

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Repealed by R.2000 d.26, effective January 18, 2000.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

(a) For purposes of enrollment, the age assigned to the applicant is based on the applicant's age on the date of enrollment. However, if the applicant is six months or more past their birthday, the assigned age for enrollment will be their age on their next birthday.

(b) For purposes of purchasing additional service credit, the age used to determine the applicable actuarial factor is based on the applicant's age on the date the purchase request is received by the Division. However, if on that date the applicant is six months or more past their birthday, the purchase actuarial factor will be based upon their age on their next birthday.

(c) For purposes of calculating a retirement option selection, the age used to determine the applicable actuarial reduction factor is based upon the member and designated beneficiary(s) ages at the effective date of retirement. If on that date, either the member or the designated beneficiary(s) age is six months or more past their birthday, the age used for the option selection will be based upon their age on their next birthday.

(d) For purposes of calculating an Option 1 reserve balance upon the death of a retired member, when the beneficiary(s) elects an annuity certain (specified number of years) or a life annuity, the applicable factor is based upon the beneficiary(s) age at the time of the member's death. If the beneficiary(s) age is six months or more past their birthday, the factor is based upon their age on their next birthday.

(e) For purposes of calculating the group life insurance benefits upon the death of an active employee when the beneficiary(s) elects an annuity certain (specified number of years) or a life annuity, the applicable factor is based upon the beneficiary's(s) age at the time of the member's death. The factor is based solely on the beneficiary(s) age at the time of the member's death; not rounded up to the next birthday.

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).

Repeal and New Rule, R.2010 d.149, effective July 19, 2010.

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

Section was "Nearest attained age; enrollment; retirement."

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. TYPPEF 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 1A. DEFINITIONS**17:2-1A.1 Definitions**

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

“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.

“Board” means the Board of Trustees of the Public Employees’ Retirement System, vested with the general responsibility for the proper operation of the System pursuant to N.J.S.A. 43:15A-17.

“Division” means the Division of Pensions and Benefits, Department of the Treasury, in the State of New Jersey.

“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 work day or work year.

“System” or “PERS” means the Public Employees’ Retirement System created pursuant to N.J.S.A. 43:15A-1 et seq.

“TPAF” means the Teachers’ Pension and Annuity Fund, created pursuant to N.J.S.A. 18A:66-56.

“Work year” means either a 10-month contracted employee who works from September through June of each year and is compensated for each month or a 12-month contracted employee who works throughout the year and is compensated for each month.

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).

Public Notice: Notice of the Minimum Annual Base Salary for Participation in the Public Employees’ Retirement System.

See: 42 N.J.R. 3001(b).

Public Notice: Notice of the Minimum Annual Base Salary for Participation in the Public Employees’ Retirement System.

See: 43 N.J.R. 3052(a).

17:2-2.2 Multiple employment

(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) Prior to July 1, 2007, an elected official must also enroll on the basis of such office, if the elected official was enrolled 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 that required the elected official to establish membership in the retirement system. If the individual had 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).

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

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

Section was "Multiple employment's". In (b), substituted "Prior to July 1, 2007, an" for "An", substituted the first occurrence of "was" for the first occurrence of "is"; substituted "that" for "which" and substituted "had" for "has", deleted "or is enrolling" following "enrolled", and inserted a comma following "office".

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 in 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(d). 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;

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;

12. Any official who commences service in a State or local elective public office on or after July 1, 2007, except for those who established membership in the PERS prior to July 1, 2007 based on service while continuously serving in the same elected office;

13. Any official who is directly appointed by the Governor as of July 1, 2007, to serve at the Governor's pleasure during his or her term of office; also, an official whose gubernatorial appointment requires the advice and consent of the Senate, or who is appointed in a substantially similar fashion by a local entity (county, municipality, etc.). A member who enrolled in the PERS prior to July 1, 2007, and whose membership has not expired pursuant to the provisions of N.J.S.A. 43:15A-7(e) or 8(a), shall continue as a PERS member while serving in that appointed position;

14. Any employee working under a Professional Services Contract as of January 1, 2008, as defined by N.J.S.A. 40A:11-5, 18A:18A-5, 18A:64A-25.5 and 43:15A-7.2; and

15. Any independent contractor as set forth in regulation or policy of the Federal Internal Revenue Service.

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.

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

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

In the introductory paragraph of (a), substituted "System" for "system"; in (a)5, inserted the first occurrence of "in", updated the N.J.A.C. reference and substituted the first semicolon for a comma; in (a)10, deleted "and" from the end; in (a)11, deleted a comma following "reenrollment" and substituted a semicolon for a period at the end; and added (a)12 through (a)15.

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

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.

(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).

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

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

In (a), deleted "of Pensions and Benefits" following "Division".

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 request 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 beneficiary 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. Forms of compensation that have been identified as extra compensation include, but are not limited to:

1. Overtime;
2. Pay for extra work, duty or service beyond the normal workday, work year (for 10 month employees) or normal duty assignment;
3. Bonuses;
4. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;
5. Any compensation which the employee or employer has the option of including in base salary;
6. 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 base salary or to salary in a new contract that correlates with compensation on an excluded item in an old contract (for example, clothing allowance);
7. Individual retroactive salary adjustments where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
8. 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;
9. Compensation in the absence of services;
10. Increments or adjustments in recognition of the member's forthcoming retirement;

11. 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;

12. 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

13. 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 shall investigate increases in compensation reported for credit that 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. The Division may also consider the averages of the regular increases in the employees' compensation preceding the periods in which the extra compensation was received or the average increases granted to employees in different bargaining units of the same employer. In those cases where a justification of an increase in salary is not substantiated, the Division may adjust the compensation accordingly.

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

1. 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. 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. Refer any suspected submission of false information in violation of N.J.S.A. 43:15A-55, this chapter 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 Division 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 Division 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 refunded because of a determination by the Division that a denial of credit for increases in compensation is warranted under this section.

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".

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

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

Rewrote (a) and (d); in the introductory paragraph of (e), substituted "Division may" for "Board"; in (e)1 and (e)2, substituted "Require" for "May require"; in (e)1, deleted a comma following "retirement" and substituted a semicolon for period at the end; in (e)3, substituted "Refer" for "May refer" and "this chapter" for "these rules"; in (f), the introductory paragraph of (g) and in (h), substituted "Division" for "Board"; and in (h), substituted "section" for "rule".

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 refers 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 "extra-curricular" 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 PERS 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 PERS 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).

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

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

In (d), substituted "12-month" for "12 month" twice and "PERS" for "Public Employees' Retirement System" twice.

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 (Reserved)

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).

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

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

Section was "Service and salary credit: awards of back pay".

17:2-4.6 Minimum adjustment

In order to facilitate the reconciliation of a member's account upon death, no refunds or additional contributions shall

may be 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 canceled 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 retirement application. If it is not received, the retirement will be canceled 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.

(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.

(g) A member who previously retired pursuant to (a) through (d) above and is reenrolled pursuant to (f) above must file a new retirement application in order to initiate payment of the retirement allowance. Except in the case of disability retirement, 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.

(h) 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.

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

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

Rewrote (a), (b) and the introductory paragraph of (e); in (e)1 and (e)2, inserted the second and third sentences; in (e)1, substituted a period for "and" at the end of the first sentence; added (e)3 and (e)4; in (f), inserted a comma following "43:15A-44", "retirements" and "43:15A-57.2", and deleted the second through fifth sentences; added new (g); and recodified former (g) as (h).

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 benefit 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) 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, or

62nd birthday for those members enrolled on or after November 2, 2008. Should the member's birthday fall on the first of the month, the member may elect the retirement to commence on that date, provided that an application is received by the Division in accordance with N.J.A.C. 17:2-6.1.

(d) 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. 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.

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.

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

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

In (b), substituted "If" for "Except in the event of deferred retirement, if"; in (c), inserted " , or 62nd birthday for those members enrolled on or after November 2, 2008", deleted the second sentence, and inserted the last sentence; deleted former (d); recodified (e) as (d); and in (d), inserted the last sentence.

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).

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).

Employee, a human services specialist, was entitled to ordinary disability retirement benefits under N.J.A.C. 17:2-6.7, after the removal of a brain tumor. Both medical experts agreed that she could not perform her job. Whether utilizing the results of one physician's neuropsychiatric evaluation or the other physician's neurological examination, their observations were generally similar; the employee exhibited issues in the areas of attention, calculation, emotional control, and headaches. *Zayas v. Pub. Emp. Ret. Sys.*, OAL Dkt. NO. TYP 11472-11, 2013 N.J. AGEN LEXIS 21, Initial Decision (January 3, 2013).

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 Employees' 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

Employee was not entitled to accidental disability retirement benefits arising from a motor vehicle accident because her travel did not qualify as work-related travel under N.J.A.C. 17:2-6.27. Although she claimed that she could have simply traveled directly home from the work-related event, she apparently elected not to do so and, instead, went to her office to retrieve materials for her next event, along with her e-mails and voicemail messages. Apart from the fact that the record was bereft of evidence that the University of Medicine and Dentistry of New Jersey was paying for all expenses of the travel, the employee's travel was not from her field work at a location other than her office, but rather from her office to her home, and this travel was excluded by the express language of the regulation. *Shapiro v. Bd. of Trustees of the Public Employees' Retirement System*, OAL Dkt. No. TYP 09224-08, 2013 N.J. AGEN LEXIS 52, Initial Decision (March 13, 2013).

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. TYPE 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 system, the excess reserve will be transferred.