

SUBCHAPTER 4. MEMBERSHIP

17:3-4.1 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 Fund shall be limited to base salary, and shall not include extra compensation.

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

- i. Overtime;
- ii. Pay for extra work, duty or service beyond the normal work day, work year for the position, or normal duty assignment;
- iii. Bonuses;
- iv. Lump-sum payments for longevity, holiday pay, vacation, compensatory time, accumulated sick leave, or any other purpose;
- v. Any compensation which the employee or employer has the option of including in base salary;
- vi. Sell-backs, trade-ins, waivers, or voluntary returns of accumulated sick leave, holiday pay, vacation, overtime, compensatory time, or any other payment or benefit in return for an increase in base salary;
- vii. Individual retroactive salary adjustments where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
- viii. Individual adjustments to place a member at the maximum of his or her salary range in the final years of service where no sufficient justification is provided that the adjustment was granted primarily for a reason other than retirement;
- ix. Increments or adjustments in recognition of the member's forthcoming retirement;
- x. Any form of compensation which is not included in the base salary of all employees in the same position or covered by the same collective bargaining agreement or employment;
- xi. 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;
- xii. 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;
- xiii. Compensation paid for coaching sports;
- xiv. Compensation paid for teaching summer school;

xv. Compensation paid for performing clerical or other duties;

xvi. Compensation in the absence of services;

xvii. Compensation paid for working during vacation periods;

xviii. Compensation paid for serving as a bedside instructor or for leading extracurricular activities; and

xix. Compensation paid for additional services performed during a normal duty assignment, which are not included in base salary.

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

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

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

(e) In connection with an investigation of an increase in compensation, the Board 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 TPAF;
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. 18A:66-64, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

(f) Failure to satisfactorily respond to a request by the Board for documents or information related to an increase in

compensation may result in the denial of credit for the increase in compensation.

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

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

(h) A member shall receive service credit for that base salary received during the period of suspension in which the member is awaiting a determination by the Commissioner of Education as provided under N.J.S.A. 18A:6-14.

(i) To be creditable compensation for teaching a period during the regular contracted day, the compensation shall be offered to all eligible and certified employees in the same position or covered by the same collective bargaining agreement, reported in regular, periodic installments in accordance with the payroll cycle of the employer and not offered to employees in anticipation of retirement.

(j) A stipend may be considered credible compensation and subject to pension deductions for retirement credit if it:

1. Is included as part of the petitioner's regular payroll check; and
2. Represents duties not addressed in base compensation that are integral to the effective functioning of the school curriculum.

Amended by R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

Amended by R.1981 d.30, effective January 27, 1981.

See: 12 N.J.R. 675(d), 13 N.J.R. 162(a).

(f) added.

Repeal and New Rule, R.2001 d.412, effective November 19, 2001.

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

Section was "Creditable salary".

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Rewrote (a); in (d), deleted "of Pensions and Benefits" following "Division" and inserted a comma following "credit"; in (e)1, substituted "TPAF" for "Teachers' Pension and Annuity Fund"; rewrote (i); and added (j).

Law Review and Journal Commentaries

Pensions—Teachers. Steven P. Bann, 133 N.J.L.J. No. 11, 54 (1993).

Case Notes

That home instructors are not part of the regular teaching staff for purposes of attaining tenure under N.J.S.A. 18A:28-5 can be inferred from former N.J.A.C. 17:3-4.1(a)2xix (now N.J.A.C. 17:3-4.1(a)1xviii), which excludes home instructor income from earnings which are eligible for pension credit. *Donvito v. Board of Educ. of Northern Valley Reg'l High Sch. Dist.*, 387 N.J. Super. 216, 903 A.2d 508, 2006 N.J. Super. LEXIS 232 (App.Div. 2006), cert. denied, 188 N.J. 577, 911 A.2d 69, 2006 N.J. LEXIS 1740 (2006).

High school teachers acting as department chairpersons were not temporary employees so compensation received was creditable. *Siri v. Board of Trustees of Teachers' Pension and Annuity Fund*, 262 N.J. Super. 147, 620 A.2d 440 (A.D.1993).

Additional half-day of work performed by high school psychologist was not temporary so the extra salary was creditable for pension purposes. *Siri v. Board of Trustees of Teachers' Pension and Annuity Fund*, 262 N.J. Super. 147, 620 A.2d 440 (A.D.1993).

Initial Decision (2008 N.J. AGEN LEXIS 871) adopted, which concluded that board's determination to exclude for pension purposes monies paid for disability insurance, health benefits, and annuity contributions, and for payments identified by the school district as "un-identified" and "over/under ROC" was correct, and these amounts were not properly included within the calculation of the final average salary of member retired from his last employment as assistant superintendent for curriculum and instruction with regional high school district. In re *Klemens*, OAL Dkt. No. TYP 08955-07, 2008 N.J. AGEN LEXIS 1124, Final Decision (October 31, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 871) adopted, which concluded that the inclusion as "extra compensation" of a form of payment which, at the sole option of the employee, may or may not be used to buy health benefits, makes eminent sense. If the money were used by the board to buy the health benefits package for the employee, it would surely be seen that the health package was a benefit and not part of either "contractual" or "base" salary" but, if instead, that same money were paid to the employee at his option, the money simply would replace the benefit. It would therefore be "extra compensation," added to the "base" at the choice of the employee, but not part of what he absolutely would receive under any circumstance as "contractual" salary under his agreement with the board. In re *Klemens*, OAL Dkt. No. TYP 08955-07, 2008 N.J. AGEN LEXIS 1124, Final Decision (October 31, 2008).

Merit increase not a bonus for pension calculation purposes. *Farrah v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 69.

Petition for pension credit for payment received for services rendered as high school department chairman denied based upon finding that payment did not take the form of salary and was classified as extra compensation in petitioner's employment contract (also citing former N.J.A.C. 17:3-29). *Bishop v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 4 N.J.A.R. 179 (1980).

17:3-4.2 Leave with pay

(a) If a member is granted a leave of absence during the course of a school year 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 receive credit and will be required to make contributions only if the member is receiving 50 percent or more of the regular base or contractual salary.

Amended by R.1974 d.24, effective January 31, 1974.

See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Inserted paragraph identifiers; in (a), substituted "on the basis of such salary" for "for such leave" and added "from the date of the leave" following "six months"; in (b), neutralized gender references.

17:3-4.3 School year members; 10 and 12 months

(a) Members whose salaries for a school year are considered as a full year's compensation shall be given service credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's salary credit shall be given during any consecutive 12 months.

(b) Members whose contracts require them to work 10 months of the year and who are employed and are compensated for employment for the full normal school year by the board of education are entitled to receive 12 months of service credit. Members will not receive service credit for months during the normal school year when they are not actively employed and did not receive salary.

(c) A 12-month member is presumed to work each month of the fiscal year. Members shall not receive service credit for a month that a member does not work and is not on an approved paid leave of absence.

amount, three-quarters, one-half or one-quarter of the reduced allowance. If the beneficiary dies before the retiree, the retiree's allowance will increase to the maximum amount. These additional payment options shall be known as Options A, B, C, and D as defined below. The options, as established by N.J.S.A. 43:15A-50, include the following:

1. Maximum Option provides the largest allowance for the member but does not include a pension benefit paid to a beneficiary upon the member's death. 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 regular interest on those contributions, the balance of contributions and regular interest shall be paid in a lump sum to the member's designated beneficiary or estate.

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

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

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

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

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

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

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

9. Option D provides, upon the member's death, a lifetime monthly retirement allowance equal to 25 percent of the member's monthly retirement allowance to a beneficiary. If the member's beneficiary predeceases the member, the member's retirement allowance shall increase to the Maximum Option.

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

(e) In addition to the requirements in (a) through (d) above:

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

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

(f) Retired members, who return to public employment, shall have their previous retirement allowances cancelled and be reenrolled in the Fund pursuant to N.J.S.A. 18A:66-40 for those who retired on disability retirements or N.J.S.A. 18A:66-53.2 for those who retired on early, service, veteran or deferred retirements. A member who ceases covered employment and retires again must file a new retirement application with the Division in accordance with (a) through (e) above in order to initiate payment of the retirement allowance. The previous retirement allowance shall then be reinstated, and the new retirement allowance, based upon the member's subsequent covered employment, shall commence. The previous and subsequent retirement allowances shall then be combined and paid in one monthly benefit check. The retirement allowance shall become effective on the first of the month following receipt of the application unless a future date is requested.

(g) 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.

(h) If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit, the applicant will be required to submit a separate application for retirement. If the applicant submits the sep-

arate application for retirement within 30 days of the Board's decision, the applicant may retain the retirement date designated on the disability retirement application.

Amended by R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

Amended by R.1987 d.10, effective January 5, 1987.

See: 18 N.J.R. 1519(b), 19 N.J.R. 140(b).

Substantially amended.

Amended by R.2001 d.147, effective May 7, 2001.

See: 33 N.J.R. 637(a), 33 N.J.R. 1398(b).

Rewrote the section.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (a), deleted "of Pensions and Benefits (Division)" following "Division"; in the introductory paragraph of (c), substituted "c. 120" for "c.120"; in (c)1, inserted the last sentence; rewrote (e); and added (g) and (h).

Case Notes

Petition for acceptance of retirement application, filed more than 30 days after retirement date, denied; after notification by Board that disability retirement application was denied and advising petitioner to file for service retirement, which she did not do for three months, petitioner held not entitled to retroactively effectuate retirement application to her actual retirement date (citing former rule). *Sobel v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 139 N.J.Super. 55, 352 A.2d 585 (App.Div.1976).

Estoppel did not entitle teacher to retroactive retirement date. *Berk v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 348.

Board of Trustees not equitably estopped from correcting erroneous retirement allowance; detrimental reliance not established. *Sgombick v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 107.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.2 Effective date

(a) A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

Recodified from N.J.A.C. 17:3-6.3 and amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Deleted (b); recodified former (c) as (b) and neutralized gender references. Former N.J.A.C. 17:3-6.2, Effective date; changes, recodified to N.J.A.C. 17:3-6.3.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Section was "Effective date; death prior thereto". Deleted (b).

Case Notes

31-day period for conversion of individual life policy began to run after receipt of approval rather than date of approval of retirement. *McKenna v. Prudential Ins. Co. of America*, 224 N.J.Super. 172, 539 A.2d 1266 (A.D.1988).

For purpose of statute, notice of termination of employment and notice of existence of right to convert to individual life policy were not synonymous. *McKenna v. Prudential Ins. Co. of America*, 224 N.J.Super. 172, 539 A.2d 1266 (A.D.1988).

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.3 Effective date; changes

(a) Except as provided by N.J.A.C. 17:3-6.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

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

(c) A deferred retirement shall become effective on the first of the month following the member's 60th birthday. Should the member's 60th 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. 17:3-6.1.

(d) In the case of deferred retirement, if an applicant desires to amend the retirement application, the amended application must be filed with the Division a minimum of one month prior to the effective date of retirement.

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

As amended, R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

As amended, R.1974 d.24, effective January 31, 1974.

See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).

As amended, R.1975 d.140, effective May 27, 1975.

See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).

As amended, R.1983 d.78, effective March 21, 1983.

See: 14 N.J.R. 1202(b), 15 N.J.R. 449(b).

Subsection (f), added.

Recodified from N.J.A.C. 17:3-6.2 and amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section. Former N.J.A.C. 17:3-6.3, Effective date; , death prior thereto, recodified to N.J.A.C. 17:3-6.2.

Amended by R.2005 d.394, effective November 21, 2005.

See: 37 N.J.R. 1928(a), 37 N.J.R. 4460(a).

In (a), substituted "Except as provided by N.J.A.C. 17:3-6.7, a" for "A"; rewrote (e).

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (c), rewrote the last sentence; and in (e), inserted the last sentence.

Case Notes

Denial of retiree's request to convert ordinary plan to early service retirement was not arbitrary or capricious. *Steinmann v. State, Dept. of Treasury, Div. of Pensions, Teachers' Pension and Annuity Fund*, 235 N.J.Super. 356, 562 A.2d 799 (A.D.1988) reversed 116 N.J. 564, 562 A.2d 791.

Initial Decision (2008 N.J. AGEN LEXIS 1007) adopted, which concluded that good cause did not exist to change retiree's retirement classification from Ordinary Disability to Early Retirement retroactive to her retirement date since request for change was made beyond the 30-day grace period. Although retiree claimed that good cause existed because the board failed to provide her with sufficient information to enable her to make an informed decision regarding what type of retirement benefits she should apply for, and that the board should have informed her that, by choosing ordinary disability benefits, the Division of Workers' Compensation might decide to reduce the amount of her worker's compensation award, the board was not required to inform petitioner of the possibility that a separate governmental division, independent of the Division of Pensions and Benefits, could, at some point in the future, decide to reduce the amount of money that it awarded her. In re *Ferroni*, OAL Dkt. No. TYP 2288-08, 2009 N.J. AGEN LEXIS 58, Final Decision (January 9, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1007) adopted, which concluded that retiree failed to act with due diligence in contacting board to change her retirement classification from Ordinary Disability to Early Retirement retroactive to her retirement date after retiree became aware of the potential offset of her worker's compensation benefits by her ordinary disability benefits; retiree did not file her request to change her pension designation until approximately four years after she was put on notice about the potential offset. In re *Ferroni*, OAL Dkt. No. TYP 2288-08, 2009 N.J. AGEN LEXIS 58, Final Decision (January 9, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1007) adopted, which concluded that good cause did not exist to change retiree's retirement classification from Ordinary Disability to Early Retirement retroactive to her retirement date since request for change was made beyond the 30-day grace period despite retiree's claim that she was suffering from severe depression and sleep apnea which were both a result of the injury she sustained while employed and which had an adverse effect on her mental state and precluded her from making a conscious decision to choose more favorable pension benefits. In fact, however, other than stating that she was feeling stressed about filling out her pension application and that she was receiving conflicting information from different sources, her records indicated that despite her depression her insight and judgment were intact and that her thought process was normal rate, as well as logical and goal directed. In re *Ferroni*, OAL Dkt. No. TYP 2288-08, 2009 N.J. AGEN LEXIS 58, Final Decision (January 9, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 834) adopted, which concluded that the medical situation justifying tolling must be severe, even if not ultimately fatal. Generally, the fact that a member-retiree has elective surgery, or has a routine illness, or even is hospitalized for some non-life threatening condition, should not result in tolling the 30-day window for making changes to the retirement application. However, as "incapacity" is the necessary element for tolling, each case must be considered on its own facts, even in the context of less than life-threatening circumstances. In re *Dent*, OAL Dkt. No. TYP 00029-08, 2008 N.J. AGEN LEXIS 1118, Final Decision (October 31, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 834) adopted, which concluded that the experience of a retiree with a stated retirement date of July 1, 2007, from the onset of numbness and slurred speech, through

hospitalization and diagnosis, transfer by ambulance to a hospital, surgery, and after care until his release from his doctor's care, was such that it could be readily understood that from at least July 15, 2007, through July 27, 2007, he had things on his mind that could well have precluded him from concentrating on his pension benefits and the need to effectuate any change in his choice of options before the end of the 30-day period on July 31. From July 15 until July 27, 2007, a period of 13 days, retiree was "incapacitated," and the 30-day time period was properly tolled, and a change in the option from Option A to Option C on August 3, only three days after the end of the 30 days, was timely. In re *Dent*, OAL Dkt. No. TYP 00029-08, 2008 N.J. AGEN LEXIS 1118, Final Decision (October 31, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 834) adopted, which concluded that giving a member one last chance to determine what will be the makeup and disposition of his pension and life insurance following retirement after the reality of actual retirement arrives, as opposed to cutting his chance off at or before that fateful day, is in accord with the liberal approach guiding the administration of pension laws. The decision as to whether to toll the time limit where incapacity occurs during that "last chance" should not be affected by the fact that the employee had the opportunity to make changes during the days, weeks, or months after filing and, where it occurs before actual retirement, board approval. In re *Dent*, OAL Dkt. No. TYP 00029-08, 2008 N.J. AGEN LEXIS 1118, Final Decision (October 31, 2008).

Retiree may change benefits after retirement and receipt of benefits if retiree is incompetent at time of application completed. *Cicione v. Teacher's Pension and Annuity Fund*, 97 N.J.A.R.2d (TYP) 84.

Tenured teacher could not obtain difference between her salary and disability pension benefits for period between when she applied for and was granted disability retirement. *Matter of Tenure Hearing of Scherr*, 95 N.J.A.R.2d (EDU) 97.

Monthly allowance selection; decedent was competent at the time he made selection. *Robertson v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 161.

No good cause or reasonable diligence existed to allow teacher to reopen early retirement designation made 12 years earlier. *Porter v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 9.

Untimely request to change effective date of retirement denied. *Jengeleski v. Board of Trustees of the Teachers' pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 5.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

17:3-6.4 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. 17:3-6.2; 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. 18A:66-35.1). 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.1982 d.14, effective February 1, 1982.

See: 13 N.J.R. 748(b), 14 N.J.R. 161(c).

Repealed and replaced (a) and (b).

Repeal and New Rule, R.1999 d.431, effective December 20, 1999.

See: 31 N.J.R. 2709(a), 31 N.J.R. 4293(b).

Section was "Outstanding loan".

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (a), amended the N.J.A.C. reference in 1, deleted 2 and recodified former 3 as 2; in (b), substituted "1" for "1" following "Option".

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In the introductory paragraph of (a), (a)2 and (b), inserted "accrued"; and in (a)2, substituted "c. 132 (N.J.S.A. 18A:66-35.1)" for "c.132".

17:3-6.5 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.

17:3-6.6 (Reserved)

Repealed by R.2004 d.244, effective July 6, 2004.

See: 36 N.J.R. 920(a), 36 N.J.R. 3267(c).

Former N.J.A.C. 17:3-6.6, Retirement credit, recodified to N.J.A.C. 17:3-4.7.

17:3-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by the member's employer, or by one acting in behalf of the member, will be retired on an ordinary disability retirement allowance if the Board finds that:

1. The applicant was considered a member at the time of filing the application for a disability retirement allowance or is covered by the provisions of N.J.A.C. 17:3-6.15;
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.

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (a), rewrote 1 and substituted "ordinary" for "ordinance" in 4; neutralized gender references throughout.

Amended by R.2005 d.394, effective November 21, 2005.

See: 37 N.J.R. 1928(a), 37 N.J.R. 4460(a).

Added (b).

Case Notes

Injuries sustained by industrial arts teacher when he attempted to break up fight between students were caused by traumatic event, entitling teacher to accidental disability retirement benefits. *Kopack v. Board of Trustees, Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 243.

Teacher injured while travelling to school at normal time was not entitled to accidental disability pension. *Loftus v. Teachers' Pension and Annuity Fund*, 95 N.J.A.R.2d (TYP) 14.

Accidental disability retirement benefits; slip and fall injury was not shown to be traumatic event. *Catarcio v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 99.

Ordinary disability retirement benefits were properly denied when employee failed to meet service requirement; out-of-state service. *Bewley v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 61.

Student's composition directed at teacher did not warrant accidental disability retirement in absence of actual threat. *Kablesch v. Board of Trustees*, 93 N.J.A.R.2d (TYP) 229.

Elementary school teacher with severe back pain entitled to ordinary disability benefits. *Dilascio v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 105.

Third grade teacher injured while restraining violent student permanently and totally disabled by traumatic event qualifying her for accidental disability retirement benefits. *McCulloch v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 66.

Physical assault of teacher constituted a traumatic event within meaning of accidental disability retirement statute. *Malawka v. Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 21.

17:3-6.8 Option selection; accidental disability denied

If an applicant for an accidental disability retirement benefit is rejected for an accidental disability benefit but is approved by the Board for retirement, in accordance with N.J.A.C. 17:3-6.7, the applicant will be permitted, within 30 days following Board approval of the retirement, to amend the option selection, which the applicant made on the original accidental disability retirement application.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Neutralized gender references throughout.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Section was "Option selection". Inserted a comma following "selection".

17:3-6.9 Employer and employee notices

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

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Deleted the paragraph identifier in (a) and neutralized gender references throughout; deleted (b).

17:3-6.10 Involuntary disability application

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

1. The member's employer has properly initiated a disability application signed by the Certifying Officer or other

designated officer of the employer, on the member's behalf;

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

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

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

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

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

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (a)1, substituted "Certifying" for "Ccertifying" and deleted "and" from the end.

17:3-6.11 Early retirement; reduction

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

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

As amended, R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

As amended, R.1974 d.24, effective January 31, 1974.

See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

Case Notes

Good cause was shown by school teacher who converted his ordinary disability retirement plan to early service retirement. *Steinmann v. State*, Dept. of Treasury, Div. of Pensions, Teachers' Pension and Annuity Fund, 116 N.J. 564, 562 A.2d 791 (1989).

17:3-6.12 Service retirement; eligibility

A member becomes eligible for "Service" retirement on the first of the month following the member's 60th birthday. At the election of a member, if the member's 60th birthday falls on the first of a month, the retirement shall become effective on that date provided the member files a timely retirement application pursuant to N.J.S.A. 18A:66-43(a) and requests that date.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

17:3-6.13 Disability retiree; annual medical examinations

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

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

As amended, R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

Amended by R.1998 d.324, effective July 6, 1998.

See: 30 N.J.R. 1027(a), 30 N.J.R. 2515(a).

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

Amended by R.2000 d.236, effective June 5, 2000.

See: 32 N.J.R. 997(a), 32 N.J.R. 2110(a).

Rewrote the section.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (a), deleted "under the normal retirement age of 60" following "retirees"; in (b), neutralized the gender references.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (a), inserted "under the normal retirement age of 60".

17:3-6.14 Disability retiree; annual report (employment, earnings, test and adjustment)

(a) Pursuant to N.J.S.A. 18A:66-40, if a disability retiree is engaged in gainful employment that does not require reenrollment in the TPAF, then the amount of the retiree's pension benefit and cost-of-living increases based on the pension benefit, but not the annuity benefit, shall be reduced to an amount, when added to the amount then earned, shall not exceed the amount of salary now attributable to the position from which the member retired.

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

2. If the retiree can prove through written verification from the former employer that the salary for the position from which the member retired is higher than that assumed under the provisions of (a)1 above, the Division shall use that salary to determine what reduction in benefits should be made.

(b) Earnings from employment in New Jersey shall be obtained through the New Jersey Department of Labor and Workforce Development. For all other earnings the disability retirees shall be required to file a report with the Fund which may include copies of the retiree's IRS 1040 forms and W-2 forms as well as any other proofs of employment requested of a specific retiree indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of the prior year.

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

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

reduction may be made in anticipation of excess earnings in the current year. If, in the subsequent year, it is determined that the salary earned in the previous year was higher, appropriate repayment to the Fund shall be requested by the Division. If the salary earned was less, then a refund shall be made minus any outstanding amounts owed. If the gainful employment ends, the retirant must notify the Division in order to have the amount of reduction recalculated.

2. If it is found by the Division that gross earned income for the prior calendar year exceeded the difference between the pension portion of the retirement benefit and the salary of the retirant's former position and if the retirant does not refund the excess pension to the Fund within 30 days of notification of the difference, the pension portion of the retirement allowance shall be further reduced in order to recover the overpayment. If the remaining pension portion of the retirement benefit is not large enough to recover the amounts owed after a dollar for dollar reduction has been taken, then the annuity portion of the benefit as well as any death benefits or survivor's benefits shall be reduced by the amounts owed.

3. System interest shall be assessed on any repayment schedules.

(d) Retirants who retired on or before October 1, 1992, and who are age 60 or older, shall be exempt from the above earnings test beginning with the calendar year in which they attain the age of 60. Retirants who retired on or after November 1, 1992 are subject to the earnings test for their lifetime.

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

Amended by R.1998 d.325, effective July 6, 1998.

See: 30 N.J.R. 1028(a), 30 N.J.R. 2515(b).

Rewrote the section.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

Amended by R.2005 d.14, effective January 3, 2005.

See: 36 N.J.R. 4220(a), 37 N.J.R. 89(a).

Rewrote the section.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In the introductory paragraph of (a), substituted "TPAF" for "Teachers' Pension and Annuity Fund"; and in (a)1, deleted "of Pensions and Benefits (Division)" following "Division".

17:3-6.15 Disability retirements; filing after more than two years' discontinuance of service

(a) Following the filing of a disability retirement application, a vested member, who has not withdrawn contributions from the retirement system, and has discontinued service for more than two consecutive years, and who was otherwise eligible for disability retirement at the time service was discontinued, shall be approved to receive disability retirement benefits by the Board, if:

1. The applicant demonstrates to the satisfaction of the Board that the applicant was physically or mentally incapacitated for the performance of duty at the time service was discontinued, and continues to be so incapacitated, with the same disability or disabilities, at the time of filing; and

2. The applicant factually demonstrates to the satisfaction of the Board that service was discontinued because of the disability or disabilities.

(b) A disability retirement application that is filed under this rule may take effect, in accordance with the laws and rules applicable to effective dates for disability retirements, only on or after the date the application is filed.

(c) Disability retirements under this rule shall not be effective prior to February 1, 1999.

New Rule, R.1999 d.35, effective February 1, 1999.

See: 30 N.J.R. 3377(a), 31 N.J.R. 459(a).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote (c).

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In the introductory paragraph of (a), (a)1 and (a)2, deleted "of Trustees" following "Board"; in the introductory paragraph of (a), deleted "his or her" following "withdrawn"; and in (a)1, substituted "the applicant" for "he or she".

17:3-6.16 (Reserved)

Repealed by R.1990 d.283, effective June 4, 1990.

See: 22 N.J.R. 329(a), 22 N.J.R. 1740(c).

Section was "Retirement of members age 71 (correction of age)".

17:3-6.17 Approved allowance

When a retirement allowance becomes effective pursuant to N.J.A.C. 17:3-6.2, the type of retirement benefit and option elected shall stand as approved.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Substituted "retirement benefit and option" for "allowance (maximum or option)".

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Inserted "pursuant to N.J.A.C. 17:3-6.2".

17:3-6.18 Option 1 benefit

The reserve established under the provisions of Option 1 shall be a form of reducing term insurance, as the reserve shall reduce in value by the amount of the retirant's regular monthly allowance, whether received or not, for each month that the retirant survives after the effective date of retirement.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Inserted "regular" preceding "monthly" and neutralized gender references throughout.