

examined by an independent physician designated to conduct such an examination for the Retirement System.

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Added (a)3.

Amended by R.2006 d.130, effective April 3, 2006.

See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Rewrote the section.

Amended by R.2011 d.235, effective September 6, 2011.

See: 43 N.J.R. 1177(a), 43 N.J.R. 2364(b).

Substituted "certify" for "furnish", and in the first sentence, deleted "of Trustees" following "Board".

17:4-2.4 Training requirements

(a) As required under N.J.S.A. 43:16A-1(2)(a)(iii), permanent, full-time police officers are required to successfully complete the training requirement prescribed under N.J.S.A. 52:17B-66 et seq., (Police Training Commission (PTC)) or proof of comparable training requirements as determined by the Board of Trustees.

1. For positions under the statutory authority of the PTC, all police applicants must receive certification of successful completion of the basic training course for municipal police officers, which includes the physical conditioning program and the medical certification for participation in the training approved by the PTC pursuant to N.J.S.A. 52:17B-66 et seq.

2. For positions that are not under the statutory authority of the PTC, all police applicants are required to complete comparable training to that prescribed by the PTC for municipal police officers, which includes the physical conditioning program and the medical certification for participation in the training. The employer must certify to the Division of the completion of the aforementioned training.

3. An applicant may be exempt from some parts of the basic training course if the applicant has successfully completed police training conducted by a Federal, State or county agency if the requirements are substantially equivalent to the requirements of a municipal police officer and approved by the PTC.

i. For those positions under the statutory authority of the PTC, the applicant must receive certification from the PTC regarding such exemption and successfully complete the remaining course work at an approved PTC school in New Jersey.

ii. For those positions not under the statutory authority of the PTC, in order for the Division to consider whether the applicant qualifies under the comparable police training rule, the applicant must submit the following documents to the Division for review of the authorized training credit:

(1) A letter of waiver request;

(2) A transcript of the training courses from the prior Federal, State or county agency, including the dates of completion for each course; and

(3) The course description of each and every police training course that the police applicant wishes to use for an exemption.

4. Comparable training for out-of-State police training courses cannot be more than three years from the date the police applicant graduated from the police academy.

5. Comparable training for in-State police training courses cannot be more than three years from the date the police applicant separated service with the former New Jersey employer to the date of the employment with the current New Jersey employer.

6. The applicant must successfully complete the remaining course work at either an approved PTC school in New Jersey or a school that offers comparable training to that prescribed by the PTC as set forth in (a)2 above. The employer must certify to the Division that such basic training course was satisfactorily completed.

(b) As required under N.J.S.A. 43:16A-1(2b), permanent, full-time firefighters are required to successfully complete the Firefighter I certification prescribed under N.J.A.C. 5:73-4.2, 4.3 and 4.4, or as determined by the Board.

1. Since all firefighting applicants must comply with N.J.A.C. 5:73-4.2, 4.3 and 4.4, the PFRS Board has determined that comparable training pursuant to the New Jersey Department of Community Affairs, Division of Fire Safety – Office of Training and Certification guidelines will be the only authorized agency to determine if the firefighting applicant's training meets the requirements for the Firefighter I certification.

New Rule, R.2008 d.373, effective December 15, 2008.

See: 40 N.J.R. 4678(a), 40 N.J.R. 6991(b).

Section was "Reserved".

Amended by R.2011 d.235, effective September 6, 2011.

See: 43 N.J.R. 1177(a), 43 N.J.R. 2364(b).

In (a)2, deleted "applicant or the" preceding "employer", substituted "certify to the Division" for "submit proof", and inserted "completion of the"; in the introductory paragraph of (a)3ii, deleted "of Pensions and Benefits" following "Division" twice; in (a)6, substituted "a school that offers" for "school offered" and "certify" for "submit evidence", and deleted "applicant or the" preceding "employer" and "of Pensions and Benefits" following "Division"; deleted (a)7; in the introductory paragraph of (b), inserted "as", and deleted "of Trustees" following "Board"; and deleted (b)2.

17:4-2.5 Age requirements

(a) Applicants must be appointed to an eligible title on or prior to their 35th birthday.

(b) The age of candidates for positions covered by the PFRS with employers who have adopted the provisions of Title 11A of the New Jersey Statutes (Civil Service) is determined at the announced closing date of the examination offered by the Civil Service Commission for those positions.

Candidates must not be one day past the date of their 35th birthday on the announced closing date of the examination. Those candidates meeting the age requirements at that time will be considered as having met the age maximum requirement for the duration of the list promulgated as a result of such examination.

(c) N.J.S.A. 38:23A-1 et seq. is recognized as a modification of the age maximum for certain “veterans.” Persons having served in the active military service of the United States during “time of war” and conflict as defined in N.J.S.A. 43:16A-11.7 can for the purpose of meeting the maximum age requirement for entrance into this retirement system reduce their actual age by the stipulated period of such military service. Should this reduced age meet the age maximum in effect, the applicant will be considered as having met the age maximum for enrollment.

(d) The period of time to be deducted from an individual’s age is limited to actual time served during the war or conflict. Earlier or later periods of military service cannot be used to reduce individuals’ ages so as to enable them to meet any maximum age limits.

(e) Any active military service terminating in dishonorable discharge is not creditable.

(f) An applicant is permitted to reduce their actual age in order to meet the maximum age requirement of 35 years for the position of municipal police officer if, in accordance with N.J.S.A. 40A:14-127.1, they have previous service as a former State trooper, sheriff’s officer or deputy, or county or municipal police officer. Prior experience in Federal law enforcement agencies or in law enforcement agencies of other states that would meet the requirements of police officer in New Jersey would also qualify for the purpose of reducing the candidate’s age for the position of a municipal police officer. “Age reductions” may also be granted for persons seeking employment as municipal police officers who have prior service with the Delaware River Port Authority Police, Amtrak or South Eastern Pennsylvania Transportation Authority (SEPTA) police departments. No person may be appointed over the age of 45 except for those who were previously involuntarily terminated from their former law enforcement officer employment.

(g) Individuals seeking employment with a municipality in an eligible PFRS title who are over age 35 on the closing date of the examination with a Civil Service employer or over age 35 on the date of hire with a non-Civil Service employer, even after “reductions in age” have been taken into account, cannot establish membership in any State-administered retirement system. Since enrollment in the PFRS is a condition of employment (N.J.S.A. 43:16A-3(1)), these individuals cannot be hired.

(h) Municipal statutes provide that in some situations volunteer and exempt firefighters in municipalities may be appointed to full-time firefighter positions if they are not over

40 years of age at the time of their appointments. This proper appointment of someone who is past their 35th birthday to a municipal fire department does not negate the eligibility requirement that someone not be past their 35th birthday to be enrolled in the PFRS. Therefore, any appointees under this provision are required to enroll in the PERS.

Amended by R.2000 d.292, effective July 17, 2000.
See: 32 N.J.R. 1320(a), 32 N.J.R. 2599(a).

Rewrote (c) and (d); and recodified former (d)3 as (e).
Amended by R.2003 d.204, effective May 19, 2003.
See: 35 N.J.R. 508(a), 35 N.J.R. 2186(a).

Rewrote (b).
Amended by R.2006 d.130, effective April 3, 2006.
See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Added (f)-(h).
Amended by R.2011 d.235, effective September 6, 2011.
See: 43 N.J.R. 1177(a), 43 N.J.R. 2364(b).

In (b), substituted “PFRS” for “Police and Firemen’s Retirement System” and “Civil Service Commission” for “Department of Personnel”, and deleted “(N.J.S.A. 43:16A-3(1))” from the end; and in (h), substituted “firefighters” for “fire fighters”, “firefighter” for “fire fighters” and “PERS” for “Public Employees’ Retirement System”.

Case Notes

As a firefighter, age 38, was hired under the mistaken belief that his service in the military and as a police officer would enable him to meet N.J.S.A. 40A:14-12’s age limit for firefighters (age 35), and the firefighter, acting in good faith and reasonably, left other employment to accept the position, the Board of Trustees of the New Jersey Police and Firemen’s Retirement System (PFRS) had to consider whether the firefighter could enroll in PFRS on equitable grounds despite the age limit of 35 set out in N.J.S.A. 43:16A-3 and N.J.A.C. 17:4-2.5. *Sellers v. Board of Trs. of the Police & Firemen’s Ret. Sys.*, 399 N.J. Super. 51, 942 A.2d 870, 2008 N.J. Super. LEXIS 62 (App.Div. 2008).

Initial Decision (2007 N.J. AGEN LEXIS 602) adopted, which found that petitioner’s position as a Protection Officer with the Federal Reserve could not be used to reduce his age for enrollment in PFRS when he joined a local police department because the services rendered did not have full police powers outside the confines of the Federal Reserve Bank; petitioner did not demonstrate that he met the applicable training and physical and mental fitness requirements of a police officer. In re *Sorrentino*, OAL Dkt. No. TYPPE 09598-2006N, 2007 N.J. AGEN LEXIS 1011, Final Decision (September 11, 2007).

17:4-2.6 Enrollment date

(a) Pursuant to N.J.A.C. 17:4-2.3, 2.4 and 2.5, an employee who is appointed to a regular classified appointment from a Civil Service list to a PFRS position shall be considered for PFRS enrollment upon successful completion of the police or firefighting training.

1. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first day of the following month after successful completion of the police or firefighting training.

2. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the following pay period after successful completion of the police or firefighting training.

(b) Pursuant to N.J.A.C. 17:4-2.3, 2.4 and 2.5, an employee in the unclassified service shall be considered as beginning service on the date employment began. The compul-

SUBCHAPTER 4. MEMBERSHIP

17:4-4.1 Creditable compensation

(a) The compensation of a member subject to pension contributions and creditable for retirement and death benefits in the system shall be limited to base salary, and shall not include extra compensation.

1. "Base salary" means the annual compensation of a member, in accordance with 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.

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. 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 work day or normal duty assignments;
- 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;
- 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 or employment policy 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 credibility 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 employee 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 reasonably anticipated annual compensation increases for members of the retirement system based upon consideration of the Consumer Price Index for the time period of the increases, the table of assumed salary increases recommended by the actuary and adopted by the Board, and the annual percentage increases of salaries as indicated in data from the Public Employment Relations Commission, or through other reliable industry sources of information regarding average annual salary increases. Those cases where a violation of the statute or rules 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), 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. 43:16A-18, 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 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 refunded because of a determination by the Board that a denial of credit for increases in compensation is warranted under this section.

(i) This section shall not be applicable to longevity pay, holiday pay, or education pay which is included in the creditable compensation of a retiree or member on a mandatory basis in accordance with the provisions of a collective negotiations agreement or employment policy of an employer approved and executed on or before January 1, 2000, until the termination date of the collective negotiations agreement or employment policy, or December 31, 2001, whichever occurs first.

Repeal and New Rule, R.2000 d.141, effective April 3, 2000.
See: 31 N.J.R. 3930(a), 32 N.J.R. 1246(a).
Section was "Creditable salary".

Case Notes

Police officers' base salary increase based on "senior status," occurring after 22 years of service and which was given in exchange for cessation of longevity pay and of vacation day accruals, was granted primarily in anticipation of officers' retirement and was disruptive to actuarial soundness of pension system, thus such salary increase was not creditable for retirement benefits. *Fraternal Order of Police v. Board of Trustees of the Police and Firemen's Retirement System*, 774 A.2d 680 (2001).

Police officers did not detrimentally rely on previous approval by Board of Trustees of the Police and Firemen's Retirement System of officers' increased "senior status" pay, and thus Board was not estopped from determining that "senior status" pay was not creditable for pension benefits, where most of the officers had not yet retired, sole officer who had retired was receiving pension credit under grandfathering provision, union had opportunity to bargain for other creditable salary increases, and "senior status" pay would not have been creditable under prior rule. *Fraternal Order of Police v. Board of Trustees of the Police and Firemen's Retirement System*, 774 A.2d 680 (2001).

Initial Decision (2008 N.J. AGEN LEXIS 920) adopted, which concluded that Board of Trustees of the Police and Firemen's Retirement System (PFRS) correctly determined that provisions in the contract between Ocean County PBA Local 258 and Ocean County providing that a "clothing allowance" be rolled into base salary was in violation of N.J.A.C. 17:4-4.1(a)(2)(vi) and, therefore, not creditable compensation in the PFRS. In re Ocean County PBA Local No. 258, OAL Dkt. No.

TYPFF 2950-06, 2008 N.J. AGEN LEXIS 1121, Final Decision (December 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 1269) adopted, which determined that the PFRS Board was not precluded from reducing public employees' pension benefits as a result of a prior determination by the PFRS Board that holiday leave pay was not creditable for pension purposes and, therefore, should not be included in the calculation of the employees' final compensation. In re Segear, OAL Dkt. No. TYP 01500-06, TYP 03718-06, TYP 03719-06, TYP 03877-06, 2008 N.J. AGEN LEXIS 1324, Final Decision (September 8, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 792) adopted, which determined that a patrol officer was not entitled to have a second-in-command stipend included as part of creditable PFRS compensation; the second-in-command stipend was for duties beyond the officer's regular duties, on a temporary basis, when covering for the chief when he was out. N.J.A.C. 17:4-4.1 defines compensation as base salary and specifically excludes individual adjustments granted in anticipation of retirement or for temporary duties beyond the regular work day. In re York, OAL Dkt. No. TYPFF 05895-2006N, 2008 N.J. AGEN LEXIS 35, Final Decision (January 15, 2008).

In consolidated cases, training pay and vacancy pay for law enforcement officers constituted additional remuneration for performing temporary duties beyond the regular workday within the meaning of N.J.A.C. 17:4-4.1, and thus, the officers were not entitled to pension credit. "Workday" was read not only in the narrow sense of fixed hours of employment, but also in the broader sense of the duties that an employee ordinarily performed during his working hours. *City of Hoboken PBA Local No. 2 v. Bd. of Tr. of Police and Firemen's Ret. Sys.*, OAL Dkt. No. TYP 03710-06 and TYP 03711-06 (Consolidated), 2007 N.J. AGEN LEXIS 700, Initial Decision (October 18, 2007), adopted (PFRS Bd. of Trustees November 19, 2007).

17:4-4.2 Prior service

(a) Any period of prior service credit paid for by an employer at the adoption of the system will reflect identical credit when calculating membership credit.

(b) Prior service credits are limited to service rendered on a full-time basis.

17:4-4.3 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 Retirement System.

Amended by R.2001 d.66, effective February 20, 2001.
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Created gender neutral references.
Amended by R.2006 d.130, effective April 3, 2006.
See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Capitalized "retirement system"; and at the end of the sentence, substituted "Retirement System" for "system".

17:4-4.4 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.

setting forth the employment termination date and the salaries reported for contributions in the member's final year of employment.

(d) As to an application for disability retirement, the following shall apply:

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 in the form of either hospital records supporting the disability or a report from a second physician. The required documentation must be received within six months of the date of filing the disability retirement application. If it is not received, the retirement will be cancelled and the member must complete a new disability application for a future retirement date;

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. The required documentation must be received within six months of the date of filing the disability application. If it is not received, the retirement will be cancelled and the member must complete a new disability application for a future retirement date;

3. A member filing for a disability retirement shall not file a separate application for any other type of retirement, while a disability application is pending; and

4. If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit, the applicant must submit a written statement accepting the alternate retirement type. If the applicant submits the written statement within 30 days of the Board's decision, the applicant may retain the retirement date designated on the disability retirement application.

(e) If a member's previous retirement allowance has been cancelled due to the member's return to employment and reenrollment in the Retirement System pursuant to the provisions of N.J.S.A. 43:16A-15.3, a new retirement application must be filed with the Division in accordance with (a) through (c) above. The previous retirement allowance shall then be reinstated, and the new retirement allowance, based on the member's subsequent covered employment, shall commence. Except in the case of disability, 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.

Amended by R.2001 d.66, effective February 20, 2001.
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Rewrote section.

Amended by R.2007 d.12, effective January 16, 2007.

See: 38 N.J.R. 3284(a), 39 N.J.R. 237(b).

In the introductory paragraph of (d), substituted a colon for “, an”; in (d), inserted designation 1; in (d)1, inserted “An” and “a physical”, and substituted “; and” for a period at the end; and added (d)2.

Amended by R.2011 d.235, effective September 6, 2011.

See: 43 N.J.R. 1177(a), 43 N.J.R. 2364(b).

Rewrote (a), (b), (d) and (e).

Case Notes

Retired firefighter not entitled to benefits for period prior to Retirement System's receipt of retirement application. *Sheren v. PFRS*, 96 N.J.A.R.2d (TYP) 64.

17:4-6.2 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 one month after the date of the retirement, whichever is later.

Recodified from N.J.A.C. 17:4-6.3 and amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Rewrote the section. Former N.J.A.C. 17:4-6.2, Effective dates; changes, recodified to N.J.A.C. 17:4-6.3.

Amended by R.2006 d.130, effective April 3, 2006.

See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

Section heading was “Effective date; death prior thereto”.

Case Notes

Police sergeant's right to cancel his retirement under pension regulations does not entitle him to immediate reemployment, which, instead, is controlled by priorities promulgated by civil service laws and regulations. Therefore, a trial court erred in granting the sergeant partial summary judgment in his suit asserting damages for a city's refusal to rehire him after he cancelled his retirement and sought reemployment in his former position, which had already been filled by the city. *Klawitter v. City of Trenton*, 395 N.J. Super. 302, 928 A.2d 900, 2007 N.J. Super. LEXIS 280 (App.Div. 2007).

17:4-6.3 Effective dates; changes

(a) Except as provided by N.J.A.C. 17:4-6.7, 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) If a member requests a change in the retirement application before the 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 one month has elapsed following the effective date or 30 days after 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 55th birthday. If the member's 55th 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. 43:16A-11.2 and requests that retirement date.

(d) Should the member continue to receive a salary beyond the effective date of retirement after approval of the retirement by the Board, 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 approved, effective date of retirement. This restriction also applies to payments of accrued sick or vacation time that is paid in periodic payments on the employer's regular payroll schedule.

Recodified from N.J.A.C. 17:4-6.2 and amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

Rewrote the section. Former N.J.A.C. 17:4-6.3, Effective date; death prior thereto, recodified to N.J.A.C. 17:4-6.2.

Amended by R.2005 d.232, effective July 18, 2005.

See: 37 N.J.R. 573(a), 37 N.J.R. 2687(a).

In (a), substituted "Except as provided by N.J.A.C. 17:4-6.7, a" for "A"; rewrote (e).

Amended by R.2006 d.130, effective April 3, 2006.

See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

In (e), added the last sentence.

Amended by R.2011 d.235, effective September 6, 2011.

See: 43 N.J.R. 1177(a), 43 N.J.R. 2364(b).

In (b), substituted "If" for "Except in the event of deferred retirement, if"; deleted former (d); recodified former (e) as (d); and in (d), deleted "of Trustees" following "Board".

Case Notes

Police sergeant's right to cancel his retirement under pension regulations does not entitle him to immediate reemployment, which, instead, is controlled by priorities promulgated by civil service laws and regulations. Therefore, a trial court erred in granting the sergeant partial summary judgment in his suit asserting damages for a city's refusal to rehire him after he cancelled his retirement and sought reemployment in his former position, which had already been filled by the city. *Klawitter v. City of Trenton*, 395 N.J. Super. 302, 928 A.2d 900, 2007 N.J. Super. LEXIS 280 (App.Div. 2007).

Retiree time-barred from requesting change in benefits three years after receiving benefits. *Esposito v. Police and Firemen's Retirement System*, 97 N.J.A.R.2d (TYP) 93.

Lack of good cause and diligence defeated request to reopen application for accidental disability benefits. *Stein v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 198.

17:4-6.4 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. 17:4-6.2; 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. 43:16A-16.2). 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 that are due to the beneficiary or estate. If multiple beneficiaries are 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.2000 d.293, effective July 17, 2000.

See: 31 N.J.R. 2710(a), 32 N.J.R. 2601(a).

Rewrote (a); deleted former (b) and (c); and recodified former (d) as (b).

Amended by R.2006 d.130, effective April 3, 2006.

See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

In introductory paragraph (a), added "accrued"; in (a)1, corrected N.J.A.C. cite; deleted former (a)2; recodified former (a)3 as (a)2 and added "accrued" and statutory citation; and in (b), added "accrued".

17:4-6.5 Willful negligence

(a) Willful negligence is defined as follows:

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.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 341) adopted, which concluded that a police officer's failure to properly utilize both straps on his 120-pound backpack was ordinary negligence rather than willful negligence; however, the injury that resulted from this failure was reasonably foreseeable and not caused by a traumatic event, and thus the officer was ineligible for accidental disability retirement benefits. In re *Doran*, OAL Dkt. No. TYP 11562-07, 2008 N.J. AGEN LEXIS 692, Final Decision (May 13, 2008).

17:4-6.6 (Reserved)

Recodified to N.J.A.C. 17:4-4.8 by R.2004 d.410, effective November 1, 2004.

See: 36 N.J.R. 622(a), 36 N.J.R. 4953(a).

Section was "Retirement credit".

17:4-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by the member's 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 in service at the time of filing the application for a disability retirement allowance. A "member in service" means that the member or the employer was making pension contributions to the retirement system at the time of filing the application for a disability retirement allowance. It may also mean that the member was on an approved leave of absence, paid or unpaid, or suspension, paid or unpaid, at the time of filing the application for a disability retirement allowance, and it has not been more than the time frames permitted by N.J.S.A. 43:16A-9(5)a for active membership since the