

Obligation to exclude salary adjustments from compensation is not limited to salary increases granted in the year immediately preceding retirement. *DiMaria v. Board of Trustees of Public Employees' Retirement System*, 225 N.J.Super. 341, 542 A.2d 498 (A.D.1988) certification denied 113 N.J. 638, 552 A.2d 164.

ALJ was not precluded from considering whether increase in member's salary more than one year preceding retirement was granted primarily in anticipation of retirement. *DiMaria v. Board of Trustees of Public Employees' Retirement System*, 225 N.J.Super. 341, 542 A.2d 498 (A.D.1988) certification denied 113 N.J. 638, 552 A.2d 164.

Increase in salary from \$18,000 to \$55,000 was granted primarily in anticipation of retirement. *DiMaria v. Board of Trustees of Public Employees' Retirement System*, 225 N.J.Super. 341, 542 A.2d 498 (A.D.1988) certification denied 113 N.J. 638, 552 A.2d 164.

Teacher's lump sum death benefit based on final year of creditable service, not highest paid year. *Bush v. Teachers' Pension and Annuity Fund*. 92 N.J.A.R.2d (TYP) 157.

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

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.

#### **17:1-4.19 Biweekly salary computation; retirement and death benefits (final compensation or last year's salary)**

(a) In computing the salary upon which pension contributions were based during a member's last year of service, in the case of a 12-month State employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made within the prescribed period.

(b) In computing final compensation upon which pension contributions were based, in the case of a 12-month State employee reported on a biweekly basis, a total of 78 biweekly pays will be used, including any retroactive salary payments made within the prescribed period.

(c) In order to compute (a) and (b) above for biweekly State employees who are paid by centralized payroll, the actuary will supply factors to convert biweekly salaries to compensate for State biweekly payroll schedules. Application of the factors to the salaries reported for pension purposes will develop the wage base for the calculation of benefits.

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

(e) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years in such one or three-year period, the final average compensation or last year's salary period to death or retirement shall be determined on a proportional basis.

(f) The biweekly pay periods for which no contributions were made shall be counted as zero.

R.1974 d.62, effective March 12, 1974.

See: 6 N.J.R. 84(a), 6 N.J.R. 158(b).

As amended, R.1978 d.96, effective March 14, 1978.

See: 10 N.J.R. 37(b), 10 N.J.R. 175(b).

#### **17:1-4.20 Disability applications; priorities**

(a) When disability cases are returned from the Medical Review Board to the Disability Review Section, the Disability Review Section will prepare sufficient copies and forward to the secretaries of the respective retirement systems those cases that are ready for presentation to the board or commission, as the Medical Review Board has made a specific recommendation that can be acted upon by the board or commission.

(b) The priority in forwarding the cases to the secretaries of the respective retirement systems shall be in the order of the boards regular meeting schedule.

(c) If the Medical Review Board has not given a specific medical recommendation upon which the board or commission may act, the case will not be forwarded to the secretary of the retirement system, but the Disability Review Section will proceed in accordance with the advice of the Medical Review Board to obtain additional information needed by the board to render a medical recommendation.

#### **17:1-4.21 Disability retirants; reexaminations**

A person receiving a disability retirement allowance and who has not attained the normal retirement age, will not be subject to the periodic medical reexamination, if he reaches the normal retirement age in the year in which the examination is to be performed, provided he has had at least one reexamination.

As amended, R.1980 d.63, effective February 5, 1980.

See: 12 N.J.R. 52(d), 12 N.J.R. 163(a).

#### **17:1-4.22 Disability retirants; availability of medical records**

The division will release a copy of the examining physician's medical report to the member, his attorney or any person authorized by the member in writing to receive a copy of such report. In no event will the report be released to any individual not authorized in writing to receive the report.

As amended, R.1981 d.86, effective March 6, 1981.

See: 13 N.J.R. 110(a), 13 N.J.R. 247(d).

Old text concerning medical records and availability deleted, new text concerning disability retirants substituted therefor.

#### **17:1-4.23 Survivor certifications**

Widows, widowers, parents and guardians of minor children receiving pension checks may be contacted annually by

letter or certificate of eligibility to determine eligibility for the continuation of monthly benefits.

As amended, R.1971 d.16, effective February 1, 1971.

See: 3 N.J.R. 11(b), 3 N.J.R. 52(a).

As amended, R.1979 d.169, effective May 1, 1979.

See: 11 N.J.R. 209(b), 11 N.J.R. 304(d).

#### 17:1-4.24 Due date; retired health benefits coverage

(a) An employee, upon retirement, or an eligible survivor of such employee, will be notified by certified mail of his right to continue coverage in the State Health Benefits Program.

(b) The retired employee or eligible survivor must, within a 15-day period following the receipt of the letter offering retired coverage, submit the appropriate application and premiums for such coverage.

#### 17:1-4.25 Indictments, litigation or appeals

(a) When a member is indicted and has been accused of a crime involving moral turpitude, the matter shall be referred to the Attorney General's office to determine the status of any claim which may be filed by the member.

(b) No credit shall be granted for the period during which the member's salary has been terminated while under indictment or suspension, until the outcome of the proceedings determines the basis for the award of such credit, if any.

(c) All claims for retirement, death benefits and the return of contributions cannot be processed until the matter has been completely resolved and this has been verified by contact with the Attorney General's office, the Department of Education, the Civil Service Commission or other responsible agencies.

(d) Likewise in cases where anything pertaining to a member's employment is in litigation, or under appeal, the matter should be referred to the Attorney General's office to determine if claims can be processed or whether the processing of such claims are to be postponed pending a final resolution of the litigation or appeal.

As amended, R.1982 d.491, effective January 17, 1983.

See: 14 N.J.R. 1290(a), 15 N.J.R. 95(b).

Spelling correction and "agents" changed to "agencies".

#### Case Notes

Conviction on plea of guilty to job-related criminal charges required total forfeiture of retirement benefits. *Gallerano v. Retirement System*, 93 N.J.A.R.2d (TYP) 299.

Three years of bribe taking warrants forfeiture of 28 years of service credit. *Sudia v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 118.

Conviction of receiving bribes and of income tax evasion warrants forfeiture of pension benefits accumulated during such employment; however, employee could withdraw contributions plus interest. *Tomaso v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 48.

Extortion conviction warranted denial of 12 years and 8 months of retirement service credit. *Fisher v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 114.

School psychologist's service not honorable after his criminal sexual contact conviction, and therefore not creditable for calculating pension benefits. *LePrince v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 59, affirmed and remanded 267 N.J.Super. 270, 631 A.2d 545, certification denied 134 N.J. 482, 634 A.2d 528, certiorari denied 114 S.Ct. 1072, 510 U.S. 1119, 127 L.Ed.2d 390.

#### 17:1-4.26 Medical examinations; out-of-State

(a) The retirement system may arrange medical examinations for members who live out-of-State with physicians located in the vicinity of the member's place of residence.

(b) In the event the Board or Commission contemplates the denial of a disability claim based on an out-of-State physician's medical report, the employee will be required to be examined by a New Jersey physician who is a member of the Board of Medical Examiners for the Division of Pensions.

(c) The New Jersey medical examiner's report and all related data will be reviewed by the Board or Commission to determine whether the member's application for disability benefits will be approved.

R.1974 d.62, effective March 12, 1974.

See: 6 N.J.R. 84(a), 6 N.J.R. 158(b).

#### 17:1-4.27 Final compensation; salaries to be used for a period of purchased service

(a) If a period of purchased New Jersey service may be included in the period for the calculation of final compensation, actual base salaries paid during such period will be certified and used in the computation.

(b) The period of a purchased leave of absence will not be included in the calculation of final compensation.

R.1974 d.62, effective March 12, 1974.

See: 6 N.J.R. 84(a), 6 N.J.R. 158(b).

#### 17:1-4.28 Post-retirement employment; employer certification

(a) Employers shall certify on the certification of service and final salary form that the retiring employee has terminated all service.

(b) Also, within the three-month period following the employee's effective date of retirement, a certification will be sent to the employer, with a copy to the employee, in order for him to affirm that the employee has indeed terminated as of the effective retirement date and that no services are being rendered by the retirant as an employee in any other capacity.

R.1975 d.235, effective August 1, 1975.

See: 7 N.J.R. 346(b), 7 N.J.R. 446(a).