

1. Any remaining balance shall be paid from the proceeds of any other benefits payable on the account of the retirant in the form of monthly payments or the balance of the Option I reserves that are due to the beneficiary or estate. If the retirant has designated multiple beneficiaries to receive such benefits, each beneficiary will share equally in repaying the loan from the benefits payable to them.

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Repealed and replaced (a) and (b).

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 Retirement credit

(a) A member shall receive credit toward retirement for any month or biweekly pay period in which a full normal deduction is received by the Fund.

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

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.1981 d.140, effective June 4, 1981.
See: 13 N.J.R. 159(c), 13 N.J.R. 376(a).
(b) added.

Amended by R.1991 d.100, effective March 4, 1991.

See: 22 N.J.R. 3321(b), 23 N.J.R. 712(b).

In (b), amended method of computing back pay awards. Added (c).

Case Notes

Former teacher entitled to interest on monies improperly withheld from retirement account, but not reimbursement for overpayment of state income tax. *Nangle v. Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 14.

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 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 member was under the normal retirement age at the time of filing application for a disability retirement allowance; and
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 his regular or assigned duties; and
4. The member meets the service requirement for ordinance disability.

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

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

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. *Kablesh 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

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

17:3-6.9 Employer and employee notices

(a) 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 his 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 his 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 by both the employee and his employer.

(b) Both the employer and the employee will also be advised that a copy of such notice will be placed in the member's file and will be given full consideration in any future claim for disability retirement benefits.

17:3-6.10 Employer application; employee notice

(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 his employees, the member will be promptly notified by letter that:

1. His employer has initiated a disability application, on the member's behalf; and
2. His employer has certified that the member is permanently and totally disabled for the continued performance of duty; and, if appropriate;
3. His employer has certified that the member should be retired as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties;
4. He has a period of 30 days to contest his involuntary retirement before the Board acts on his employer's application;
5. He will be required to appear for an examination before a physician designated to conduct such an examination for the Fund; and

6. In the event the Board finds that he is totally and permanently incapacitated for the performance of duty, he shall be granted the maximum retirement allowance (without option) payable under the statute, if he (the member) does not file a completed "Application for Disability Retirement Allowance" setting forth the type of allowance he desires, before his retirement goes into effect; and

7. In the event the Board finds that he 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.

17:3-6.11 Early retirement benefit

(a) The statutory reduction of $\frac{1}{4}$ of one per cent 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 his 55th birthday occurs on or after the 15th day of the month.

(b) Retirement on the first of the month in which a member attains age 55 shall be classed as "early" retirement, although a reduction is not applied if his 55th birthday occurs before the middle of such 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).

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 his 60th birthday.

17:3-6.13 Disability retirant; annual medical examinations

(a) All disability retirants, under the normal retirement age, 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 retirant to submit to the required medical examination shall result in the automatic suspension of his retirement allowance until he 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).

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

(a) All disability retirants, under the normal retirement age, shall be required to file a report with the Fund

indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of each year:

1. Such report must be filed with the Fund before the following February 15.

2. Failure on the part of the retirant to file a completed report with the Fund before February 15 shall result in the automatic suspension of the retirant's retirement allowance for the period the report is in default.

(b) If a retirant reports employment and earnings, then the following test shall be made by the Fund to ascertain:

1. Eligibility for reenrollment: If the retirant is engaged in a position subject to coverage by the Fund, his retirement allowance shall be cancelled and shall be reenrolled in the Fund pursuant to N.J.S.A. 18A:66-40c, effective as of the date of his appointment to such contract.

2. Adjustment of allowance:

i. If the retirant is engaged in employment and he estimates that his gross earned income for the present calendar year will exceed the difference between his pension and the salary he would have been receiving had he continued to work for his former employer (normal increment steps and salary guide revisions will be considered, but no promotional assumptions will be made) his pension for the period may be adjusted by such difference. If at the close of the calendar year it is found that his earnings differ from his estimate an appropriate adjustment will be made.

ii. If such a retirant has not properly estimated his gross earned income for the calendar year and it is found at the close of the calendar year it exceeded the difference between his pension and the salary of his former position and if he does not refund the excess pension to the Fund within 30 days, effective April 1, his pension for the succeeding 12-month period will be reduced by the excess pension he received in the preceding calendar year.

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).

17:3-6.15 (Reserved)

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.1979 d.397, effective October 4, 1979.

See: 11 N.J.R. 412(a), 11 N.J.R. 596(a).

As amended by R.1981 d.509, effective January 18, 1982.

See: 13 N.J.R. 620(a), 14 N.J.R. 105(c).

(a): deleted "at the ... birthday" and substituted "effective ... 71" therefor.

(c) deleted and (d) renumbered as (c) and (e) renumbered as (d).

Repealed R.1987 d.187, effective April 20, 1987.

See: 19 N.J.R. 195(a), 19 N.J.R. 648(a).

This section was "compulsory retirement".

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, the type of allowance (maximum or option) elected shall stand as approved.

17:3-6.18 Option "I" benefit

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

17:3-6.19 Maximum allowance prescribed

Where someone, other than a legal guardian, acting in behalf of a member makes application for a retirement allowance, such individual may not elect other than the maximum allowance for the member and the member's estate must be designated as the beneficiary for all death benefits payable on the member's account.

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

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

17:3-6.20 Final compensation; 10 and 12-month members

(a) In order to determine the final compensation (three-year average) for benefits on a:

1. Member reported on a monthly basis under a ten-month contract, use the creditable salaries upon which contributions were made to the Fund for his final 30 months of service.

2. Member reported on a monthly basis under a 12-month contract, use the creditable salaries upon which contributions were made to the Fund for his last 36 months of service.

(b) If a member was reported on any combination of ten and 12-month contract years in such three-year period, the final average compensation shall be determined on a proportional basis.

(c) The months for which no contributions were made shall be counted as zero.

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).

Case Notes

Teacher's retirement benefits corrected to reflect calculation on proportional basis where teacher worked both 10 and 12-month contract years. *Anderson v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 132.

17:3-6.21 Determination of last year's salary; veterans (veteran one-half pay retirement)

For a member reported on a monthly basis under a 10-month contract, use the member's final 10 months of creditable salaries upon which contributions were made for the period immediately preceding retirement; on a 12-month contract basis, his or her final 12 months of service; combination of 10- and 12-month contracts, on a proportional basis.

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).

Amended by R.1985 d.547, effective November 4, 1985.
See: 17 N.J.R. 2239(a), 17 N.J.R. 2674(a).

Substantially amended.

17:3-6.22 Waiver

If for any reason a retirement allowance or portion thereof has been waived by a retired member or beneficiary, the benefit waived shall remain in the Retirement Reserve Fund. Such person may cancel the waiver effective as of the first day of any month subsequent to the receipt of the notice of cancellation; however, he may not make a claim for payment of any benefits waived prior thereto.

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

17:3-6.23 Teachers' Retirement Fund benefits

All Teachers' Retirement Fund benefits payable under the provisions of N.J.S.A. 18A:69-49 shall be exempt from consideration where the term "pension" is employed when referring to the suspension of the pension portion of a member's retirement allowance.

17:3-6.24 Part-time members

The determination of benefits, service credit and final compensation for any person (part-time teacher) who qualified for membership under Section 2.3 (Full time) of this Chapter shall be done on the same basis as for regular full-time teachers, with the exception that the Board shall reserve the right to review any application where there has been an unusual change in the teacher's status which might result in the payment of an abnormal benefit.

17:3-6.25 Medical examinations; physicians

Where the statute prescribes that a physician be designated by the Fund to perform a medical examination, such physician shall be selected from the current membership directory of the Medical Society of New Jersey and the New Jersey Association of Osteopathic Physicians and Surgeons; however, in the cases of those members whose personal physician has identified them as having a probable abbreviated life expectancy, such "imminent death" cases may be processed without the necessity of an examination by a physician designated by the Fund if corroborating medical evidence of the diagnosis can be obtained.

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.1975 d.140, effective May 27, 1975.

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

As amended, R.1977 d.96, effective March 21, 1977.

See: 9 N.J.R. 100(b), 9 N.J.R. 200(a).

As amended, R.1982 d.15, effective February 1, 1982.

See: 13 N.J.R. 749(a), 14 N.J.R. 161(d).

Deleted "in order . . . by the fund" and substituted "in the cases . . . can be obtained".

17:3-6.26 Final compensation; biweekly salary computation for State employees reported by centralized payroll

(a) 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.

(b) In computing (a) above, the total salary will be adjusted by the factors supplied by the actuary to convert biweekly salaries to compensate for State biweekly payroll schedules. Application of the factors to the salaries reported for pension purposes will develop "final compensation."

(c) In computing (a) above, 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 a salary. The adjustment as specified in (b) above, shall not be made.

(d) If a member was reported on a biweekly basis on any combination of 10- and 12-month contract years, the final average compensation prior to retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

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

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

As amended, R.1978 d.104, effective March 21, 1978.

See: 10 N.J.R. 37(c), 10 N.J.R. 176(a).

17:3-6.27 Determination of last year's salary; State employee veterans reported by centralized payroll

(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. The total salary will be adjusted by factors supplied by the actuary to compensate for State biweekly payroll schedules.

(b) In computing (a) above, 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 (a) above, shall not be made.