

Initial Decision (2008 N.J. AGEN LEXIS 782) adopted, which found that surviving spouse failed to carry his burden of establishing that he was entitled to a surviving beneficiary's retirement allowance where the deceased member signed an application for retirement allowance requesting the maximum allowance possible during her lifetime and leaving nothing to her designated beneficiaries. The application set forth that the member should read the attached instructions carefully before completing the application and there was a narrative accompanying the instructions describing the payment options and specifically advising that selection of the maximum allowance would not provide any pension benefits to a beneficiary. In re Catoggio, OAL Dkt. No. TYP 12291-2006S, 2008 N.J. AGEN LEXIS 1475, Final Decision (August 21, 2008), aff'd per curiam, No. A-0643-08T3, 2009 N.J. Super. Unpub. LEXIS 2728 (App.Div. November 2, 2009).

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 (2009 N.J. AGEN LEXIS 145) adopted, which found that petitioner's application for accidental disability benefits was properly denied because, although she was permanently and totally disabled, a question remained as to whether her disability was the direct result of a traumatic event and petitioner did not present any expert testimony; while a party may testify as her own expert, that party must possess some requisite experience, training or education to provide an opinion in the subject area and petitioner's certification as an "addictions specialist" did not qualify her as a medical expert on the issue of direct result. In re *Davis*, OAL Dkt. No. TYP 2632-07, Final Decision (March 19, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 99) adopted, which found that a carpenter was not entitled to accidental disability retirement benefits because, although he was permanently disabled because of emotional and psychological problems, the disability did not result from direct personal experience of a terrifying or horror-inducing event that involved actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of petitioner or another person; instead, petitioner suffered a series of stressful incidents at work that were not objectively capable of causing a reasonable person in similar circumstances to suffer disabling mental injury. In re *Mancini*, OAL Dkt. No. TYP 6126-08S, 2009 N.J. AGEN LEXIS 866, Final Decision (February 19, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1039) adopted, which found that a sanitation driver established by a preponderance of the credible evidence that he was entitled to receive ordinary disability retirement benefits based on his physician's testimony that the worker was permanently and totally disabled from performing his duties as a sanitation driver. The testimony of respondent's expert was not as credible in light of the fact that his examination of the worker lasted approximately five to ten minutes, he failed to review the MRI reports, did not perform a physical examination and did not know what the worker's job entailed. In re *Carrico*, OAL Dkt. No. TYP 11674-07N, 2009 N.J. AGEN LEXIS 549, Final Decision (January 22, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1270) adopted, which found that a custodian established by a preponderance of the credible evidence that she was permanently and totally disabled from the performance of her duties and was, therefore, entitled to an ordinary disability pension because almost all of her duties were labor intensive and involved bending (mopping, washing floors, cleaning, scrubbing and disinfecting toilets, etc.), reaching, including changing light bulbs, dusting ceilings, cleaning chalkboards, washing windows, painting, and lifting (snow removal). While someone in a sedentary position may have been able to continue working despite back pain, it was unlikely that a custodian would be able to do the jobs required while experiencing the level of pain caused by spinal disc disease. In re *Sowinski*, OAL Dkt. No. TYP 03312-05 (On Remand), 2008 N.J. AGEN LEXIS 1122, Final Decision (November 13, 2008).

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 632) adopted, which denied the application of a public employee, who served as a senior clerk typist, for ordinary disability retirement benefits under this section, after the Board of Trustees of the PERS found that the employee was not totally and permanently disabled due to a rare eye disease and polycondritis. The employee's testimony was in clear contradiction of the testimony of her doctor who clearly testified that the employee's flare-ups had become fewer over the two-year period since her retirement, and furthermore had achieved a level of self-management of the disease. Thus, the employee failed to sustain the burden of proving that she was physically incapacitated for the performance of duty and should be retired as disabled. In re *Davis*, OAL Dkt. No. TYPPE 03310-2005N, 2007 N.J. AGEN LEXIS 939, Final Decision (October 18, 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 Employees' 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 Employees' 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.

creditable salaries" and inserted "shall be used" following "group of employees"; in (d), substituted "(a)" for "(a)1".

Case Notes

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

17:2-6.26 Medical examination; physician

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

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

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

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

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

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

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

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

Rewrote the section.

Administrative correction.

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

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

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

Rewrote the section.

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

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

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

(c) If a member's duties require or authorize the member to travel between the member's place of residence and a location other than an office or workplace of the employer to which the member is regularly assigned or near to the regularly assigned office or workplace to perform the duties of the employment, the member is in performance of duty

when the member completely leaves the property of the member's residence and begins to travel to the other location, or until the member begins entry to the property of residence after travel from the other location, and all expenses of the travel are paid for by the employer. A member's duties are considered to authorize or require travel from the place of residence to a location other than a regularly assigned office or workplace of the employer in the following situations:

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

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

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

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

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

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

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

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

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

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

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 599) adopted, finding that a public employee established, by a preponderance of the credible evidence, that he was eligible for an accidental disability allowance because the employee suffered a traumatic event, pursuant to this section, when he was injured by a streetcar while traveling to and from a work-related function. When the accident occurred, the employee was in the process of meeting a colleague to select courses to be given at a seminar as well as discussing a murder case he had been assigned. This was to be done prior to dinner which was planned at a different location. The meeting was directly related to a work-related conference and was not considered a social or recreational activity. In re Groninger, OAL DKT No. TYPPE 11098-2006N, 2007 N.J. AGEN LEXIS 947, Final Decision (October 18, 2007).

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

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

SUBCHAPTER 7. TRANSFERS**17:2-7.1 Honorable services; interfund transfers; State-administered retirement systems**

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

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

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

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

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

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

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

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

i. The member has withdrawn the former membership;

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

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

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

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

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

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

2. If the reserves accumulated or provided for in the former system are more than those required in the new