

Amended by R.2000 d.293, effective July 17, 2000.

See: 31 N.J.R. 2710(a), 32 N.J.R. 2601(a).

Rewrote (a); deleted former (b) and (c); and recodified former (d) as (b).

Amended by R.2006 d.130, effective April 3, 2006.

See: 37 N.J.R. 4521(a), 38 N.J.R. 1578(a).

In introductory paragraph (a), added "accrued"; in (a)1, corrected N.J.A.C. cite; deleted former (a)2; recodified former (a)3 as (a)2 and added "accrued" and statutory citation; and in (b), added "accrued".

### 17:4-6.5 Willful negligence

(a) Willful negligence is defined as follows:

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.

### 17:4-6.6 (Reserved)

Recodified to N.J.A.C. 17:4-4.8 by R.2004 d.410, effective November 1, 2004.

See: 36 N.J.R. 622(a), 36 N.J.R. 4953(a).

Section was "Retirement credit".

### 17:4-6.7 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 in service at the time of filing the application for a disability retirement allowance. A "member in service" means that the member or the employer was making pension contributions to the retirement system at the time of filing the application for a disability retirement allowance. It may also mean that the member was on an approved leave of absence, paid or unpaid, or suspension, paid or unpaid, at the time of filing the application for a disability retirement allowance, and it has not been more than the time frames permitted by N.J.S.A. 43:16A-9(5)a for active membership since the member's last contribution to the retirement system. If the member had pending litigation for wrongful termination filed against the employer, the member has 30 days from the date the litigation is resolved to file for disability retirement in order to be considered a "member in service";
2. The member is physically or mentally incapacitated for the performance of duty;
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, canceled or amended.

Amended by R.2001 d.66, effective February 20, 2001.

See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).

In (a), rewrote 1; neutralized gender references throughout.

Amended by R.2005 d.232, effective July 18, 2005.

See: 37 N.J.R. 573(a), 37 N.J.R. 2687(a).

In (a), rewrote 1; added (b).

#### Case Notes

Patrolman suffering heart attack triggered by violent assault with arrestee qualifies for accidental disability retirement benefits. *Ciupinski v. Board of Trustees of the Police and Firemen's Retirement System*, 97 N.J.A.R.2d (TYP) 99.

Accidental disability retirement allowance denied because no traumatic event occurred. *Joyce v. Police and Fireman's Retirement System*, 97 N.J.A.R.2d (TYP) 11.

Police officer who witnessed deaths of his father and brother while on duty suffered qualifying traumatic event entitling him to accidental disability retirement benefits. *Flint v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 278.

Corrections officer who sustained back injury in trip and fall incident did not suffer traumatic event for purposes of accidental disability retirement benefits eligibility. *Burzachiello v. Board of Trustees, Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 275.

Police officer granted disability retirement for psychiatric disorder offered sufficient proof that he no longer suffered from disorder to support his reinstatement 15 years later. *Dascoli v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 231.

Bus driver injured when patients fell on her in three unrelated incidents several days apart suffered qualifying traumatic event entitling her to award of accidental disability retirement benefits. *Harring v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 202.

Bus collision constituted traumatic event entitling driver to accidental disability retirement benefits. *Fullwood v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 200.

Former firefighter's application for disability retirement benefits was properly dismissed where applicant was not member in service at time of filing. *Kirwin v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 183.

Corrections officer who was diagnosed as suffering from multiple sclerosis while receiving treatment for on-the-job tripping injury was not entitled to accidental disability retirement benefits. *McBride v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 162.

Incident in which corrections officer was surrounded and threatened by prison inmates, and which resulted in officer's total psychiatric disability, constituted traumatic event entitling him to accidental disability retirement benefits. *Flume v. Police and Firemen's Retirement System*, 96 N.J.A.R.2d (TYP) 153.

### 17:4-6.8 Employment after retirement

(a) A member, who is pending retirement or whose retirement has become effective pursuant to N.J.A.C. 17:4-6.2, is required to re-enroll in the Police and Firemen's Retirement System pursuant to N.J.S.A. 43:16A-15.3, regardless of whether the member is over age 35, if:

1. The member returns to the employment in a PFRS covered position;

2. The member continues in the same, or substantially the same, position held prior to retirement with no lapse in service after the retirement date. In this case, the member would not be considered to have a bona fide retirement and would not be entitled to any retirement benefits. The member would be reinstated to the former PFRS membership; or

3. The member returns to employment in a position which is the same, or substantially similar, to the position held by the member prior to retirement, and:

i. The position became a PFRS position for that member prior to retirement due to the provisions of N.J.S.A. 43:16A-1(2)(a) or (b) or 43:16A-3.1, which permit a member of the PFRS to continue membership if serving in an appointive administrative or supervisory capacity over police or firefighters, and the member returned to employment with the same employer;

ii. The position became a PFRS position at the option of the member prior to retirement pursuant to N.J.S.A. 43:16A-3.5 or other statutory authority; or

iii. The position remained a PFRS position under the provisions of N.J.S.A. 43:16A-1.2 for those serving in the position at the time of the P.L. 1989, c.204 review.

(b) If a member is eligible to contribute to the PFRS from a position, then the position is a PFRS position.

(c) If the position is not for a title which is eligible for enrollment in the PFRS and the member is not eligible to contribute to the PFRS due to having reached the mandatory retirement age of 65 (N.J.S.A. 43:16A-5), the position is not covered under the provisions of the PFRS, and the member is not eligible to re-enroll or contribute to the PFRS from that position. The member may work in that position without affecting his or her retirement allowance.

New Rule, R.2005 d.119, effective April 18, 2005.  
See: 37 N.J.R. 40(a), 37 N.J.R. 1217(b).

#### 17:4-6.9 Final compensation

(a) In order to determine the final compensation for benefits on a:

1. Member reported on a monthly basis, use the base salary upon which pension contributions were made to the Annuity Savings Fund for the member's last 12 months of service.

2. Member reported on a biweekly basis, use the base salary upon which pension contributions were made to the Annuity Savings Fund for the member's last 26 pay periods of service multiplied by the factor supplied by the actuary to compensate for biweekly payroll schedules.

(b) The months or pay periods for which no contributions were made shall not be used in the calculation.

Amended by R.2001 d.66, effective February 20, 2001.  
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).  
Rewrote section.

#### 17:4-6.10 Employer initiated disability retirement application

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for an employee, 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 available medical documentation; and, if appropriate;

3. The member's 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 the member's regular or assigned duties;

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

5. The member will be required to appear for an examination before a physician designated to conduct such an examination for the retirement system; and

6. In the event the Board finds that the member is totally and permanently incapacitated for the performance of duty, the member shall be granted a retirement allowance; and

7. 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.2001 d.66, effective February 20, 2001.  
See: 32 N.J.R. 4060(a), 33 N.J.R. 684(a).  
Rewrote section.

#### 17:4-6.11 Service or special retirement; eligibility

(a) A member becomes eligible for "service" retirement:

1. On the first of the month following the member's 55th birthday. If the member's 55th 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. 43:16A-5, and requests that date; or