accidental disability retirement. *Boychuk v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 193.

Denial of petitioner's application for accidental disability retirement allowance was appropriate. *Post v. Public Employees' Retirement System, Board of Trustees*, 94 N.J.A.R.2d (TYP) 122.

Diabetic employee was not entitled to accidental disability retirement benefits. *Morgan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 95.

Epileptic employee suffering from recurrent; accidental disability retirement allowance. *Lojik v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 91.

Request for accidental disability retirement benefits; traumatic event. *Gilmore v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 89.

Disability benefits approved for school matron suffering arthritic changes. *Mirra v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 78.

Accidental disability retirement denied; "traumatic event". *Cook v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 76.

Employee failed to establish that he was permanently and totally disabled from performance of duties. *Weldon v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 68.

Accidental disability benefits; fall on staircase was not caused by a great rush of force or uncontrollable power. *Zech v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 45.

Back injury did not result from a traumatic event. *Ferro v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 42.

Rheumatoid arthritis; ordinary disability retirement. *Daggs v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 39.

Accidental disability retirement benefits were properly denied; "traumatic event". *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Petitioner who fell from a height of less than two feet was not eligible for accidental disability pension. *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Fall of less than two feet from a chair; accidental disability pension. *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Accidental disability retirement benefits properly denied; membership. *Donovan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 33.

Denial of accidental disability retirement benefits was appropriate; employee was not member of PERS at time of accident. *Donovan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 33.

Accidental disability retirement benefits denied; not member in Public Employees' Retirement System at time of accident. *Donovan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 33.

Willful negligence precluded award of accidental disability pension benefits. *DeInnocentes v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 26.

Disability pension was properly denied. *Barnes v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 22.

Accidental disability retirement; injury not result from traumatic event. *Pannone v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 18.

Claim for accidental disability retirement did not involve "a great rush of force or uncontrollable power," and therefore was not a traumatic event. *Morgillo v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 13.

Claim for accidental disability retirement properly denied. *Hanuszak v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 10.

Ordinary disability retirement benefits denied. *Carcich v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 6.

Claim for accidental disability retirement benefits based on post-traumatic stress disorder properly denied. *Birch v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 1.

Employee's slip and fall did not constitute a "traumatic event". *Moore v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 338.

Worker who slipped and fell not entitled to accidental disability retirement benefits. *Collins v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 334.

Physical conditions of which employee complained, absent medical proof as to performance and capability, were insufficient to warrant ordinary disability retirement. *Willard v. Retirement System*, 93 N.J.A.R.2d (TYP) 306.

Accidental disability benefits were calculable from date of accident which led to retirement, rather than from last day of work. *Muscarella v. Retirement System*, 93 N.J.A.R.2d (TYP) 296.

Absent stress or strain from normal work effort, injury was not a traumatic event giving rise to accidental disability retirement. *Landau v. Retirement System*, 93 N.J.A.R.2d (TYP) 280.

Withdrawal of contributions from pension system operated as waiver of right to vested disability pension. *DeGraaff v. Retirement System*, 93 N.J.A.R.2d (TYP) 269.

Fall from prison bus was not traumatic event entitling correction officer to accidental disability benefits. *Crescenzo v. Retirement System*, 93 N.J.A.R.2d (TYP) 267.

Psychiatric worker experienced traumatic event warranting accidental disability benefits when caught in door by patient. *Reed v. Retirement System*, 93 N.J.A.R.2d (TYP) 258.

Attacks upon worker by youths at treatment center were traumatic events warranting accidental disability pension benefits. *Noonan v. Retirement System*, 93 N.J.A.R.2d (TYP) 254.

Accidental disability retirement allowance was not available absent evidence of causation and a traumatic event. *Davis v. Retirement System*, 93 N.J.A.R.2d (TYP) 243.

Back injury due to losing balance while loading heavy drums of cleaning fluid onto truck not result of traumatic event qualifying employee for accidental disability retirement benefits. *Fithian v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 213.

Eligibility for ordinary disability retirement benefits as result of psychiatric disability. *Kenerley v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 185.

An X-ray technician injured by sudden movement of low-functioning patient was not entitled to accidental disability pension. *Peters v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 159.

Being pulled onto table by patient not traumatic event qualifying X-ray technician for accidental disability retirement benefits. *Peters v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 159.

Employee's handicap did not make ground level slip and fall traumatic event qualifying him for accidental disability retirement benefits. *Juchniewicz v. Board of Trustees, Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 137.

Major depression and generalized anxiety did not entitle housing manager to ordinary disability retirement benefits where manager showed improvement with antidepressant medication. *Cappucio v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 98.

Worker hit by falling oven racks entitled to accidental disability retirement benefits. *Wagner v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 75.

Psychiatric hospital worker slipped and fell on floor; thus, no traumatic event for accidental disability retirement purposes. *Brown v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 61.

School custodian's neck and back injuries physically incapacitated him from performing his work, entitling him to ordinary disability retirement pension. *Rich v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 34.

Slip and fall on mashed potatoes and lifting cases of milk not traumatic events so as to qualify employee for accidental disability retirement benefits. *Bodie v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 29.

Back injury sustained when jerked off balance by 300-pound psychiatric patient not traumatic event entitling X-ray technician to accidental disability retirement benefits. *Downs v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 13.

Library aide entitled to ordinary disability retirement benefits due to back condition even though she continued to work during application process. *Bok v. Board of Trustees, Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 3.

Public works inspector injured in car accident entitled to accidental disability retirement benefits for traumatic event occurring in course of duty. *Woods v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 160.

Slip and fall on wet floor not traumatic event entitling carpenter to accidental disability retirement benefits. *Osback v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 141.

Hospital attendant struck in back by patient lift entitled to accidental disability benefits despite prior degenerative disc disease. *Dix v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 138.

Falling off ladder not direct cause of injury; thus, no eligibility for accidental disability retirement benefits. *Rinaldis v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 105.

Security guard with coronary heart disease not entitled to accidental disability retirement benefits; insufficient causality between traumatic event and subsequent heart attack. *Zaharioudakis v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 93.

Worker's injuries induced by stress and strain of normal work effort, and not result of traumatic event qualifying him for accidental disability retirement benefits. *Rinaldis v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 88.

Ground level fall not traumatic event qualifying hospital worker for accidental disability retirement benefits. *Evans v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 85.

Road construction worker who inhaled fumes from new blacktop mixture was not injured as result of traumatic event entitling him to accidental disability retirement benefits. *Beverly v. Public Employee's Retirement System*, 92 N.J.A.R.2d (TYP) 41.

Fall from ground level cannot constitute great rush of force necessary to find traumatic event entitling claimant to accidental disability retirement benefits. *Keaton v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 37.

Hospital attendant's injury while assisting patient from bed to chair did not result from traumatic event qualifying her for accidental disability retirement benefits. *Siniscalchi v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 30.

Supervisor's transfer threats did not constitute a traumatic event qualifying employee for accidental disability retirement benefits. *Fay v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 27.

Maintenance worker's fall from three foot scaffolding was not traumatic event entitling him to accidental disability retirement benefits. *Minkus v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 19.

School crossing guard's fall on sidewalk was not traumatic event in course of employment entitling her to accidental disability retirement benefits. *Osinga v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 16.

17:2-6.8 Option selection; accidental disability denied

If an applicant for an accidental disability retirement benefit is rejected for an accidental disability benefit but is approved by the Board for retirement, in accordance with N.J.A.C. 17:2-6.7, the applicant will be permitted within 30 days following Board approval of the retirement, to amend the option selection which the applicant made on the original accidental disability retirement application.

As amended, R.1971 d.71, effective May 18, 1971.

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

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 throughout.

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

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

17:2-6.9 Employer and employee notices

If an applicant for accidental disability retirement is found to be physically or mentally incapacitated for the performance of duty but is rejected for accidental disability retirement because the Board finds that the disability was not a direct result of a traumatic event occurring during and as a result of the performance of the applicant's regular or assigned duties and, if the applicant does not meet the minimum statutory requirements for any other type of retirement allowance, the System will notify both the member and the member's employer that the member was found to be physically or mentally incapacitated for the continued performance of duty, as was previously certified to the System.

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 throughout, and deleted "by both the employee and his employer" and deleted a former second sentence at the end.

17:2-6.10 Involuntary disability application

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of their employees, the member will be promptly notified by letter that:

1. The member's employer has properly initiated a disability application signed by the Certifying Officer or other designated officer of the employer, on the member's behalf;

2. The member's employer has submitted a written statement as to the grounds for the employer's request for member's involuntary disability retirement and all available medical documentation;

3. The member has a period of 30 days to contest his or her involuntary retirement before the Board acts on the employer's application;

4. The member will be required to appear for an examination before a physician designated to conduct such an examination for the retirement system;

5. In the event the Board finds that the member is totally and permanently incapacitated for the performance of duty, the member shall be granted the maximum retirement option, if the member does not file a completed "Application for Disability Retirement Allowance" setting forth the type of allowance the member desires, before the retirement goes into effect; and

6. In the event the Board finds that the member is not totally and permanently incapacitated for the performance of duty, the employer's application shall be disallowed and the employer shall be informed that the member should be returned to duty.

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 gender references throughout, rewrote 1 and 2, deleted a former 3, and recodified former 4 through 7 as 3 through 6.

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

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

In (a)5, substituted "option" for "allowance, (without option) payable under the statute".

17:2-6.11 Early retirement; reduction

(a) Retirement with 25 or more years of credited service before the first of the month in which a member attains age 60 shall be classified as "early" retirement.

(b) The statutory reduction of one quarter of one percent applies to each month prior to the month in which the member attains age 55 and for the month in which the member attains age 55 if the member's 55th birthday occurs after the 15th day of the month.

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.

Case Notes

Suspended employee who retired after completing court-ordered pretrial intervention program was not entitled to early retirement benefits. *Gulics & Simeone v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 228.

17:2-6.12 Service retirement; eligibility

A member becomes eligible for "Service" retirement on the 1st of the month following the member's 60th birthday. At the election of a member, if the member's 60th birthday falls on the first of a month, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 43:15A-47a, and requests that date.

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

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

Neutralized a gender reference in the first sentence, and added a second sentence.

Case Notes

Denial of petitioner's request for additional four years of creditable service was appropriate. *Alcaro v. Division of Pensions, the Alternate Benefit Program*, 94 N.J.A.R.2d (TYP) 124.

17:2-6.13 Disability retiree; annual medical examinations

(a) All disability retirees under the normal retirement age of 60 may be required to undergo a medical examination each year for a maximum period of five years by a physician designated by the System as of the anniversary date of their retirement, unless such examination requirement has been waived by the Board.

(b) Failure on the part of a retiree to submit to the required medical examination shall result in the automatic suspension of the retiree's retirement allowance until the retiree submits to a medical examination.

Amended by R.1998 d.322, effective July 6, 1998.

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

In (a), deleted "under age 60," following "retirees" and substituted "at least five years or for good cause thereafter" for "a maximum period of five years" in the first sentence, and added a second sentence.

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), deleted "as of the anniversary date of their retirement" following "System" in the first sentence; and in (b), neutralized gender references throughout.

Amended by R.2000 d.248, effective June 19, 2000.

See: 32 N.J.R. 1152(a), 32 N.J.R. 2257(a).

Rewrote (a).

Case Notes

Regulations adopted by the Board of Trustees of Teachers' Pension and Annuity Fund (TPAF) and Board of Trustees of Public Employees' Retirement System (PERS) which applied to all disability retirees, regardless of age, and allowed Boards to require physical examination for good cause after five years exceeded legislative requirements of statute, and thus, regulations were invalid. *New Jersey Education Association v. Board of Trustees, Public Employees' Retirement System*, 327 N.J.Super. 326, 744 A.2d 353 (N.J.Super.A.D. 2000).

Township not required to reinstate formerly disabled employee who resigned before applying for disability benefits. *Township of Dover v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 83.

17:2-6.14 Disability retiree; annual report (employment, earnings, test and adjustment)

(a) Pursuant to N.J.S.A. 43:15A-44, if a disability retiree is engaged in gainful employment that does not require reenrollment in the Public Employees' Retirement System, then the amount of the retiree's pension benefit and cost-of-living increases based on the pension benefit, but not the annuity benefit, shall be reduced to an amount, which when added to the amount then earned, shall not exceed the amount of salary now attributable to the position from which the member retired.

1. For the purposes of determining the amount of salary attributable to the position from which the member retired, the Division of Pensions and Benefits (Division) shall apply the salary assumption used by the System's actuaries in each calendar year of retirement to the retiree's final year's salary.

2. If the retiree 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 retiree shall be required to file a report with the System which may include copies of the retiree's IRS 1040 forms and W-2 forms and any other proofs of employment requested of a specific retiree 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.

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

1. If the retiree is engaged in employment, and the gross earned income for the preceding calendar year exceeds the difference between the pension portion of the retirement benefit and the salary the retiree would have been receiving had the retiree continued to work for the former employer, the retiree shall be billed for the amount of the overpayment. Further, the Division shall assume that the retiree continues to be employed at the same level of salary for the current year. Therefore, a dollar for dollar reduction may be made in anticipation of excess earnings in the current year. If, in the subsequent year, 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 retiree 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.

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 his or her 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 of Trustees, if:

1. The applicant demonstrates to the satisfaction of the Board of Trustees that he or she 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 of Trustees 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).

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, 43 and 44 require the Retirement System or the Board to designate physicians to perform medical examinations. A designated physician shall not be a member's personal physician, except in the case of a member whose personal physician has identified the member as having a probable abbreviated life expectancy (referred to as an "imminent death" case), if corroborating medical evidence of the diagnosis can be obtained.

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).

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 Trustees 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 Teacher's Pension and Annuity Fund (TPAF) at the time of enrollment in the Public Employees' Retirement System (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;

iii. The account has expired; that is, it has been more than two years from the date of the last contribution and 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.

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.

(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.

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. The account has not expired; that is, it has not been more than two years between the date of the last contribution, the member is vested, or the member's account has remained active due to the provisions of N.J.S.A. 43:15A-8; and

3. The account has not been canceled due to Board of Trustees 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 of Pensions and Benefits 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.

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 Public Employees' Retirement System 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 Public Employees' Retirement System 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.

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 of Pensions and Benefits. 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.

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 Public Employees' Retirement System 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, 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.

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 Public Employees' Retirement System 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.

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 written 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 written 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 $\frac{1}{60}$ th 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.

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 Public Employees' Retirement System, 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.

17:2-8.14 Retirement date for prosecutors having both regular and Prosecutors Part Public Employees' Retirement System 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 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 $\frac{3}{16}$ 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 $\frac{3}{16}$ of the last 12 months of regular PERS salary.

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.